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Wilfredo Y. Lapitan
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Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

JAN 17 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218404

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
BERSAMIN,*
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

ROLANDO BAGSIC Y
VALENZUELA,
Accused-Appellant.

Promulgated:

December 13, 2017

Wilfredo Y. Lapitan

X-----X

DECISION

MARTIRES, J.:

This is an appeal from the Decision,¹ dated 30 June 2014, of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06043 which affirmed with modification the Joint Decision,² dated 30 January 2013, of the Regional Trial Court, Branch 38, San Jose City (RTC), in Criminal Case Nos. 1515-09-SJC and 1516-09-SJC finding Rolando Bagsic y Valenzuela (*accused-appellant*) guilty of rape by sexual assault and of statutory rape.

The Facts

On 21 July 2009, three Informations were filed before the RTC charging accused-appellant with one (1) count of statutory rape, one (1)

* On official leave.

¹ *Rollo*, pp. 2-20; penned by Associate Justice Ramon R. Garcia with Associate Justices Rebecca De Guia-Salvador and Danton Q. Bueser, concurring.

² *Rollo*, pp. 53-62; penned by Presiding Judge Loreto S. Alog, Jr.

Prado

count of rape by sexual assault, and one (1) count of violation of Section 5 (b) of Republic Act No. 7610 (*R.A. No. 7610*).

In Criminal Case No. 1514-09-SJC, the information states:

That on or about March 15, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully, feloniously and with lewd design, commit lascivious conduct on the person of (AAA), a 12 year-old minor by mashing the latter's breast, against her will, which acts debase, degrade and demean the dignity of the latter and impair her normal growth and development and to her damage and prejudice.

CONTRARY TO LAW.³

In Criminal Case No. 1515-09-SJC, the information states:

That on or about April 18, 2009, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously has inserted his finger into the vagina (sexual assault) of the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.⁴

In Criminal Case No. 1516-09-SJC, the information states:

That sometime in 2007, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously has sexual intercourse or carnal knowledge with the offended party, (BBB), a minor, who is eight (8) years of age, to her damage and prejudice.

CONTRARY TO LAW.⁵

Accused-appellant pleaded not guilty to the crimes charged.

Version of the Prosecution

The prosecution presented AAA, BBB, and their mother CCC as witnesses. Their combined testimony tended to establish the following:



³ CA rollo, p. 53.

⁴ Records, Vol. I, p. 1.

⁵ Records, Vol. III, p. 1.

AAA and BBB were born on 2 August 1996 and 18 June 2000, respectively. They called accused-appellant "Lolo" as he was the common-law husband of their maternal grandmother.⁶

Sometime in 2007, while BBB was playing with her sisters, accused-appellant called her and brought her to a hut in a field located at Zone 7, Sto. Niño 3rd, San Jose City, Nueva Ecija. Inside the hut, accused-appellant told BBB to lie down, lifted her shirt, and removed her shorts and underwear. Accused-appellant then removed his lower garments and had carnal knowledge of BBB, but he was unable to make a full penetration.⁷

BBB cried and pushed accused-appellant away. She did not shout for help for fear that accused-appellant would hurt her. Whenever someone came by the field, accused-appellant desisted from assaulting her.⁸

For several times, thereafter, whenever accused-appellant urinated, he made BBB watch him and hold his penis.⁹

The assault upon BBB was repeated on 18 April 2009 at about five o'clock in the morning. At that time, BBB and her two female siblings had to sleep in accused-appellant's house because their mother was at the hospital attending to AAA. While in bed, BBB was awakened by a finger being inserted into her vagina. When she opened her eyes, BBB saw accused-appellant. Sensing that BBB was already awake, accused-appellant left.¹⁰

About a month earlier or on 15 March 2009, AAA and her siblings stayed with accused-appellant and their maternal grandmother because their parents had to attend the wake of a deceased relative. At around four o'clock in the morning, AAA was awakened by somebody, whom she identified to be accused-appellant because of his rough hand and odor, fiddling her nipple. The incident lasted for about two minutes. Accused-appellant stopped when he realized that AAA's siblings were already awake.¹¹

Thereafter, AAA and her siblings rose from bed and prepared breakfast. AAA did not tell anyone about the incident out of fear. It was only

⁶ Records, Vol. V; TSN, 1 February 2011, pp. 3-4.

⁷ Id. at 5-7.

⁸ Id. at 8-10.

⁹ Id. at 7-8.

