



Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

PEOPLE OF THE G.R. No. 242278  
 PHILIPPINES, Plaintiff-Appellee, Present:

- versus -

LEONEN, J.,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 ROSARIO, JJ.

CHRISTIAN MANUEL y Promulgated:  
 VILLA, Accused-Appellant. December 9, 2020  
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DECISION

DELOS SANTOS, J.:

The Case

This ordinary appeal challenges the Decision<sup>1</sup> dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08616, which affirmed the Judgment<sup>2</sup> dated July 15, 2016 of the Regional Trial Court (RTC) of Manila, Branch 9 in Crim. Case Nos. 11-288374-78, finding accused-appellant Christian Manuel y Villa (accused-appellant) guilty beyond reasonable doubt of Acts of Lasciviousness, Attempted Qualified Rape, Qualified Rape, and Qualified Rape by Sexual Assault.

<sup>1</sup> Rollo, pp. 2-17; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

<sup>2</sup> Records, pp. 143-153; penned by Presiding Judge Jacqueline S. Martin-Balictar.

### The Antecedents

Accused-appellant's conviction arose from the following sets of Information, viz.:

Criminal Case No. 11[-]288374

That on or about June 15, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA],<sup>3</sup> a **minor, 9 years old**, and/or common[-]law husband of [BBB], with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [AAA], by then and there directing her to hold his penis and moving it up and down, against her will and without her consent. (Emphasis supplied)

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

Criminal Case No. 11[-]288375

That on or about June 27, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], a **minor, 9 years old**, and/or common[-]law husband of [BBB], with lewd design, did then and there willfully, unlawfully and feloniously commence the commission of the crime of rape directly by overt acts, to wit: by then and there suddenly removing the shorts and panty of said [AAA], and forcibly trying to place his penis into her vagina, with the evident intent of having carnal knowledge with her, all against her will and consent, but said [accused-appellant] did not perform all the acts of execution which should have produced the crime of rape by reason of some cause or accident other than his own spontaneous desistance, that is, by the act of said [AAA] of kicking the herein [accused-appellant] causing him to return to the original place where he was then sleeping. (Emphasis supplied)

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

Criminal Case No. 11[-]288376

That sometime [i]n August 2010, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], a **minor, 11 years old**, and/or common[-]law husband of [BBB], mother of said [AAA], did then and there willfully, unlawfully and feloniously have carnal knowledge upon said [AAA], by then and there making her lie sideways and thereafter, inserting his penis [i]nto her vagina, touching lightly its hole/[labia]. (Emphasis supplied)

CONTRARY TO LAW.<sup>6</sup>

<sup>3</sup> In conformity with Administrative Circular No. 83-2015 (*Subject Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names/Personal Circumstances*), the complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution, have been replaced with fictitious initials.

<sup>4</sup> Records, p. 2.

<sup>5</sup> Id. at 3.

<sup>6</sup> Id. at 4.

Criminal Case No. 11[-]288377

That sometime [sic] on the third Saturday of August 2010, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], **a minor, 11 years old**, and/or common[-]law husband of [BBB], mother of [AAA], did then and there willfully, unlawfully and feloniously have carnal knowledge upon said [AAA], by then and there pulling her, removing her clothes and shorts, making her lie sideways, and forcibly inserting his penis [into] her vagina. (Emphasis supplied)

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

Criminal Case No. 11[-]288378

That on or about June 28, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], **a minor, 9 years old**, and/or common[-]law husband of [BBB], mother of [AAA], did then and there willfully, unlawfully and feloniously commit sexual assault upon said [AAA], by then and there making her hold his penis and putting it inside her mouth, against her will and consent, to her damage and prejudice. (Emphasis supplied)

CONTRARY TO LAW.<sup>8</sup>

Accused-appellant pleaded not guilty to all charges. Thereafter, trial on the merits ensued.

***Version of the Prosecution***

The evidence of the prosecution comprised of the testimonies of the minor victim, AAA, and her mother, BBB. Their testimonies sought to establish the following:

AAA is the daughter of BBB from a previous relationship. AAA was born on July 13, 1999, and was only 3 years old when BBB lived with her common-law husband, herein accused-appellant. At the time of the incidents, they all resided in [REDACTED], Manila, together with BBB's two children with accused-appellant.<sup>9</sup>

AAA narrated that the first incident occurred on June 15, 2009 when she was 9 years old. While she was sleeping, accused-appellant sat beside her and made her hold his penis, guiding her hand in upward and downward movements. The act lasted for about 20 minutes until she resisted by

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<sup>7</sup> Id. at 5.

<sup>8</sup> Id. at 6.

