



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 240229

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

- versus -

Promulgated:

NIEL RAYMOND A. NOCIDO,
Accused-Appellant.

JUN 17 2020

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DECISION

PERALTA, C.J.:

For consideration of the Court is the appeal of the Court of Appeals (CA) Decision¹ dated April 25, 2017, which affirmed with modification the Partial Decision² dated August 5, 2015 of the Regional Trial Court (RTC), Makati City, Branch 136, finding accused-appellant Niel Raymond A. Nocado (Nocado) guilty of the crimes of Rape through Sexual Intercourse and Rape by Sexual Assault. The accusatory portions of the two (2) Amended Informations state:

Criminal Case No. 09-1772

On the 3rd day of August 2009, in the [C]ity of Makati, the Philippines, accused conspiring and confederating with Paul Justin Ventura and Marianito Bagon @ Bok, whose whereabouts are still unknown, by means of force, violence and intimidation did then and there willfully,

¹ Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba concurring; *rollo*, pp. 2-22.

² Penned by Presiding Judge Rico Sebastian D. Liwanag; *CA rollo*, pp. 47-54.

unlawfully and feloniously have carnal knowledge of complainant [AAA],³ 12 years old, minor, against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 09-1773

On the 3rd day of August 2009, in the [C]ity of Makati, the Philippines, accused conspiring and confederating with Paul Justin Ventura and Marianito Bagon @ Bok, whose whereabouts are still unknown, by means of force, violence and intimidation did then and there willfully, unlawfully, and feloniously insert his finger and penis into the anal orifice and mouth of [the] complainant [AAA], 12 years old, minor, against her will and consent.

CONTRARY TO LAW.⁴

Nocido pleaded not guilty⁵ to both charges. Trial on the merits proceeded even in the absence of co-accused Marianito Bagon (*Bagon*) and Paul Justin Ventura (*Ventura*), who are both at-large.

The facts, as established by the prosecution, and as culled from the CA Decision, are as follows:

The prosecution presented three witnesses, namely: (1) PO2 Maria Cecilia Fajardo [*PO2 Fajardo*]; (2) Police Chief Inspector Joseph Palmero, M.D. [*PCI Palmero*]; and (3) the victim AAA.

PO2 Fajardo was the police investigator assigned at the Women's Desk, who interviewed AAA. Private complainant AAA narrated what transpired; and while she answered some questions, she looked tired, scared and worried. On the other hand, it was PCI Palmero who conducted a medico-legal examination on AAA on August 4, 2009 and concluded that the contusions and other injuries AAA suffered suggest sexual and/or physical abuse.

The victim, AAA, a 12-year[-]old lass. She narrated that on August 3, 2009, she and her friends attended a wake. At around 3:00 o'clock in the morning, her friends walked her home until they reached ██████ St. While walking along ██████ St. accused [Bagon] suddenly accosted and pointed a fan knife at her. As soon as [Bagon] got hold of her, accused-appellant Nocido and accused [Ventura] approached her. Fearing for her

³ The identity of the victim or any information to 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, 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"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

⁴ Records, pp. 2-6.

⁵ *Id.* at 53.

life, she struggled to free herself. Unfortunately, [Ventura] and [Bagon] were able to forcibly bring her to an alley that leads to a vacant house. It was accused-appellant who guided them to the secluded area.

Inside the vacant house, all of the accused simultaneously hit AAA. Accused-appellant slapped her several times while [Ventura] punched her in the stomach to stop her from further resisting. As a consequence, AAA fell down. To prevent them from further harming her, AAA pretended to have fainted. At that point, [Bagon] pinned her down. Taking advantage of the situation, [Bagon] and accused-appellant removed her clothes, while [Ventura] held a lighter to illuminate the area. [Bagon] removed AAA's shorts and panties, kissed her lips, and proceeded downwards her body to lick her vagina. Afterwards, [Ventura] lifted AAA and mounted her on top of [Bagon]. After [Bagon] inserted his finger into AAA's vagina, he pushed his penis inside AAA's vagina. While [Bagon] was mashing AAA's breasts, accused-appellant also tried to insert his penis into AAA's vagina. Accused-appellant then tried to enter (sic) his penis into AAA's anus, but failed; he used his finger instead. Thereafter, [Bagon] tried to insert his penis into the mouth of AAA, but since AAA feigned unconsciousness, he was not able to open her mouth.