¹⁰ Id. at 11-15.

¹¹ Records, Vol. V; TSN, 5 May 2011, pp. 43-48.



when BBB revealed the sexual acts committed against her by accused-appellant that AAA also mustered the courage to speak out.¹²

During the presentation of the prosecution's evidence, however, an Affidavit of Desistance,¹³ dated 15 May 2012, was executed by AAA, BBB, and CCC.

Version of the Defense

The defense presented the maternal grandmother of AAA and BBB as its sole witness. She testified that accused-appellant became her common-law partner in February 2010, about a year after the death of her husband. Her family resented her relationship with accused-appellant because she was no longer able to support them and their disagreement resulted in the filing of the rape cases against accused-appellant.¹⁴

The RTC Ruling

In its decision, dated 30 January 2013, the RTC acquitted accused-appellant for violation of Section 5 (b) of R.A. No. 7610 for failure of the prosecution to sufficiently establish the identity of the perpetrator. It observed that AAA admitted that she was not able to see the face of the person who assaulted her but that she concluded that said person was accused-appellant on the basis of the assailant's rough hand and odor. The RTC reasoned that AAA's mere general statement that the person who touched her breasts had the same rough hand and odor as the accused-appellant was not conclusive proof of the latter's identity as the culprit absent any showing why and how such could distinctly be attributable to accused-appellant.

The trial court, however, found accused-appellant guilty of statutory rape and of rape by sexual assault. It noted that BBB, even at such a young age, was able to withstand the lengthy cross-examination. The RTC held that the affidavit of desistance was not sufficient to reverse BBB's earlier testimony clearly narrating how accused-appellant had sexually molested her on two occasions. It added that the allegation that the cases were concocted by CCC to force a separation between accused-appellant and her mother should not be given weight because no parent would be so depraved to use her own daughter for such trivial purpose.



¹² Id. at 48-51.

¹³ Records, Vol. I, p. 74.

¹⁴ Records, Vol. VI; TSN, 8 November 2012, pp. 70-73.

Finally, the RTC ruled that it was conclusively established that in 2007 and on 18 April 2009, BBB was under 12 years of age as evidenced by her birth certificate and by the defense's admission during the pre-trial conference that she was barely eight years old on 18 April 2009. It concluded that BBB's straightforward testimony duly proved that accused-appellant had carnal knowledge of her in 2007 and had assaulted her by inserting his finger into her vagina on 18 April 2009. The *fallo* reads:

WHEREFORE, his guilt for the offense charged in Criminal Case No. 1514-2009-SJC not having been established beyond reasonable doubt, the accused Rolando Bagsic is ACQUITTED.

Said accused, however, is hereby found guilty of rape defined and penalized under Art. 266-A in relation to Art. 266-B of the Revised Penal Code in Criminal Cases No. 1515-2009-SJC and No. 1516-2009-SJC and is accordingly sentenced as follows:

- a. In Criminal Case No. 1515-2009-SJC, to suffer an indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, for rape through sexual assault;
- b. In Criminal Case No. 1516-2009-SJC, to suffer the penalty of reclusion perpetua, for statutory rape, and such accessory penalties provided for by law.

The accused is likewise found liable to pay BBB the following:

	In	Crim.	In	Crim.
	Case	No.	Case	No.
	1515-2009-		1516-2009-	
	SJC		SJC	
a. Indemnity	P30,000.00		P50,000.00	
b. Moral damages	P30,000.00		P50,000.00	
TOTAL	P60,000.00		P100,000.00	

All of which must earn interest at the rate of 6% per annum from finality of this judgment until fully paid.¹⁵

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In a decision, dated 30 June 2014, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It opined that the court *a quo* correctly accorded credence to the testimony of BBB after finding her answers to the questions on direct and cross-examination to

¹⁵ CA rollo, pp. 61-62.

be intelligible, candid, and unwavering. The CA found no merit in accused-appellant's attempt to discredit BBB's testimony by imputing ill motive against her; that is, that she had charged accused-appellant with rape at the instance of CCC who harbored resentment against him for being the common-law husband of her mother.