<sup>9</sup> TSN, January 11, 2016, pp. 9-10.

kicking him.<sup>10</sup>

AAA recalled that on June 27, 2009, accused-appellant forcibly removed her shorts and underwear while she was sleeping. Accused-appellant then went on top of her, held her hands and feet, and tried to insert his penis into her vagina. However, she successfully resisted his sexual advances by pushing and kicking him.<sup>11</sup> The following night, or on June 28, 2009, accused-appellant forced AAA to hold his penis and insert it into her mouth. Owing to her resistance by pushing and kicking him, his penis merely touched her mouth.<sup>12</sup>

Sometime in August 2010, accused-appellant successfully ravished AAA. After removing her shorts and underwear, accused-appellant made her lie sideways and forcibly inserted his penis into her vagina, overpowering her resistance.<sup>13</sup>

On September 1, 2010, AAA told her mother that accused-appellant sexually molested her. The following morning, they reported the incidents to the police station. AAA was then referred to the Child Protection Unit of the Philippine General Hospital (CPU-PGH) and to the care of the Department of Social Welfare and Development.<sup>14</sup>

BBB declared that her daughter developed depression and exhibited an unusual behavior. Sometimes AAA would go berserk and curse at herself. Since 2011, they went to CPU-PGH thrice for her treatment.<sup>15</sup>

In a Provisional Medico-Legal Report<sup>16</sup> dated September 7, 2010, Dr. Stella Manalo of the CPU-PGH indicated the following:

#### IMPRESSIONS

No evident injury at the time of the examination but medical evaluation cannot exclude sexual abuse. Acute Tonsillopharyngitis, exudative.

#### *Version of the Defense*

The defense presented accused-appellant as its lone witness. Accused-appellant declared that he and BBB were not married, but they were living

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<sup>10</sup> TSN, June 3, 2016, pp. 7-9.

<sup>11</sup> Id. at 11-15.

<sup>12</sup> Id. at 25-27.

<sup>13</sup> Id. at 23-25.

<sup>14</sup> *Rollo*, p. 5.

<sup>15</sup> *CA rollo*, p. 55.

<sup>16</sup> Records, pp. 15-16.

as husband and wife for about 10 years. AAA, BBB's daughter from a previous relationship, lived with them, together with accused-appellant's two children with BBB. Accused-appellant admitted having exercised parental authority over AAA when she was just 3 years old, and treated her as his own daughter.<sup>17</sup>

Interposing denial, accused-appellant argued that it was impossible for him to have molested or raped AAA inside their house, which he claimed to be mere shanty covering a very small area, where they all slept together, *i.e.*, accused-appellant slept beside his two children, while AAA slept beside her mother, BBB.<sup>18</sup>

### The RTC Ruling

In its Judgment<sup>19</sup> dated July 15, 2016, the RTC convicted accused-appellant of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in Criminal Case No. 11-288374, Attempted Qualified Rape in Criminal Case No. 11-288375, Qualified Rape in Criminal Case No. 11-288377 and Qualified Rape by Sexual Assault in Criminal Case No. 11-288378. However, it acquitted accused-appellant of the charge of Rape in Criminal Case No. 11-288376 for failure to prove his guilt beyond reasonable doubt. The *fallo* of the Decision reads:

WHEREFORE, accused is hereby found:

GUILTY beyond reasonable doubt of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the Revised Penal Code, in Criminal Case No. 11[-]288374. He is sentenced to suffer the indeterminate penalty of 5 months and 10 days of [*Arresto Mayor*] medium as minimum, to 4 years and 2 months of [*Prision Correccional*] [m]edium as maximum, and is ORDERED to pay the victim P75,000[.00] as civil indemnity, P75,000[.00] as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

GUILTY beyond reasonable doubt of ATTEMPTED QUALIFIED RAPE, defined and penalized under Article 266-A, in relation to Article 6 of the Revised Penal Code in Criminal Case No. 11[-]288375. He is sentenced to suffer the indeterminate penalty of 6 years[,] 2 months and 1 day of [*Prision Mayor*] minimum as minimum, to 18 years and 2 months of [*Reclusion Temporal*] maximum as maximum and is ORDERED to pay the victim P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages, plus interest at 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

<sup>17</sup> TSN, March 21, 2016, pp. 15-18.

<sup>18</sup> Id. at 11-12 and 18.

<sup>19</sup> Supra note 2.

GUILTY beyond reasonable doubt of QUALIFIED RAPE under Article 266-A paragraph [1(d)] of the Revised Penal Code in Criminal Case No. 11[-]288377. He is sentenced to suffer the [indeterminate] penalty of *RECLUSION PERPETUA* without eligibility for parole, and is ORDERED to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

GUILTY beyond reasonable doubt of QUALIFIED RAPE BY SEXUAL ASSAULT under Article 266-A[,] paragraph 2 of the Revised Penal Code in Criminal Case No. 11[-]288378. He is sentenced to suffer the indeterminate penalty of 10 years of [*Prision Mayor*] as minimum, to 17 years [and] 4 months of [*Reclusion Temporal*] as maximum, and is ORDERED to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

Accused is ACQUITTED of the crime of Rape under Article 266-A, paragraph [1(d)] of the Revised Penal Code under Criminal Case No. 11[-]288376, for lack of evidence to prove guilt beyond reasonable doubt.

SO ORDERED.<sup>20</sup>

The RTC held that AAA gave a detailed and credible narration of her sexual ordeal, positively identifying accused-appellant as the perpetrator who consummated the sexual acts against her will. Taking into consideration the child's very young age at the time of the incidents, the RTC was persuaded of her candor and sincerity throughout the trial and even during her cross-examination. The RTC also underscored that the lack of specific injuries on AAA's genital and hymen did not negate her claim of rape and sexual abuse, holding that a medical examination of the victim is merely corroborative in character and is not essential to a conviction.