Since dawn was already breaking, the three accused transferred AAA to the comfort room as someone might see her. Afterwards, they put on her jumper and gave her a t-shirt. [Bagon] carried her towards an alley. x x x. She attempted to shout for help but [Bagon] covered her mouth. [Bagon] threatened to kill her if she would tell anybody of what just happened. Thereafter, she immediately gathered her clothes and ran away without wearing any bra. She proceeded to the house of [REDACTED], a friend in [REDACTED] Street. There, she recounted and relayed her nightmare in the hands of the felons to [REDACTED]'s mother. In no time, they went to the *barangay* hall to lodge a complaint against accused-appellant Nocido, accused [Bagon] and accused [Ventura]. At around 1:30 in the afternoon, AAA's father was informed by one [REDACTED] that his daughter was in the *barangay* hall looking for him. AAA's father immediately proceeded to the place. When he arrived thereat, his daughter told him of her horrible ordeal.⁶

For the Defense

On the other hand, Nocido raised the defense of denial, and placed the blame on his co-accused Bagon and Ventura, to wit:

x x x According to him, on August 3, 2009, he, [Bagon], and [Ventura] borrowed a speaker and a DVD from a certain [REDACTED]. While they were walking along [REDACTED] St., they met AAA. [Bagon] and [Ventura] talked to her and were able to convince her to go to an alley that leads to a vacant house. After some time, AAA tried to leave but she was prevented by [Bagon] and [Ventura]. When she tried to escape, [Bagon] held her and pushed her to a wall causing her to fall down. Accused-appellant tried to stop [Bagon] and [Ventura] but the latter prevailed. [Ventura] then carried AAA to the vacant house. [Ventura] lit his lighter and watched [Bagon] having sexual intercourse with AAA. Thereafter, [Bagon] and [Ventura] switched places. Accused-appellant further alleged that out of fear, he was

⁶ Rollo, pp. 4-5. (Citations omitted)



not able to leave the place and seek help; and that the door was also blocked by [Bagon] and [Ventura]. Later on, [Ventura] brought AAA outside the house, while [Bagon] threatened her not to tell the incident to anybody. Accused-appellant slightly slapped AAA's face to awaken her. When she regained consciousness, he assisted her to the nearest store. He left the place, went home and slept until 8:00 o'clock in the evening. Upon waking up, he was surprised about the presence of police officers in his house. They forcibly boarded him to a van and told him that he was being charged with the rape of AAA. Subsequently, he was brought to the police station and incarcerated.⁷

RTC Ruling

On August 5, 2015, the RTC issued a Partial Decision, the dispositive portion of which reads:

WHEREFORE, the Court renders judgment finding accused Niel Raymond A. Nocido **GUILTY** beyond reasonable doubt [of] the crime of Rape [t]hrough Sexual Intercourse in Criminal Case No. 09-1772 and Rape [by] Sexual Assault in Criminal Case No. 09-1773.

In Criminal Case No. 09-1772, he is sentenced to suffer the penalty of imprisonment of *reclusion perpetua*. In Criminal Case No. 09-1773, he is sentenced to suffer the indeterminate penalty of imprisonment of six years of *prision correccional* to ten years of *prision mayor*.

For each case, the Court orders him to pay the complainant the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages.

No costs.

Pending their apprehension, these cases shall remain **ARCHIVED** insofar as accused Bagon and Ventura are concerned.

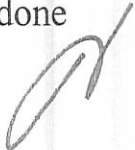
IT IS SO ORDERED.⁸

The RTC convicted Nocido for rape by sexual assault, which he personally committed. He was also held liable for rape through sexual intercourse committed by the other two accused. The RTC explained that Nocido's cooperation in the consummation of the rape through sexual intercourse made him a co-conspirator.

The RTC gave full weight and credit to the testimony of AAA, a minor victim. The categorical testimony of a minor victim as to how she was physically and sexually abused and raped, deserves full credit. The RTC saw for itself how traumatic it was for a minor to testify in court of the abuse done

⁷ *Id.* at 5-6.

⁸ *CA rollo*, p. 53.



to her. With her willingness to undergo the trouble and the humiliation of a public trial, she could only have been impelled to tell the truth.

With regard to the circumstance affecting criminal liability, the RTC considered the aggravating circumstance of ignominy as attendant in this case, even if it was not alleged in the Informations. With ignominy as an aggravating circumstance, the RTC awarded ₱25,000.00 as exemplary damages.

Nocido filed his appeal with the CA. The accused-appellant, and the plaintiff-appellee filed their respective Briefs.

CA Ruling

On April 25, 2017, the CA rendered its assailed Decision affirming accused-appellant Nocido's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is hereby DENIED.