The appellate court pointed out that during the hearing on 7 June 2011, BBB affirmed that she was executing an affidavit of desistance, but she remained silent when asked if accused-appellant did not actually rape her. It added that BBB's testimony was corroborated by the Medico-Legal Report, dated 5 May 2009, finding that BBB's hymen suffered from incomplete laceration which suggested blunt or penetrating trauma. The CA disposed the case in this wise:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The Joint Decision, dated January 30, 2013 of the Regional Trial Court, Branch 38, San Jose City is AFFIRMED with MODIFICATION in that appellant Rolando Bagsic is further ordered to pay private complainant BBB the amount of Thirty Thousand Pesos (P30,000.00) as exemplary damages in Criminal Case No. 1516-2009-SJC for statutory rape; and Thirty Thousand Pesos (P30,000.00) in Criminal Case No. 1515-2009-SJC for rape by sexual assault, in addition to the other award of damages, all of which are subject to interest of six percent (6%) per annum from the date of finality of this judgement until they are fully paid.¹⁶

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, viz:

LONE ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁷

Accused-appellant asserts that he should be acquitted of the crimes charged because the testimonies of the prosecution witnesses raised reasonable doubt on whether he sexually abused BBB considering that the latter subsequently executed an affidavit of desistance. He avers that the filing of the cases was only due to the resentment of CCC towards him.¹⁸

¹⁶ Rollo, p. 19.

¹⁷ CA rollo, p. 34.

¹⁸ Id. at 44-45.

THE COURT'S RULING

The appeal is bereft of merit.

***BBB's affidavit of desistance
cannot be given any weight.***

BBB's affidavit of desistance is not a ground for the dismissal of the case. Rape is no longer considered a private crime as R.A. No. 8353 or the Anti-Rape Law of 1997 has reclassified rape as a crime against persons.¹⁹ Rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution.²⁰ Hence, an affidavit of desistance, which may be considered as pardon by the complaining witness, is not by itself a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.²¹

Moreover, it has been consistently held that courts look with disfavor on affidavits of desistance. The rationale for this was extensively discussed in *People v. Zafra*.²²

We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable.²³ [emphasis omitted.]



¹⁹ *People v. Lindo*, 641 Phil. 635, 643 (2010).

²⁰ *People v. Castel*, 593 Phil. 288, 323 (2008).

²¹ *People v. Dimaano*, 506 Phil. 630, 647 (2005).

²² 712 Phil. 559-578 (2013); citing *People v. Alcazar*, 645 Phil. 181, 194 (2010).

²³ *Id.* at 576-577.

In addition, when asked by the court *a quo* whether her affidavit of desistance meant that she was not raped by accused-appellant, BBB simply did not answer.²⁴ Neither did she give any exculpatory fact that would raise doubts about the rape.

BBB's testimony should be given full weight and credence.

It must be noted that accused-appellant's only defense is the alleged resentment of CCC towards her mother's relationship with him. Such argument is flimsy and superficial. In *People v. Basmayor*,²⁵ the Court ruled:

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. [citations omitted]²⁶

In this case, BBB was able to withstand the rigors of direct examination and cross-examination. Not once did she falter in narrating the dastardly act committed against her and identifying accused-appellant as the perpetrator. Moreover, no decent mother would use her daughter as an instrument of revenge, especially if it will subject her child to embarrassment and lifelong stigma.²⁷ A disagreement among family members, even if true, does not justify dragging a young girl's honor to merciless public scrutiny that a rape trial brings in its wake.²⁸

Finally, the testimony of BBB was also corroborated by the Medico-Legal Report²⁹ which stated that the physical findings suggested blunt or penetrating trauma. "When a rape victim's testimony on the manner she was defiled is straightforward and candid, and is corroborated by the medical findings of the examining physician as in this case, the same is sufficient to support a conviction for rape."³⁰



²⁴ Records, Vol. V; TSN, 14 June 2012, p. 62.

²⁵ 598 Phil. 194-214 (2009).

²⁶ Id. at 208.

²⁷ *People v. Bonaagua*, 665 Phil. 750, 763 (2011).

²⁸ *People v. Maglente*, 578 Phil. 980, 998 (2008).

²⁹ Records, Vol. I, p. 5.

³⁰ *People v. Soria*, 698 Phil. 676, 689 (2012).

Accused-appellant is guilty of statutory rape.

For the accused to be found guilty of the crime of statutory rape, two (2) elements must concur: (1) that the offender had carnal knowledge of the victim; and (2) that the victim is below twelve (12) years old.³¹ If the woman is under 12 years of age, proof of force and consent becomes immaterial not only because force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven.³²

BBB positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incident of rape as follows:

[Fiscal Escudero]

Could you recall when was the first time you were raped by Rolando Bagsic?

[BBB]

No, sir.