Aggrieved, accused-appellant appealed to the CA challenging AAA's credibility. Accused-appellant maintained that it was impossible for him to have sexually molested and raped AAA in their house where they were sleeping, together with his wife and two children. To him, they would have been easily awakened by any slight movement. He added that AAA's behavior of staying in the same house with her supposed violator after the alleged three incidents of sexual abuse and rape is uncharacteristic of a sexually-abused or raped victim. Lastly, accused-appellant argued that the lack of definitive statement in the medical findings on AAA that she had been raped or sexually abused belied her claims.

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<sup>20</sup> Records, pp. 152-153.

### The CA Ruling

In its Decision<sup>21</sup> dated April 26, 2018, the CA affirmed accused-appellant's conviction in Criminal Case Nos. 11-288375, 11-288377 and 11-288378 for Attempted Qualified Rape, Qualified Rape and Qualified Rape by Sexual Assault, respectively, with modification as regards the penalties imposed and damages awarded. In Criminal Case No. 11-288374, the CA convicted accused-appellant of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of Republic Act (R.A.) No. 7610, otherwise known as the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*. The *fallo* of the Decision reads:

WHEREFORE, the *Appeal* is hereby DENIED. The *Judgment* dated 15 July 2016 of the Regional Trial Court of Manila, Branch 9, is AFFIRMED with MODIFICATIONS to [read] as follows:

1. Criminal Case No. 11[-]288374 (*Acts of Lasciviousness*) under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA No. 7610). Accused-appellant CHRISTIAN MANUEL y VILLA is sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal*, as maximum. He is further ordered to pay AAA, the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine.
2. Criminal Case [No.] 11[-]288375 (*Attempted Qualified Rape under Article 266-A in relation to Article 6 of the Revised Penal Code*). Accused-appellant CHRISTIAN MANUEL y VILLA, is sentenced to suffer the indeterminate penalty of imprisonment for six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is further ordered to pay AAA, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.
3. Criminal Case [No.] 11[-]288377 (*Qualified Rape under Article 266-A in relation to Article 266-B(1) of the Revised Penal Code*). Accused-appellant CHRISTIAN MANUEL y VILLA is ordered to pay AAA, the amount of P100,000.00 each as civil indemnity, moral damages and exemplary damages.
4. Criminal Case [No.] 11[-]288378 (*Qualified Rape by Sexual Assault under Article 266-A(2) in relation to Article 266-B(1) of the Revised Penal Code*). Accused-appellant CHRISTIAN MANUEL y VILLA is ordered to pay AAA the amount of P100,000.00 each as civil indemnity, moral and exemplary damages.

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<sup>21</sup> Supra note 1.

All damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

SO ORDERED.<sup>22</sup>

As did the RTC, the CA gave paramount weight to the testimony of AAA, finding the same to be straightforward and consistent. It debunked accused-appellant's assertions which purportedly tainted her testimony as regards her behavior during and after the alleged incidents, and the lack of definitive medical findings that she had been raped and sexually abused.

Hence, this appeal.

For purposes of this appeal, the Public Attorney's Office<sup>23</sup> and the Office of the Solicitor General<sup>24</sup> manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In this appeal, accused-appellant once again raised the following assignment of errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED NOTWITHSTANDING THE INCREDIBILITY OF THE TESTIMONIES AND QUESTIONABLE BEHAVIOR OF THE PROSECUTION WITNESSES, WHICH PUT GRAVE AND SERIOUS DOUBTS ON THEIR CREDIBILITY.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF [QUALIFIED RAPE] AS THERE IS NO CONCLUSIVE FINDING THAT HE RAPED AAA.

III.

THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S DEFENSES.<sup>25</sup>

### **The Court's Ruling**

The appeal is devoid of merit.

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<sup>22</sup> Records, pp. 121-122.

<sup>23</sup> *Rollo*, p. 37.

<sup>24</sup> *Id.* at 33.

<sup>25</sup> *CA rollo*, pp. 29-30.





**Criminal Case No. 11-288374**  
***Acts of Lasciviousness under Article***  
***336 of the RPC, in relation to Section***  
***5(b), Article III of R.A. No. 7610***

In Criminal Case No. 11-288374, the RTC convicted accused-appellant of Acts of Lasciviousness plainly under Article 336 of the RPC. On appeal, the CA underscored that AAA was 9 years of age at the time of the incident and, thus, held him guilty of the crime of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610, which defines and penalizes Acts of Lasciviousness committed against a child under 12 years old,<sup>26</sup> as follows:

*Sec. 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 (Emphases and underscoring supplied)

Reduced to its elements, sexual abuse under the provision presupposes the concurrence of the following:

- (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>27</sup>  
(Emphases supplied)

<sup>26</sup> *People v. Caoili*, 815 Phil. 839, 886 (2017).

<sup>27</sup> *Garingarao v. People*, 669 Phil. 512, 523 (2011).

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done 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;
  - 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; and
- (3) That the offended party is another person of either sex.<sup>28</sup>  
(Emphasis supplied)

As correctly found by the CA, all the elements are present in this case.