The Decision dated August 5, 2015 of the Regional Trial Court, Branch 136, Makati City, in Criminal Case Nos. 09-1772 to 09-1773 finding accused-appellant Niel Raym[on]d A. Nocido, guilty beyond reasonable doubt of the crimes of Rape through Sexual Intercourse and Rape [by] Sexual Assault defined under Article 266-A (1) and Article 266-A (2), respectively, of the Revised Penal Code and punishable under Republic Act No. 7659, as amended by Republic Act No. 8353, is AFFIRMED with the following MODIFICATIONS:

- a) In Criminal Case No. 09-1772, accused-appellant is not eligible for parole;
- b) In Criminal Case No. 09-1773, accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of prision correccional[,] as minimum[,] to seventeen (17) years and four (4) months of reclusion temporal[,] as maximum; and
- c) Accused-appellant is ordered to pay the victim One Hundred Thousand Pesos (Php100,000.00) as moral damages, One Hundred Thousand Pesos (Php100,000.00) as civil indemnity, and One Hundred Thousand Pesos (Php100,000.00) as exemplary damages.

The monetary awards shall earn interest of six percent (6%) per *annum* from the date of finality of judgment until fully paid.

SO ORDERED.⁹

⁹ *Rollo*, pp. 21-22.

The CA affirmed the conviction of Nocido. According to the CA, the credibility of AAA's testimony is not affected by minor inconsistencies.¹⁰ The alleged inconsistencies in AAA's testimony with respect to who held her arms when she was forcibly taken at the alley, and her failure to scream despite the presence of neighbors which allegedly made her testimony contrary to human experience, are minor details which have nothing to do with the elements of the crime of rape.¹¹ There was nothing substantial on the records that will warrant a reversal of the assessment made by the RTC on AAA's narration of the incident.¹²

As regards the crimes of rape through sexual intercourse, and by sexual assault, all the elements of these crimes were proven beyond reasonable doubt.¹³ In a clear, candid, and straightforward manner, AAA narrated to the trial court how Nocido and Bagon forcibly penetrated her vagina and anus.¹⁴

Further, AAA's convincing narration of facts and her positive identification of Nocido prevail over Nocido's weak defense of denial.¹⁵ It was also established that the three accused acted in concert in raping AAA, to wit:¹⁶

- (1) accused [Bagon] poked [the] knife at AAA's neck;
- (2) accused-appellant and accused [Bagon] held her arms and dragged her to a secluded area;
- (3) all of the accused slapped and punched AAA to overpower her;
- (4) accused-appellant and accused [Bagon] removed AAA's clothes while accused [Ventura] was holding a lighter to illuminate the place;
- (5) all the accused simultaneously abused her until they were satisfied.

On the issue of the absence of proof of hymenal laceration, this does not negate the commission of rape, as the slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient to convict the rapist.¹⁷

For the aggravating circumstance of ignominy, the CA ruled that it cannot be appreciated because it was not alleged in the Informations.¹⁸

Hence, this petition for review.



¹⁰ *Id.* at 8.

¹¹ *Id.* at 9.

¹² *Id.*

¹³ *Id.* at 10.

¹⁴ *Id.* at 12.

¹⁵ *Id.*

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 19.

¹⁸ *Id.*

Issues

1. Whether the CA erred in giving due weight and credence to AAA's testimony.
2. Whether the CA erred in convicting Nocido guilty beyond reasonable doubt of the crimes of rape through sexual intercourse and rape by sexual assault under Articles 266-A(1)(A) and 266-A(2), respectively.
 - a. Whether Nocido is guilty as a conspirator.

Nocado faults the CA for affirming his conviction on the basis of AAA's inconsistent and incredible testimony. According to Nocido, a closer scrutiny of AAA's testimony would show that there are discernible improbabilities that strongly militate against being accorded the full credit it was given by the CA.¹⁹

Aside from the improbabilities in AAA's testimony, Nocido posits that the prosecution failed to establish the element of carnal knowledge based on the remaining evidence, which is the Medico-Legal Report.²⁰ According to Nocido, the Medico-Legal Report belies a finding of rape through sexual intercourse or by sexual assault because PCI Palmero failed to see any laceration, or genital wound that support a finding of penetration of any blunt object.²¹

As regards being a conspirator in the crime of rape by sexual assault, Nocido interposed the defense that mere presence at the scene of the crime at the time of its commission without proof of cooperation or agreement to cooperate, is not enough to establish that a person is a party to the conspiracy.²² According to Nocido, the evidence failed to establish that his acts, and that of his co-accused's were motivated by a common purpose to commit the crime.²³

Our Ruling

The appeal has no merit. However, there are modifications as regards the damages to be awarded in Criminal Case No. 09-1772; and the nomenclature, the penalty, and the damages to be awarded for the crime charged in Criminal Case No. 09-1773.

¹⁹ CA rollo, p. 36.

²⁰ *Id.* at 39.

²¹ *Id.*

²² *Id.* at 41.

²³ *Id.*

AAA's testimony must be given due weight and credence.