Q: Could you recall what year?

A: Yes sir.

Q: What year?

A: In 2007 sir.

Q: In 2007, were you studying then?

A: Yes sir.

Q: What grade are you then?

A: Grade I, sir.

Q: Kindly tell us how were you raped on 2007, while you were still Grade I, by Rolando Bagsic?

A: He called me up and brought me in the field sir.

Q: What were you doing when he called you and brought you to the field?

A: I was playing with my elder sisters sir.

Q: What happened when Rolando Bagsic called you?

A: He brought me in a field where there was a hut and in that hut where Rolando Bagsic laid me down and took off my short and panty sir.



³¹ *People v. Arpon*, 678 Phil. 752, 772 (2011).

³² *People v. Dimaano*, 506 Phil. 630, 648 (2005).

Q: Where is the hut located Madam Witness?

A: At the farm sir.

Q: Where is the farm located, what barangay?

A: In Zone 7, Sto. Nino 3rd sir.

Q: Are you referring to Sto. Nino 3rd San Jose City?

A: Yes sir.

Q: Madam Witness what are you wearing in your upper body?

A: I was wearing my upper clothes with sleeves sir.

Q: What happened to your clothes with sleeves after Rolando Bagsic take your shorts and panty off from you?

A: He lifted it up sir.

Q: So what happened Madam Witness when Rolando Bagsic removed your shorts and panty and lifted your upper garments?

A: He also took off his short and underwear sir.

Q: So what happened when Rolando Bagsic take his short pants and brief off?

A: He was forcibly inserting his penis in my private part sir. (Pinipilit po niyang ilusot yung ari niya sa ari ko)

Fiscal Escudero: May I please request your honor that the vernacular term as answered by the witness be put on record?

Court: Put that on record.

Fiscal Escudero: Was he successful in inserting his private part to your vagina Madam Witness?

A: Only partial sir. (The vernacular term used by the witness is “konti lang po”)

Q: How would you explain that “konti lang po” or only partial Madam Witness?

A: Only the head of his penis sir.³³

To reiterate, the Medico-Legal Report lends credence to BBB's testimony. When the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.³⁴ Further, at the time of the incident, it was sufficiently proven that BBB was under 12 years of age as indicated in her Certificate of Live Birth.³⁵



³³ Records, Vol. V; TSN, 1 February 2011, pp. 5-7.

³⁴ *People v. Mercado*, 664 Phil. 747, 751 (2011).

³⁵ Records, Vol. I, p. 4.

Accused-appellant is guilty of rape by sexual assault.

The following are the elements of rape by sexual assault:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) By inserting his penis into another person's mouth or anal orifice; or
 - (b) **By inserting any instrument or object into the genital or anal orifice of another person;**
- (3) That the act of sexual assault is accomplished under any of the following circumstances:
 - (a) By using force and intimidation;
 - (b) When the woman is deprived of reason or otherwise unconscious; or
 - (c) By means of fraudulent machination or grave abuse of authority; or
 - (d) **When the woman is under 12 years of age or demented.**³⁶
(emphasis supplied)

All the foregoing elements were met beyond reasonable doubt. Accused-appellant inserted his finger into the vagina of BBB, a child under 12 years of age at the time of the incident, *viz*:

[Fiscal Escudero]

You mentioned a while ago Madam Witness that there were two separate occasions that you were raped by your Lolo Rolando Bagsic, when was the second time?

[BBB]

April 18, 2009 sir.

Q: What time was that?

A: 5:00 in the morning sir.



³⁶ *People v. Soria*, 698 Phil. 676, 687 (2012).

Q: On April 18, 2009 at around 5:00 in the morning, what were you doing then Madam Witness?

A: I was sleeping sir.

x x x x

Q: So while you were sleeping, how were you awoken?

A: Because something hard was thrusting my private part sir.

Q: Are you able to identify what is that hard object that is thrusting your private part?

A: Yes sir.

Q: Can you tell the Honorable Court what was that object that caused you to be awoken because it being thrust to your private part?

A: His hand sir.

Q: Hand of whom?

A: Hand of Lolo Bagsic sir.

Q: How were you able to know that it is the hand of your Lolo Bagsic?

A: Because I was already awoken in that time and I saw his face sir.

x x x x

Q: So kindly tell us how is he able to thrust his hand to your private part?

A: Because my panty was moved sideward. (Yung panty ko ay nakatagilid)

Q: If this is the hand of your Lolo Bagsic what part of the hand he used to thrust your private part?