The prosecution sufficiently established the element of “lascivious conduct,” which is defined as “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>29</sup> Records show that AAA positively testified that on June 15, 2009, accused-appellant instructed her to masturbate him, by making her hold his penis and guiding her hand in upward and downward motions, which lasted for about 20 minutes.<sup>30</sup>

The second and third elements require that the victim was either exploited in prostitution or subjected to other sexual abuse, and that she is a child as defined under R.A. No. 7610.<sup>31</sup> By “other sexual abuse” is meant to cover not only a child who is abused for profit, but also in cases where a child was engaged in lascivious conduct through the coercion or intimidation by an adult.<sup>32</sup> Intimidation must be viewed in the light of the victim’s perception and judgment at the time of the commission of the crime,<sup>33</sup> taking

<sup>28</sup> *Quimvel v. People*, 808 Phil. 889, 914 (2017).

<sup>29</sup> Implementing Rules and Regulations of R.A. No. 7610, Section 2, paragraph (h).

<sup>30</sup> *Supra* note 10.

<sup>31</sup> *People v. Abello*, 601 Phil. 373, 393 (2009).

<sup>32</sup> *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

<sup>33</sup> *People v. Ardon*, 407 Phil. 104, 121 (2001).

into consideration the age, size and strength of the parties.<sup>34</sup> Intimidation need not be irresistible;<sup>35</sup> it suffices that some form of compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the victim.<sup>36</sup>

As disclosed by her birth certificate,<sup>37</sup> AAA was 9 years old at the time of the incident. Also, as admitted by accused-appellant, he was the common-law husband of AAA's mother. As a close kin of the child, actual force or intimidation need not be employed by him.<sup>38</sup> Here, it is enough that fear was undoubtedly produced in the mind of the child victim AAA, whose innocent age of 9 years at the time of the incident clearly made her vulnerable and easily intimidated by accused-appellant, whom she had known and identified as her father since she was just 3 years old. Accused-appellant's moral influence over the child cannot be denied.

It bears to add that although the Information in Criminal Case No. 11-288374 made no particular mention of Section 5(b), Article III of R.A. No. 7610, this omission is not fatal to accused-appellant's right to be informed of the nature and cause of the accusation against him. Indeed, the actual facts recited in the information as constituting the offense charged prevails over its caption or designation.<sup>39</sup> In *Quimvel v. People*,<sup>40</sup> the Court was confronted with a similarly recited information, viz.:

#### AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMUEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA], a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

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<sup>34</sup> Id.

<sup>35</sup> *People v. Rellota*, 640 Phil. 471, 496 (2010).

<sup>36</sup> Id.

<sup>37</sup> Records, p. 14.

<sup>38</sup> *People v. Corpuz*, 597 Phil. 459, 467 (2009).

<sup>39</sup> *Espino v. People*, 713 Phil. 377 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

<sup>40</sup> *Supra* note 28, at 916.

In holding that the allegations make out a case for sexual abuse under Section 5(b), Article III of R.A. No. 7610, the Court declared:

To the mind of the Court, the allegations are sufficient to classify the victim as one “exploited in prostitution or subject to other sexual abuse.” This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children.<sup>41</sup> (Underscoring supplied)

Clearly, the facts recited in the subject Information made out a charge for violation of Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. As discussed earlier, the prosecution established that accused-appellant, who exercised moral ascendancy over the child AAA, engaged her in lascivious conduct within the purview of sexual abuse under Section 5(b). Thus, the CA correctly convicted accused-appellant of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

**Criminal Case No. 11-288377**  
**Qualified Rape**

Article 266-A of the RPC, as amended by R.A. No. 8353, defines statutory rape, and Article 266-B thereof imposes the death penalty if, among others, the victim is under 18 years of age and the offender is a relative by affinity within the third civil degree, to wit:

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 is otherwise unconscious;

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<sup>41</sup> Id. at 916-917.

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

Article 266-B. *Penalty*. – 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**. (Emphases supplied)

Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or demented. Proof of force, threat, intimidation, or consent is unnecessary, since none of these is an element of statutory rape, where the only subject of inquiry is the age of the woman and whether carnal knowledge took place.<sup>42</sup>

In this case, both elements attend.

First, AAA vividly recalled her harrowing ordeal in the hands of accused-appellant in August 2010. Her testimony was straightforward and spontaneous, as she intimated to the RTC how accused-appellant removed her shorts and underwear while she was sleeping, and forcibly inserted his penis into her vagina. Second, as disclosed by her birth certificate, AAA was 11 years old when accused-appellant ravished her. Such fact supplants the element of force, threat or intimidation, as the same is not essential for rape against a victim under 12 years old. Also, the qualifying circumstance of relationship was, likewise, satisfactorily proved by BBB who declared that accused-appellant was her common-law spouse, which was admitted by accused-appellant himself. As discussed earlier, accused-appellant's moral ascendancy attends, as the child victim had known and identified accused-appellant as her father since she was just 3 years old.

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<sup>42</sup> *People v. Briosos*, 788 Phil. 292, 306 (2016).