As to whether AAA's testimony should be given due weight and credence, it is important to take into consideration the *Women's Honor* doctrine. The doctrine recognizes the "well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened, [because it is] their natural instinct to protect their honor."²⁴

However, as discussed in *People v. Amarela*,²⁵ the opinion enshrined under the *Women's Honor* doctrine borders on the fallacy of *non-sequitur*, to wit:

While the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.²⁶

Through this, the Court can evaluate the weight and credibility of a private complainant of rape without gender bias or cultural misconception.²⁷

It is a settled rule that rape may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive, and probable.²⁸

The Supreme Court is guided by jurisprudence in addressing the issue of credibility of witnesses. ***First, the credibility of witnesses is best addressed by the trial court***, considering that it is in a unique position to directly observe the demeanor of a witness on the stand.²⁹ Since the trial judge is in the best position to determine the truthfulness of witnesses, the judge's evaluation of the witnesses' testimonies is given the highest respect, on appeal.³⁰ ***Second, in the absence of substantial reason to justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's finding***, particularly when no significant facts and circumstances, affecting the outcome of the case, are

²⁴ *People v. Taño*, 109 Phil. 912, 915 (1960).

²⁵ G.R. Nos. 225642-43, January 17, 2018.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *People v. Barberan, et al.*, 788 Phil. 103, 109 (2016).

²⁹ *People v. XXX*, G.R. No. 225793, August 14, 2019.

³⁰ *Id.*

shown to have been disregarded.³¹ **Third, the rule is even more stringently applied if the CA concurred with the RTC.**³²

In this case, according to accused-appellant Nocido, there were discernible improbabilities in AAA's testimony which would militate against giving full credit to AAA's testimony.

According to Nocido, the discrepancies lie in regard to AAA's testimony, as to who were holding AAA's arms when she was pulled into a vacant house. During her direct examination, she testified that Ventura and Bagon were holding her:

Q: Will you please tell the Honorable Court how you were brought to that vacant house from that alley you were mentioning before?

A: [Ventura] and [Bagon] were holding me sir.

x x x x

Q: You mentioned that the two held you, how about the other, what did he do while the two you mentioned here [were] holding you?

A: He was holding a speaker because he was walking ahead of us, sir.

x x x x

Q: So both your hands or arms were being held by the two, [Bagon] and [Ventura] and you were pulled, correct?

A: It was [Bagon] who was pulling me, sir.

Q: How about [Ventura]? He was just holding your hand?

A: Yes, sir.

Q: How about Neil Raymond Nocido alias Arabo, what was his participation in transferring or in bringing you to the vacant house from there?

A: He was going ahead of us and he was the one who opened the door, sir.³³

However, during her cross-examination AAA testified that it was Bagon and Nocido who held her arms:

Q: Nung naglalakad na kayo hawak-hawak ka ba nila?

A: Si [Bagon] po.

Q: Si [Bagon] lang ang naghahawak sa iyo?

A: At saka po si [Nocido].

Q: Silang dalawa ang naghahawak sa iyo?

A: Opo tapos nasa likod po si [Ventura].

³¹ *Id.*

³² *Id.*

³³ TSN, July 26, 2012, pp. 4-7.

Q: Ano ang ginagawa ni [Ventura] kung alam mo?

A: Nasa likod lang po siya sumusunod.³⁴

The alleged inconsistency is a trivial matter which cannot be a basis for acquittal. This is because the inconsistency does not hinge on any essential element of the crime of rape or lascivious conduct.³⁵ The fact is that, AAA was pulled and led by appellant, together with the other two co-accused, in a vacant house, where AAA was raped and sexually abused.

For as long as the testimonies of AAA are coherent and intrinsically believable, the minor inconsistencies in her narration of facts do not detract from their essential credibility.³⁶ Rather, the minor inconsistencies enhance credibility as they manifest spontaneity and lack of scheming.³⁷

Nocido also pointed out AAA's testimony when she mentioned that during her ordeal, she neither screamed nor offered any tenacious resistance. According to Nocido, AAA did not seek help or resisted, even if she was capable of doing so:

Q: How far is the nearest neighbor of that vacant house?

A: *Dikit-dikit po ang mga bahay.*³⁸

x x x x

Q: *Pero sa itaas noon may tao?*

A: Opo.

Q: Habang ikaw ay hin[a]h[a]lay nila hindi sila nagsalita?

A: Opo.

Q: Hindi ka rin nagsalita?

A: Opo.³⁹

The failure of AAA to shout and resist while the three accused committed rape and acts of lasciviousness, is not tantamount to her consent.

Neither tenacious resistance nor a determined or a persistent physical struggle on the part the victim of rape and/or lascivious conduct, is necessary.⁴⁰ Moreover, failure to cry for help or attempt to escape during the rape and/or sexual abuse, is not fatal to the charge of rape or lascivious

³⁴ TSN, September 20, 2013, pp. 22-23.

³⁵ *People v. XXX*, G.R. No. 229836, July 17, 2019.

³⁶ *People v. Camat, et al.*, 692 Phil. 55, 74 (2012).