A: This sir. (The witness is pointing to the right index finger)

Q: So you are referring to a finger not a hand Madam Witness?

A: Yes sir.

Q: Was he able to insert his finger to your vagina?

A: Yes sir.³⁷

In sum, the Court finds no convincing reason to disturb the findings of the trial court as affirmed by the appellate court.

Proper penalty for rape by sexual assault

Accused-appellant's conviction for rape by sexual assault is affirmed, but the penalty imposed by the lower court is modified to the penalty under Article III, Section 5(b) of R.A. No. 7610:



³⁷ Records, Vol. V; TSN, 1 February 2011, pp. 11-14.

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

(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 maybe: 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

The Implementing Rules and Regulations of R.A. No. 7610 defines "lascivious conduct" as [T]he 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.

In *People v. Chingh*,³⁸ the accused' conviction for rape by sexual assault was affirmed. However, in modifying the penalty imposed to that provided in Article III, Section 5(b) of R.A. No. 7610, the Court ruled:

In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of

³⁸ 661 Phil. 208, 222-223 (2011).



reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by prision mayor. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, Armando should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.³⁹ [citations omitted]

In *People v. Ricalde*,⁴⁰ wherein accused was charged and convicted of rape by sexual assault, the same penalty was imposed.

In this case, BBB, as established by her birth certificate, was only 8 years old when the incident happened. Her age was also alleged in the information. Hence, the higher penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, as applied in the foregoing cases of *People v. Chingh* and *People v. Ricalde*, should be similarly imposed.

In the recent case of *People v. Caoili*,⁴¹ there had been divergent opinions as to whether the act of inserting the fingers into the vagina constitutes rape by sexual intercourse. In said case, the accused was charged with the crime of rape through sexual intercourse. However, after trial, the crime proved was rape by sexual assault through the insertion of the finger into the vagina. Thus, the majority held that the accused could not be convicted of rape through sexual intercourse. In so ruling, it declared that the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the

³⁹ Id. at 223.

⁴⁰ 751 Phil. 793, 815-816 (2015).

⁴¹ G.R. No. 196342, 8 August 2017.



former offense cannot be considered subsumed in the latter. However, applying the same variance doctrine, it convicted the accused of the lesser crime of acts of lasciviousness performed on a child, i.e., lascivious conduct under Section 5 (b) of R.A. No. 7610, which was the offense proved because it is included in rape, the offense charged. Consequently, the accused was sentenced to suffer the penalty of *reclusion perpetua*.

In this case, for the crime of sexual assault, the lower courts sentenced accused-appellant to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. This Court, however, modified such penalty, and deemed it proper to impose the higher penalty of *reclusion temporal* in its medium period, to *reclusion perpetua* as provided in R.A. No. 7610.

From the foregoing, it can be easily discerned that if the courts would not opt to impose the higher penalty provided in R.A. No. 7610 in cases of rape by sexual assault, wherein the victims are children, an accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits rape by sexual assault which is punishable by *prisión mayor*.

Finally, I maintain my position in *People v. Caoili* that the insertion of the finger into the vagina constitutes rape through sexual intercourse and not rape by sexual assault. Rape by sexual assault is the act of “inserting the penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.”⁴² Instrument is defined as “utensil or implement.”⁴³ On the other hand, object is defined as “a discrete visible or tangible thing.”⁴⁴ The finger, however, is neither an instrument nor an object. Stripped to its most basic definition, a finger is a body part. Consequently, applying the principle of *expressio unius est exclusio alterius* which means that the express mention of one thing excludes all others,⁴⁵ the insertion of the finger or any other body part into the genital or anal orifice of another person could not be properly categorized as rape by sexual assault. The basic difference between an instrument or object on the one hand and the finger or any body part on the other is that on account of its independent existence, the former, by itself, can be used in the dastardly act of assaulting another person; whereas the latter owes its function to the fact that it is attached to the body. For sure, a

⁴² Revised Penal Code, Article 266-A.

⁴³ Webster’s Third New International Dictionary, p. 1172.

⁴⁴ Webster’s Third New International Dictionary, p. 1555.

⁴⁵ *Social Security System v. Commission on Audit*, G.R. No. 210940, 6 September 2016, 802 SCRA 229, 249.

person would not go to the extent of cutting his finger and then use the severed finger to sexually assault another person.