Thus, the RTC correctly convicted accused-appellant of Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the RPC.

**Criminal Case No. 11-288375**  
**Attempted Qualified Rape**

In Criminal Case No. 11-288375, the Information charged accused-appellant in this wise: accused-appellant removed the shorts and panty of AAA, and forcibly tried to insert his penis into her vagina “with the evident intent of having carnal knowledge with [AAA], all against her will and consent, but [accused-appellant] did not perform all the acts of execution which should have produced the crime of Rape by reason of some cause or accident other than his own spontaneous desistance, that is, by the act of said [AAA], of kicking [accused-appellant] causing him to return to the original place where he was then sleeping.”<sup>43</sup>

To prove the allegations, AAA testified, thus:

Q On June 27, 2009, this is an Attempted Rape, do you still remember what happened that time?

A Yes, sir.

Q You were just 9 years old at that time, correct?

A Yes, Sir.

Q x x x [C]an you tell me what happened that time, if you can still remember?

A **He forcibly removed my underwear and he tr[ie]d to insert his penis, Sir.**

Q Since you mentioned [that] he forcibly removed your underwear and your short[s], how did he do that to you?

A He just pulled it down, Sir.

x x x x

Q You said he forcibly removed your underwear and your short[s], did he successfully do that?

A Yes, Sir.

Q **And you said a while ago that he place[d] himself on top of you and tr[ie]d to forcibly insert his penis into your vagina, how did he do that to you?**

A **He was on top of me, Sir.**

Q **How did he forcibly [insert] his penis into your vagina?**

A **He mounted me and tried inserting his penis inside my vagina, Sir.**

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<sup>43</sup> Records, p. 3.

Q **How did he hold you, since you said he mounted you at that time?**

A **He h[e]ld my hands and feet, Sir.**

Q If you can still remember[,] what particular [hand] did he [use] in holding your hands.

A Right hand, Sir.

Q How about your feet[,] what [hand] did he [use]?

A He also used his feet, Sir.

Q **How about his other hand[,] what did he do?**

A **Holding his penis, Sir.**

Q Did he utter any word while he was on top of you and trying to insert his penis into your vagina?

A None, Sir.

Q How about you[,] how did you react?

A None, Sir.

Q **Just by kicking and trying to push him in order to contain him?**

A **Yes, Sir.**<sup>44</sup> (Emphases supplied)

As correctly held by the RTC and the CA, the foregoing testimony established attempted rape only.

According to Article 6 of the RPC, “there is an attempt when the offender commenced the commission of the crime directly by overt acts, but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance.” The character of the overt acts has been explained by the Court in *People v. Lizada*,<sup>45</sup> thus:

**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’etre* for the law requiring a direct overt act is that, in a majority of cases, the 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

<sup>44</sup> TSN, June 3, 2016, pp. 11-15.

<sup>45</sup> 444 Phil. 67, 98-99 (2003).

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.** (Emphases supplied)

Applying the foregoing to rape cases, the Court, in *People v. Bonaagua*,<sup>46</sup> declared that the slightest penetration by the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime of rape. In *People v. Arce, Jr.*,<sup>47</sup> the Court found the accused guilty of attempted rape only, owing to the failure of the victim to declare a slightest penetration into her vagina, which was necessary to consummate rape. On the contrary, the victim categorically stated that the accused was not able to insert his penis into her private part because she was moving her hips away. In *People v. Tolentino*,<sup>48</sup> the Court, in the same manner, convicted the accused of attempted rape only, underscoring the paucity of evidence that the slightest penetration ever took place, *i.e.*, that the victim’s statements that the accused was “trying to force his sex organ into mine” and “*binundol-bundol ang kanyang ari*” did not prove that the accused’s penis reached the *labia* of the *pudendum* of the victim’s vagina.

In this case, AAA declared that accused-appellant forcibly “tried inserting his penis [into her] vagina.” There was no categorical declaration that accused-appellant’s penis actually penetrated, however slightly, much less touched, her vagina. As AAA confirmed in her testimony, she resisted accused-appellant’s advances by pushing and kicking him “in order to contain him.” The Court has consistently emphasized that “[i]n rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion.”<sup>49</sup> As a conviction cannot be made to rest on possibilities, both the RTC and the CA correctly observed that AAA’s testimony failed to prove all the elements of a consummated rape.

While accused-appellant was unsuccessful in penetrating AAA due to her resistance, in attempting to do so, he nevertheless possessed the intent to penetrate her, as manifested by the following overt acts: forcibly removing AAA’s shorts and underwear, lying on top of her, mounting and restraining her hands and feet, and holding his penis with his left hand trying to insert it into her vagina. The totality of these acts clearly demonstrated accused-

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<sup>46</sup> 665 Phil. 728 (2011).

<sup>47</sup> 417 Phil. 18 (2001).

<sup>48</sup> 367 Phil. 755 (1999).

<sup>49</sup> *People v. Poras*, 626 Phil. 526, 546 (2010).



appellant's unmistakable objective to insert his penis into AAA's vagina, making him liable for the crime of rape in its attempted stage. Considering the concurrence of the aggravating circumstances of minority and relationship, as discussed earlier, accused-appellant's conviction for Attempted Qualified Rape is in place.