³⁷ *Id.* at 74-75.

³⁸ TSN, July 26, 2012, pp. 10-11.

³⁹ TSN, September 20, 2013, p. 26.

⁴⁰ *People v. Ballacillo*, 792 Phil. 404, 418 (2016).

conduct.⁴¹ It does not make voluntary the victim's submission to the lusts of the perpetrators.⁴² For as long as threats and intimidation are employed, and the victim submits herself to her perpetrators because of fear, her physical resistance need not be established in the said crimes.⁴³

Here, AAA did not scream or offered tenacious resistance because of the threat and intimidation employed against her. AAA testified that whenever she struggled to get free from the three accused, the latter beat her up, and when she was about to scream for help, Bagon covered her mouth and threatened to kill her, *viz.*:

Q: Tapos nung nilapitan ka nya, ano ang nangyari?

A: Tinutukan nya po ko.

Q: Tinutukan ka ng?

A: Kutsilyo po.

Q: Saan ka tinutukan?

A: Sa leeg po una.

Q: Sinabi mo una. Bakit, meron pa bang sumunod na pangyayari?

A: Meron po, sa tagiliran po.

Q: So ang ibig mo bang sabihin pagkatapos ka nyang tutukan sa leeg ay inilipat nya yung tutok nya sa iyong bewang, ano ang nangyari?

A: Pagtutok nya po sa tagiliran ko, bigla pong lumapit si [Ventura] at si [Nocido].

x x x x

Q: So anong ginawa mo nung tinutukan ka?

A: Nanlaban po ako.

Q: Nasabi mo rin sa ilang mga testimonya mo na ikaw ay sinaktan nung tatlo. Maaari mo bang sabihin kung paano ka sinaktan at kung sino ang nanakit sayo?

A: Sinampal po ako ni [Nocido] tapos pinagsusuntok po ako ni [Bagon].

Q: So si [Nocido], pinagsasampal ka? Mga ilang beses?

A: Mga tatlo po o apat.

Q: Sino ang nagsuntok sayo?

A: Si [Bagon] po, saka si [Ventura] po.

Q: Saan ka sinuntok?

A: Sa mukha po.

Q: Pareho sila, sa mukha ka sinuntok?

A: [S]i [Ventura] po sinikmuraan po ako.⁴⁴

⁴¹ *Id.*

⁴² *Id.*

⁴³ *People v. Joson*, 751 Phil. 450, 460 (2015).

⁴⁴ TSN, June 26, 2013, pp. 3-4.

X X X X

Q: So ikaw, yung ibabaw lang ang merong kasuotan. Sabi mo rin nung mag-uumaga na nun, merong babae na dumaan sa harap ng bahay kung saan kayo naroroon, bakit hindi ka sumigaw at humingi ng tulong?

A: Sumigaw po ako nun, sabi ko po “Ate tulungan mo ko.” Tapos po hinawakan po ni [Bagon] ang bunganga ko.

Q: Tapos?

A: Sabi nya po, “Subukan mong magtawag,” madadamay po siya.⁴⁵

Based on the foregoing, Nocido and the two co-accused employed force, threat, intimidation and violence against AAA, in satisfying their carnal desires.

As regards the failure of the prosecution to offer in evidence the knife Bagon used to threaten AAA, this is immaterial.

On the issue that the results of the medical examination conducted on AAA did not show hymenal laceration, this did not negate the commission of rape. The element of rape does not include hymenal laceration.⁴⁶ Jurisprudence has established that, “mere touching, no matter how slight of the *labia* or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape.”⁴⁷ In the prosecution of rape, the foremost consideration is the victim’s testimony, and not the findings of the medico-legal officer.⁴⁸ A medico-legal report is not indispensable in rape cases, as it is merely corroborative.⁴⁹ The sole testimony of the victim if found to be credible, is sufficient to convict a person accused of rape.⁵⁰

Nocido is guilty of the crimes of Rape under Articles 266-A(1), in relation to Article 266-B of the Revised Penal Code (RPC), and Lascivious Conduct under Section 5(b) of Republic Act No. 7610, as amended.

⁴⁵ *Id.* at 7.

⁴⁶ *People v. ZZZ*, G.R. No. 229862, June 19, 2019.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *People v. YYY*, G.R. No. 224626, June 27, 2018.

⁵⁰ *Id.*

The Court takes into consideration that AAA was twelve (12) years old at the time of the commission of the crimes; and that when the sexual acts and sexual intercourse were committed, these were done without her consent and by force, threat and intimidation.

In *People v. Salvador Tulagan*,⁵¹ the Court clarified the principles laid down in jurisprudence, with respect to the need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the Revised Penal Code (*RPC*) or Republic Act No. 7610, or the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (R.A. 7610)*, to wit:

First, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.