It is high time to revisit the archaic definition given to carnal knowledge, i.e., penile penetration, and acknowledge that the same may be accomplished in various ways: vaginal, oral, anal, and fingering. Intercourse means “physical sexual contact between individuals that involves the genitalia of at least one person.”⁴⁶ Further, jurisprudence has consistently held that “the crux of carnal knowledge is sexual bodily connection.”⁴⁷ From the foregoing definitions, the act of inserting the finger into the vagina already constitutes rape through sexual intercourse. Justice Marvic Leonen, in his dissent in *People v. Caoili*, has eloquently stated, “the finger is as much part of the human body as the penis. It is not a separate instrument or object. It is an organ that can act as a conduit to give both pleasure as well as raw control upon the body of another. At a certain age, when men have difficulty with erections, his finger or any other similar organ becomes a handy tool of oppression. This Court cannot maintain an artificially prudish construction of sexual intercourse. When it does, it becomes blind to the many ways that women’s bodies are defiled by the patriarchy. To legally constitute the finger as a separate object not used in “sexual intercourse” or “carnal knowledge” not only defies reality, it undermines the purpose of the punishment under Article 266-A, paragraph 2.”⁴⁸

Thus, in view of the foregoing considerations and in order to provide an unequivocal higher penalty in cases of rape by sexual assault committed against children, let copies of this decision be furnished the Speaker of the House of Representatives and the Senate President for possible legislation.

Pecuniary liability

The Court finds that pursuant to *People v. Jugueta*,⁴⁹ the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. The same amounts should be paid by accused-appellant with respect to the crime of rape by sexual assault. In addition, all the damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.



⁴⁶ Webster’s Third New International Dictionary, p. 1177.

⁴⁷ *People v. Butiong*, 675 Phil. 621, 630 (2011).

⁴⁸ *Supra* note 41.

⁴⁹ G.R. No. 202124, 5 April 2016, 788 SCRA 331-391.

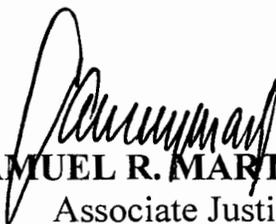
WHEREFORE, the appeal is denied. The 30 June 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06043 is **AFFIRMED with MODIFICATION**.

In Criminal Case No. 1515-2009-SJC, accused-appellant Rolando Bagic is sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. He is further ordered to pay BBB the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

In Criminal Case No. 1516-2009-SJC, accused-appellant Rolando Bagic is sentenced to suffer *reclusion perpetua*. He is further ordered to pay BBB the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

The amounts of damages awarded shall have an interest of six percent (6%) per annum from the date of finality of judgment until fully paid.

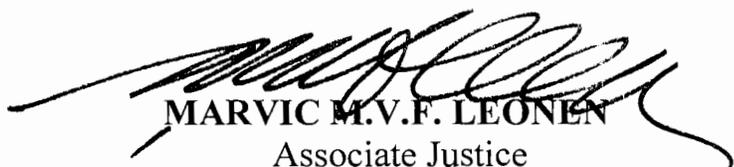
SO ORDERED.

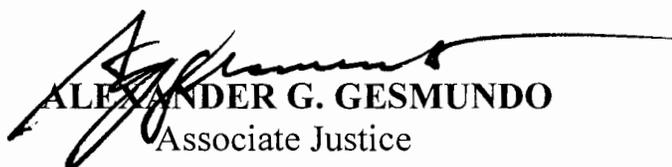

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

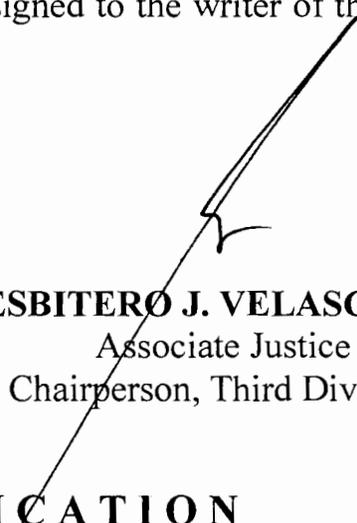
(On Official Leave)
LUCAS P. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

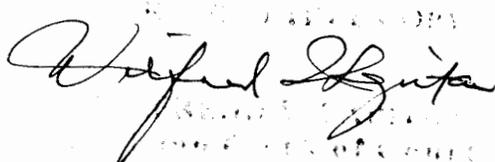
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
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.


MARIA LOURDES P. A. SERENO
Chief Justice


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