***Criminal Case No. 11-288378***  
***Conviction of Rape by Sexual Assault under Article 266-A(2), in relation to Article 266-B(1) of the RPC***

Accused-appellant was indicted under the Information which alleged: "[accused-appellant], being then the stepfather of [AAA], a minor, 9 years old, and/or common[-]law husband of [BBB], mother of said [AAA], did then and there willfully, unlawfully and feloniously commit sexual assault upon said [AAA], by then and there making her hold his penis and putting it inside her mouth, against her will and consent, to her damage and prejudice."<sup>50</sup> In convicting accused-appellant of "Qualified Rape by Sexual Assault under Article 266-A(2), in relation to Article 266-B(1) of the RPC," the CA gave premium to the following declarations of AAA, thus:

Q In this incident can you tell me what happened on June 28, 2009?  
A At that time the accused was beside me an[d] then he remove[d] his short[s] and brief and **he force[d] me to hold his penis and he insert[ed] it inside my mouth**, Sir.

x x x x

Q **Did he successfully put his penis into your mouth?**  
A **No, I was able to push him at that time, Sir.**

Q **But did his penis touch to [sic] your mouth?**  
A **Yes, Sir.**

Q **Was it slightly inserted to your mouth?**  
A **No, Sir.**

Q **Just touched your lips?**  
A **Yes, Sir.**<sup>51</sup> (Emphases supplied)

Again, taking into consideration that AAA was a child under 12 years at the time of the incident, there is a need to determine the proper nomenclature of the offense charged.

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<sup>50</sup> Records, p. 6.

<sup>51</sup> TSN, June 3, 2016, pp. 26-27.

Sexual assault, as differentiated from rape through “carnal knowledge” or rape through “sexual intercourse,” was introduced by R.A. No. 8353 or the Anti-Rape Law of 1997, amending Article 335, the provision on rape in the RPC.<sup>52</sup> Incorporated into the RPC by R.A. No. 8353, Article 266-A reads:

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 is 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. (Underscoring supplied)

In *People v. Tulagan*,<sup>53</sup> the Court reconciled the provisions on Sexual Assault, as well as Acts of Lasciviousness and Rape, under the RPC, as amended by R.A. No. 8353, *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610, to clarify the nomenclature and the imposable penalties of said crimes, and damages to conform with existing jurisprudence. Citing *Dimakuta v. People*,<sup>54</sup> the Court instructed:

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent inachination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered

<sup>52</sup> *People v. Pareja*, 724 Phil. 759, 781 (2014).

<sup>53</sup> G.R. No. 227363, March 12, 2019.

<sup>54</sup> 771 Phil. 641, 670-671 (2015).

by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

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

Taking the *Dimakuta* ruling in line with the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, the guiding parameter holds that "if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be 'Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b) of R.A. No. 7610' and no longer Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of [R.A. No.] 7610[.]"<sup>55</sup> This rule applies in this case, considering that the introduction of any object into the mouth of a child is covered under the definition of lascivious conduct under R.A. No. 7610.<sup>56</sup>

Now, going back to the testimony of AAA, there is a need to characterize the proper offense committed following her categorical declaration that accused-appellant's penis was not successfully inserted into her mouth. Relevant to this issue is an analogous application of rape through carnal knowledge in its attempted stage. Carnal knowledge is defined as "the act of a man in having sexual bodily connections with a woman,"<sup>57</sup> as such, it requires the slightest penetration of the female genitalia to

<sup>55</sup> *People v. Tulagan*, supra note 53.

<sup>56</sup> Implementing Rules and Regulations of R.A. No. 7610, supra note 29.

<sup>57</sup> *People v. Orita*, 262 Phil. 963, 975 (1990), citing Black's Law Dictionary, Fifth Edition, p. 193.

consummate the rape.<sup>58</sup> In *People v. Campuhan*,<sup>59</sup> the Court delineated what constitutes “touching” by the penis in rape, viz.:

**[T]ouching 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.**<sup>60</sup> (Emphases and underscoring supplied)

To the mind of the Court, the foregoing analysis applies by analogy in cases of rape by sexual assault, i.e., by inserting the accused’s penis into another person’s mouth. In this case, AAA testified that accused-appellant’s penis was not actually inserted into her mouth, however slightly, when she categorically declared that accused-appellant’s penis merely touched her lips by reason of her resistance when she pushed him away. From her testimony, it cannot be ascertained whether the said touching had sufficient force so as to, at least, make the lips part and permit a slight opening, through which the tip of accused-appellant’s penis, or any part thereof, may have probable entry. As accused-appellant’s conviction cannot be made to rest on such possibility, accused-appellant cannot be held liable for sexual assault in its consummated stage.

<sup>58</sup> *People v. Cruz*, 745 Phil. 54, 68 (2014).

<sup>59</sup> 385 Phil. 912 (2000).

<sup>60</sup> *Id.* at 920-922.