Second, **when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A (1) (a) of the RPC.** In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

Applying these principles to the case at bar, the Court affirms the ruling of the CA in convicting Nocado of rape under Article 266-A(1)(a) of the RPC.

Under Article 266-A(1)(a), rape through sexual intercourse is committed: (1) by a man; (2) who shall have carnal knowledge of a woman; (3) through force, threat or intimidation.

On the other hand, the proper designation of the crime of rape by sexual assault committed against a victim who is twelve (12) years old or below eighteen (18) or eighteen (18) under special circumstances, is lascivious conduct under Section 5(b) of R.A. 7610, to wit:

x x x x

(b) Those **who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse;** Provided, That when the victims is under twelve (12) years of age, the

⁵¹ G.R. No. 227363, March 12, 2019.

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.

The penalty for Lascivious conduct under Section 5(b) of R.A. 7610 is *reclusion temporal* medium to *reclusion perpetua*, which is higher than the prescribed penalty of *prision mayor* to *reclusion temporal* as provided under Article 266-B of the RPC, for the crime of rape by sexual assault committed by two (2) or more persons. This is 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.⁵²

It is emphasized that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged.⁵³ The actual facts recited in the information are controlling and not the title of the information or the designation of the offense.⁵⁴ Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.⁵⁵

Here, the Court finds it proper to convict the accused for Lascivious Conduct under Section 5(b) of R.A. 7610, even if the designation of the crime alleged in the Information is Rape by Sexual Assault.

The prosecution has proven beyond reasonable doubt that Nocido, together with his co-accused Bagon and Ventura, sexually abused and raped AAA. AAA's testimonies established that Nocido personally committed lascivious conduct under Section 5(b) of R.A. 7610, and rape through sexual intercourse under Article 266-A(1) of the RPC, in conspiracy with Bagon and Ventura. AAA clearly and candidly narrated to the court how Nocido and Bagon forcibly penetrated her vagina and anus, *viz.*:

Q: And after they were able to lower your short pants together with your panty, what else happened?

A: [Bagon] was kissing me *tapos po ano...*

INTERPRETER

Let it be put on record that the witness is finding hard to complete her answer due to her emotional state.

⁵² *Id.*

⁵³ *People v. Moya*, G.R. No. 228260, June 10, 2019.

⁵⁴ *Id.*

⁵⁵ *Id.*

FISCAL MATIRA

Q: Do you want to continue?

A: Yes, sir.

Q: Okay, please continue with your answer.

A: **[Bagon] was kissing me on my lips moving downward and trying to insert his private part into my private part, sir.**

Q: So he started kissing your lips downward, did [Bagon] able to touch your breast?

A: Yes, from my lips downward, sir.

Q: Up to your private part?

A: Yes, sir.

Q: **Were you able to feel that he touched your clitoris by means of his tongue or lips?**

A: Yes, sir.

Q: **By lips or by tongue?**

A: By lips, sir.

Q: While [Bagon] was doing that act, what did [Ventura] and [Nocido] do?

A: [Ventura] was keeping the lighter lighted at the time while [Nocido] was mashing my breast at *inilawan din po ni [Ventura] habang nagpapalitan sina [Bagon] at [Nocido] sa akin.*

Q: You mentioned *nagpapapalitan*, what do you mean by that?

A: *Ginawa po nila akong palaman... nakahiga po si [Bagon] tapos nakapatong po ako sa kanya tapos nakapatong po sa akin si [Nocido].*

Q: Of the three again, who kissed your lips first?

A: It was *[Bagon]*, sir.

Q: **So [Bagon,] after kissing your lips downward up to your vagina... question: what did he do after that?**

A: **He inserted his finger first into my vagina before inserting his penis into my vagina, sir.**

x x x x

Q: So [Ventura] did not even attempt to insert his penis into your vagina?

A: No, sir.

Q: And while [Nocido] was able to insert his penis into your vagina, the two others were there acting in concert?

A: [Bagon] was there mashing my breast and **[Nocido] did not insert his penis into my vagina instead he tried to insert his penis into my anus, sir.**

Q: Was [Nocido] able to insert his penis into your anus?

A: No sir, only his finger.

Q: Because you said the penis was not able to penetrate into your anus, he used his finger?

A: Yes, sir.

Q: Let us clear the facts of the case, [Bagon was] the one who kissed your lips up to your vagina was able to insert his penis into your vagina, correct?

A: Yes, sir.

x x x x

Q: Then followed by the act attempting to insert his penis into your anus but was not able to do so and instead using his finger to penetrate your anus?

A: Yes, sir.

Q: [Ventura] did not insert or attempt to insert his penis into your anus or into your vagina?

A: Yes, sir.

Q: He was there using light lighting the acts?

A: Yes, sir.

Q: Did he touch any part of your body while keeping the light lighted?

A: He only kissed me on my lips, sir.

Q: The first who kissed you and was able to insert his penis into your vagina for the first time, did he attempt for the second time?

A: *Opo, yun nga po yung ginawa po nila akong palaman.*⁵⁶

During AAA's cross-examination on September 20, 2013, it was clarified that Nocido did not personally commit the crime of rape through sexual intercourse:

Atty. Aldovino

Q: Binanggit mo rin [AAA] na itong si [Nocido] ay ipinasok din niya ang ari nya sa ari mo? Kinukumpirma mo pa rin ba iyon na pinasok ni [Nocido] ang ari niya sa ari mo?

A: Hindi po.

Q: Hindi niya ipinasok?

A: Opo.

Q: Walang naganap na pagpasok ng ari niya sa ari mo?

A: Wala po kasi po sa likod.

Interpreter: Sa likod?

Court: Sa puwit.⁵⁷

x x x x

Q: Sabi mo habang ikaw ay nakadapa kay [Bagon] nakapatong na noon sa iyo si [Nocido], tama?

⁵⁶ TSN, July 26, 2012, pp. 14-18.

⁵⁷ TSN, September 20, 2013, p. 31.

A: Opo.

Q: Ano naman ang ginagawa ni [Nocido]?

A: Pinipilit nya pong ipasok ang ari nya po.

Q: Doon sa?

A: Sa puwit po.

Q: Hindi niya ipinapasok sa “pepe” mo?

A: Hindi po.

Q: [Noong] pinapasok nya naramdaman mo na matigas ang ari niya?

A: Opo.

Q: At sabi mo pilit nyang pinapasok doon sa puwet mo?

A: Opo.⁵⁸

In summary, AAA categorically described before the RTC how Nocido and the other two accused took advantage of her. The Court finds that conspiracy was established in this case. Conspiracy exists when the acts of the accused demonstrate a common design of accomplishing the same unlawful purpose.⁵⁹

Here, Nocido, Bagon and Ventura’s acts demonstrated a common design to have carnal knowledge of AAA, to wit: *First*, before AAA was brought to the secluded area, Bagon poked the knife at AAA’s neck, while Nocido and Ventura cornered her. *Second*, Nocido and Bagon held her arms and dragged her to a secluded area. *Third*, prior to raping AAA, the three accused slapped and punched her. *Fourth*, while Nocido and Bagon were removing AAA’s clothes, Ventura held the lighter to illuminate the secluded area. *Lastly*, the three accused simultaneously abused AAA to satisfy their carnal desires.

The Court finds that conspiracy was established in this case. Conspiracy exists when the persons accused of a crime demonstrate a common design towards the accomplishment of the same unlawful purpose.⁶⁰ The Court finds Nocido guilty as a co-conspirator in the crime of rape through sexual intercourse committed by others. Likewise, he is also guilty of lascivious conduct under Section 5(b) of R.A. 7610, that he personally committed.

Ignominy cannot be appreciated as an aggravating circumstance.



⁵⁸ *Id.* at 35-36.

⁵⁹ *People v. Pal*, G.R. No. 223565, June 18, 2018.

⁶⁰ *Id.*

Under Rule 110 of the Revised Rules of Criminal Procedure, qualifying or generic circumstances will not be appreciated by the Court unless alleged in the information.⁶¹ It is in order not to trample on the constitutional right of an accused to be informed of the nature of the alleged offense that he committed.⁶²

In this case, the aggravating circumstance of ignominy was proved before the RTC. Since it was not alleged in the Information, it cannot be appreciated for purposes of imposing a heavier penalty. However, it can still be considered for purposes of awarding exemplary damages.

The Penalties

In Criminal Case No. 09-1772, Rape through Sexual Intercourse, under Article 266(A), in relation to Article 266-B, was committed by two or more persons, the penalty of which shall be *reclusion perpetua* to death. There being no aggravating or mitigating circumstances attendant in the commission of the crime, the lesser penalty of *reclusion perpetua* shall be imposed.⁶³

In Criminal Case No. 09-1773, Lascivious Conduct under Section 5(b) of R.A. 7610 has a penalty of *reclusion temporal* medium to *reclusion perpetua*. The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty. Further, since none of the circumstances under Section 31⁶⁴ of R.A. 7610 are attendant, and applying

⁶¹ SEC. 8. *Designation of the offense.* - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. *Cause of the accusation.* - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

⁶² *People v. Lapore*, G.R. No. 191197, June 22, 2015.

⁶³ Article 63(2) of the RPC provides:

Article 63. *Rules for the Application of Indivisible Penalties.* —

x x x x

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

x x x x

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

⁶⁴ R.A. 7610, §31.