While accused-appellant failed to consummate the offense of sexual assault, the totality of his acts in trying to achieve his bestial purpose, *i.e.*, removing his shorts and brief, and forcing AAA to hold his penis and insert/put it inside her mouth, likewise established the elements of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

Applying the variance doctrine under Section 4 in relation to Section 5, Rule 120 of the Revised Rules on Criminal Procedure,<sup>61</sup> accused-appellant can be convicted of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610, which was the offense proved though he was charged with rape through sexual assault in relation to R.A. No. 7610.

The essential elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 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>62</sup>

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
  - a) Through force, threat or intimidation;
  - b) When the offended party is deprived of reason or otherwise unconscious;

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<sup>61</sup> REVISED RULES ON CRIMINAL PROCEDURE, Rule 120, Sections 4 and 5.

Sec. 4. *Judgment in case of variance between allegation and proof.* - When there is variance between the offense charge 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.

Sec. 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 part of those constituting the latter.

<sup>62</sup> *Quimvel v. People*, supra note 28, at 915.

- c) By means of fraudulent machination or grave abuse of authority;
  - 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; and
- (3) That the offended party is another person of either sex.<sup>63</sup>

In this case, the elements of Acts of Lasciviousness under Article 336 of the RPC and sexual abuse under Section 5(b), Article III of R.A. No. 7610 were sufficiently established. As discussed earlier, the introduction of any object into the mouth of a child under 12 years partakes of a lascivious conduct under R.A. No. 7610,<sup>64</sup> more so in this case when taken in light of accused-appellant's preparatory acts of removing his pants and underwear, taking out his penis, and forcing the child to hold it.

Based, thus, on evidence, accused-appellant is criminally liable for Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

#### ***Credibility of the child witness AAA***

Accused-appellant attempts to discredit AAA's testimony by insisting that it would have been impossible for him to have raped and sexually abused AAA while in the same room as BBB and his two other children. He claims that AAA could have easily shouted or called their attention, as she had the opportunity to do so. Further, accused-appellant faults AAA in choosing to stay in their house after the three incidents on June 15, 2009, June 27, 2009 and June 28, 2009. To accused-appellant, AAA's act of allowing a span of one year, seven months and six days to lapse from the first incident up to the last one, before reporting the same does not inspire belief. He argued that no woman who was already abused thrice would allow herself to stay and sleep in the same house as her supposed violator.<sup>65</sup>

Accused-appellant's arguments fail to persuade.

Conviction in rape cases usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.<sup>66</sup> Hence, the victim's credibility becomes the paramount

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<sup>63</sup> Id. at 914.

<sup>64</sup> Implementing Rules and Regulations of R.A. No. 7610, supra note 29.

<sup>65</sup> CA rollo, pp. 40-43.

<sup>66</sup> *People v. Palanay*, 805 Phil. 116, 126 (2017).

consideration in the resolution of rape cases.<sup>67</sup>

Contrary to accused-appellant's proposition, the RTC could not be faulted for giving credence to the testimony of AAA, for the assessment of her credibility is a duty well-within its province and expertise. It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies.<sup>68</sup> Indeed, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions based on its findings are generally binding and conclusive upon the Court, especially so when affirmed by the appellate court.<sup>69</sup> With more reason shall this principle apply in testimonies given by a child. In a long line of cases,<sup>70</sup> the Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. This principle is further embodied in the *Rule on Examination of Child Witness*, thus:

Sec. 22. *Corroboration.* Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

Indeed, AAA's behavior during and immediately after each incident cannot be taken against her. The fact that AAA failed to shout or otherwise make a provocative reaction to accused-appellant's sexual advances, as well as her act of staying in their house after the first and succeeding incidents, is totally understandable. It must be emphasized that the child victim was 9 and 11 years old, respectively, when accused-appellant sexually violated her. Truly, such a tender age cannot demand from the child the kind of reaction suggested by accused-appellant. In *People v. Gecomo*,<sup>71</sup> the Court explained:

People react differently under emotional stress, as we have repeatedly ruled. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. **In a given situation, some may shout, some may faint, some may be shocked into insensibility, while others may even welcome the intrusion.** Apropos to the cases at bar, we have ruled that the failure of a complainant to run away at the first opportunity she

<sup>67</sup> *People v. Ocdol*, 741 Phil. 701, 714 (2014).

<sup>68</sup> *People v. Chua*, 444 Phil. 757, 766-767 (2003).

<sup>69</sup> *People v. Iroy*, 628 Phil. 145, 152 (2010).

<sup>70</sup> *Ricalde v. People*, 751 Phil. 793, 805 (2015), citing *Pielago v. People*, 706 Phil. 460, 468 (2013); *Campos v. People*, 569 Phil. 658, 671 (2008), citing *People v. Capareda*, 473 Phil. 301, 330 (2004); and *People v. Galigao*, 443 Phil. 246, 260 (2003).