Section 31. Common Penal Provisions. —

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(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

the Indeterminate Sentence Law, the minimum terms shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from *reclusion temporal* maximum,⁶⁵ there being no other modifying circumstances attending the commission of the crime.⁶⁶

The Damages

In both cases, the award of civil indemnities, moral and exemplary damages are proper.

Jurisprudence has settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, while moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.⁶⁷ The award of exemplary damages is also proper to set a public example and to protect the young from sexual abuse.⁶⁸

For the crime of Rape under Article 266-A(1), in relation to Article 266-B of the RPC, where it was committed by two (2) or more persons, the penalty to be imposed is *reclusion perpetua*, with civil indemnity of ₱75,000.00,

affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; and

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

⁶⁵ Article 64(1) of the Revised Penal Code provides:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

⁶⁶ Art. 64, RPC.

⁶⁷ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁶⁸ *Id.*

In summary, the award of civil indemnity, moral damages and exemplary damages in Acts of Lasciviousness under Article 336 of the RPC, Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, Lascivious Conduct under Section 5(b) of R.A. No. 7610, Sexual Assault under paragraph 2, Article 266-A of the RPC, and Sexual Assault in relation to Section 5(b) of R.A. No. 7610, are as follows:

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

moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00; in accordance with *People v. Jugueta*.⁶⁹

On the other hand, in the crime of Lascivious Conduct under Section 5(b) of R.A. 7610, if the penalty imposed is within the range of *reclusion temporal* medium, then the award of civil indemnity of ₱50,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱50,000.00, are proper; following the ruling in *People v. Tulagan*.⁷⁰

In consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DISMISSED**. The Decision dated August 5, 2015 of the Regional Trial Court, Makati City, Branch 136, in Criminal Case Nos. 09-1772 to 09-1773, as affirmed and modified by the Court of Appeals Decision dated April 25, 2017 in CA-G.R. CR HC No. 07686, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Niel Raymond A. Nocido:

1. Guilty beyond reasonable doubt of **Rape under Article 266-A(1)(a) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. 09-1772, and is sentenced to suffer the penalty of *reclusion perpetua*, and with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.
2. Guilty beyond reasonable doubt of **Lascivious Conduct under Section 5(b) of Republic Act No. 7610**, in Criminal Case No. 09-1773, and is sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor medium* as the minimum term, to twenty (20) years of *reclusion temporal* maximum, as the maximum term, with modification as to the award of damages. Accused-appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

⁶⁹ *People v. Jugueta*, 783 Phil. 806 (2016).

II. For Simple Rape/Qualified Rape:

2.1 Where the penalty imposed is *reclusion perpetua*[:] other than [where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346, or where the crime committed was not consummated but merely attempted] x x x:

a. Civil indemnity – ₱75,000.00

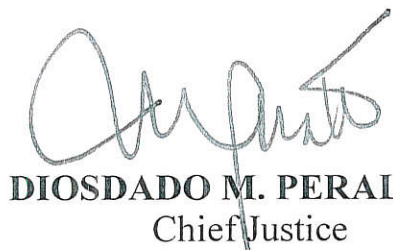
b. Moral damages – ₱75,000.00

c. Exemplary damages – ₱75,000.00

⁷⁰ *Id.*

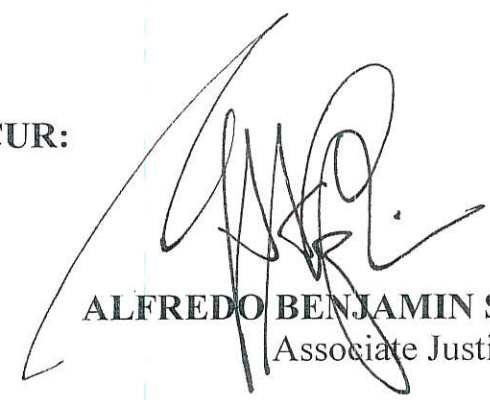
Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

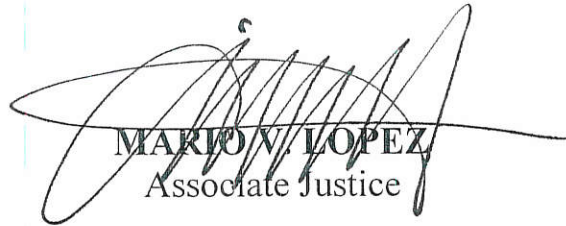
*See Concurring + Dissenting
Opinion*



JOSE C. REYES, JR.
Associate Justice



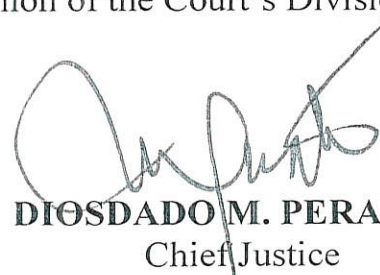
AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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