<sup>71</sup> 324 Phil. 297, 313-314 (1996).

had cannot be construed as a showing of consent to the sexual intercourse, contrary to the theory espoused by appellant. (Emphasis supplied)

Neither did the presence of BBB and their two other children in the same room where the incidents took place discount rape or sexual abuse. The Court has consistently held that rape can be committed “even in places where people congregate, in parks, along the roadside, within school premises and even inside a house where there are other occupants,”<sup>72</sup> or “where other members of the family are also sleeping.”<sup>73</sup> Indeed, “lust is no respecter of time or place.”<sup>74</sup>

Lastly, the lack of any specific injuries indicated in AAA’s medical certificate does not negate her claims. As correctly ruled by the RTC and the CA, such medical report is not material for the purpose of proving the commission of rape or sexual abuse as the same is merely corroborative in character.<sup>75</sup>

Faced, thus, with accused-appellant’s bare denial, the Court is one with the RTC and the CA in giving full weight and credit to AAA’s straightforward narration of facts on how accused-appellant raped and sexually abused her.

### ***Penalty and Award of Damages***

*Criminal Case Nos. 11-288374 and 11-288378.*

The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610, when the victim is under 12 years of age is *reclusion temporal* in its medium period which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree *i.e.*, *reclusion temporal* in its minimum period or from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum of the indeterminate penalty shall be taken from the proper penalty that could be imposed under the RPC for acts of lasciviousness which, there being no aggravating or mitigating circumstance in this case, is the medium period of *reclusion temporal*

<sup>72</sup> *People v. Uli*, 296-A Phil. 623, 632-633 (1993); *People v. Codilla*, 295 Phil. 990, 1011 (1993).

<sup>73</sup> *People v. Cura*, 310 Phil. 237, 247 (1995).

<sup>74</sup> *People v. Segundo*, 298-A Phil. 698, 703 (1993).

<sup>75</sup> *People v. Prodeciado*, 749 Phil. 746, 765 (2014).



medium which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.<sup>76</sup> The CA was correct in not appreciating the element of relationship, (*i.e.*, accused-appellant being the common-law husband of BBB), as a common-law relationship is not included under Section 3, Article XII of R.A. No. 7610 as a separate aggravating circumstance for purposes of increasing the penalty in its maximum period.<sup>77</sup>

As to accused-appellant's civil liabilities, the amount of civil indemnity, moral damages and exemplary damages awarded by the CA shall each be increased to ₱50,000.00 for each count in accordance with *People v. Tulagan*.<sup>78</sup> Further, a fine in the amount ₱15,000.00 under Section 5(b), Article III of R.A. No. 7610 shall be imposed upon accused-appellant in each case.

*Criminal Case No. 11-288377.*

The impossible penalty for Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the RPC, is death. The CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole, in *lieu* of death, in accordance with A.M. No. 15-08-02-SC<sup>79</sup> and R.A. No. 9346.<sup>80</sup> As to accused-appellant's civil liabilities, the CA correctly increased the civil indemnity, moral damages and exemplary damages to ₱100,000.00 each, in conformity with the guidelines set in *People v. Jugueta*.<sup>81</sup>

*Criminal Case No. 11-288375.*

For the crime of Attempted Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the RPC, the penalty shall be *prision mayor*, since Article 51 of the RPC states that a penalty lower by two

<sup>76</sup> *People v. Bejim*, 824 Phil. 10, 33-34 (2018).

<sup>77</sup> REPUBLIC ACT NO. 7610, Art. XII, Sec. 31, provides:

Sec. 31. Common Penal Provisions. –

x x x x

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked[.] (Emphasis and underscoring supplied)

<sup>78</sup> *Supra* note 53.

<sup>79</sup> In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

x x x x

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification of "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

<sup>80</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

<sup>81</sup> 783 Phil. 806 (2016).

degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempt to commit a felony.<sup>82</sup> Applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. In this case, the CA correctly imposed the penalty of imprisonment of six (6) years of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum.

As regards accused-appellant's civil liabilities, the award of civil indemnity, moral damages and exemplary damages shall be pegged at ₱50,000.00 each to conform with the guidelines in *People v. Jugueta*.<sup>83</sup>

In addition, an interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.<sup>84</sup>

**WHEREFORE**, the appealed Decision dated April 26, 2018 of the Court of Appeals in CA-GR. CR-HC No. 08616 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Christian Manuel y Villa is found **GUILTY** of:

1. **Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 of Republic Act No. 7610** in Criminal Case Nos. 11-288374 and 11-288378, and sentenced in each case to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, accused-appellant is **ORDERED** to pay the victim the amount of ₱50,000.00 each as civil indemnity, moral damages and exemplary damages, and ₱15,000.00 as fine, for each count of Acts of Lasciviousness.

2. **Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the Revised Penal Code** in Criminal Case No. 11-288377 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and **ORDERED** to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱100,000.00 each.

<sup>82</sup> *People v. Adallom*, 683 Phil. 618, 645-646 (2012).

<sup>83</sup> *Supra* note 81.

<sup>84</sup> *People v. Buclao*, 736 Phil. 325, 341 (2014).

3. **Attempted Qualified Rape under Article 266-A(1)(d), in relation to Article 266-B(1) of the Revised Penal Code** in Criminal Case No. 11-288375 and sentenced to an indeterminate prison term of six (6) years of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum. In addition, accused-appellant is **ORDERED** to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱50,000.00 each.


Accused-appellant is **ORDERED** to pay AAA interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.


**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson


  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**RICARDO B. ROSARIO**  
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.

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

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

  
**DIOSDADO M. PERALTA**  
Chief Justice