SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

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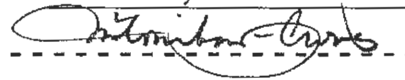
PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 248049**
	Present:
- versus -	GESMUNDO, *C.J.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER,* INTING,** ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J.,** DIMAAMPAO, MARQUEZ, KHO, JR.,** and SINGH,** *JJ.*
EFREN AGAO y AÑONUEVO, Accused-Appellant.	Promulgated: October 4, 2022



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DECISION

CAGUIOA, *J.*:

In yet another horrid case of the rape of a child, the Court here takes the difficult but important opportunity to clarify the anatomically accurate physical threshold of contact that must distinguish between attempted and consummated rape in the physical degrees of rape through sexual intercourse. Although at every turn unenviable, the Court now recognizes that there is

* No part.
** On official business.

perhaps no other way to reconcile and refine the current jurisprudence on rape than to peel away the euphemistic shrouds that have been resorted to so far, and instead inform case law with the exact anatomical situs of the pertinent body parts referred to in jurisprudence, which, unlike other matters that attend the crime of rape, are uncolored, self-evident and inarguable in their precision.

Fully aware of the detestable fact that the crime of rape, regardless of its permutations, is a violence of power and an ordeal of unspeakable trauma, the Court deems it fit that a clarification is necessary, crucial even, if it is to ensure that the detestable act of consummated rape by sexual intercourse or through penile penetration is not passed off as a mere attempt. Far from minimizing rape as a crime, objectifying women, or reducing the worth of the female victim, the Court here chooses to draw into the light the true gravity of rape by penile penetration, which has so far been capable of hiding in the shadows of unsure semantics.

To ensure that the deserved conviction and the appropriate penalty are not withheld because of perceived uncertainty, and to guarantee that no victim of rape ever has to face the tallest task of recounting the assault at the level of specificity of detail that are both sordid and unnecessary, the Court here clarifies that in the crime of rape through penile penetration, a particular physical situs and threshold penile contact draws the line between attempted rape and consummated rape of a woman or a girl, the proving of which provides the categorical factual basis for the finding of consummation. In the same breath, the Court here similarly takes the opportunity to reiterate the various badges of rape that are appreciable and applicable in the process of accurately determining the nature of the physical threshold of contact in all rape cases.

In a manner perhaps as barefaced as it is unprecedented, and in no way discounting the other physical modes with which the horrid crime of rape can be conceivably carried out, the Court affirms that to see that the jurisprudential arc towards the dignity and integrity of women and children is not undone, it must maintain its ability to take an unflinching look at existing case law and acknowledge where it can rule with better articulated clarity for the bench, the bar and the public at large.

The Facts

This appeal[1] arose from two Informations[2] dated October 27, 2014, which charged accused-appellant Efren Agao *y* Añonuevo (appellant) with two counts of statutory rape, under Article 266-A, paragraph 1 and Article 266-B of the Revised Penal Code (RPC) as amended by Republic Act No.

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1 *See* Notice of Appeal dated February 13, 2019, CA *rollo*, pp. 126-127.
2 Records, p. 105.

(R.A.) 8353[3] in conjunction with R.A. 7610,[4] docketed as Criminal Case Nos. 1453-V-14 and 1454-V-14 lodged with Branch 172, Regional Trial Court of Valenzuela City (RTC). The accusatory portions of the Informations read:

Crim. Case No. 1453-V-14

That sometime in July 2010, in Valenzuela [C]ity, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being the step-father of herein minor victim AAA,[5] who was then 10 years old, DOB: (December 6, 1999), by means of force and intimidation, did then and there [willfully], unlawfully and feloniously have sexual intercourse with said minor victim, against her will and without her consent, thereby subjecting the said victim to sexual abuse, which debased, degraded and demeaned her intrinsic [worth] and dignity as a human being.

CONTRARY TO LAW.

Crim. Case No. 1454-V-14

That sometime in January 2012, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, being the step-father of herein minor victim AAA, who was then 13 years old DOB: (December 6, 1999), by means of force and intimidation, did then and there [willfully], unlawfully and feloniously have sexual intercourse with the said minor victim, against her will and without her consent, thereby subjecting the said minor to sexual abuse, which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[6]

Upon arraignment, appellant pleaded not guilty.[7]

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[3] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE AND FOR OTHER PURPOSES or The Anti-Rape Law of 1997, dated September 30, 1997.

[4] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, dated June 17, 1992.

[5] The identity of the victim or any information which could establish or compromise his/her identity as well as those of his/her immediate family or household members, shall be withheld pursuant to R.A. 7610, titled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION AND FOR OTHER PURPOSES," approved on June 17, 1992; R.A. 9262, titled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. *See also* Amended Administrative Circular No. 83-2015, titled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017).

[6] Records, p. 105.

[7] Certificate of Arraignment, id. at 31.

During the trial, private complainant AAA recounted the protracted abuse she was subjected to, and positively identified appellant in open court as the man who repeatedly raped her.[8]

The prosecution's collective evidence showed that AAA was born on December 6, 1999 to BBB[9] and CCC,[10] her mother and father, respectively. AAA's parents were not married,[11] and separated when she was still a baby. AAA added that her mother BBB later on lived with appellant, whom AAA identified as her stepfather.[12] AAA alleged that she first fell victim to appellant's abuse sometime in 2009, when she was 10 years old, during an incident when appellant started touching her private parts while he was bathing her.[13] AAA thereafter chose not to tell her mother because she was afraid the latter would not believe her.[14]

AAA further testified that appellant first raped her in July 2010, at around 7:00 in the morning. During her direct examination, she recalled that while she was sleeping, she woke up to find appellant touching her breasts and vagina,[15] and later on trying to insert his penis into her vagina. AAA specifically testified that appellant undressed her and then mounted her.[16] She said that she both felt and saw appellant's penis hard against her, as the appellant kept trying[17] to insert it into her vagina, thereafter managing to introduce the same into the outer fold, also called the *labia majora* of AAA's

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[8] TSN, March 1, 2016, pp. 9-12.

[9] Supra note 5.

[10] Id.

[11] TSN, March 1, 2016, p. 4.

[12] Id. at 5.

[13] Id. at 6-8.

[14] Id. at 9.

[15] The Court notes that while the term "vagina" may have been previously used in some jurisprudential pronouncements as the global term to refer to the female genitalia, the "vagina" is specifically defined as "a neuromuscular vault connecting to the cervix of the uterus that unsheathes the penis during sexual intercourse and allows passage of the newborn infant during birth." [Aikaterini Deliveliotou and George Creatsas, *Anatomy of the Vulva*, THE VULVA: ANATOMY, PHYSIOLOGY AND PATHOLOGY (Eds. Farage, M. and Maibach, H.) (2006), pp. 5-6.]

[16] TSN, March 1, 2016, p. 10.

[17] Records, pp. 6-7; in her *Sinumpaang Salaysay*, AAA recounts:

> [Tanong]: Ano naman ang mga sumusunod pang pangyayari noong unang beses ka niyang gahasain noong July 2010?
>
> [Sagot]: Nung natutulog po ako sa may Northville I, Bignay po hinihipuan niya po ako sa ari [ko po] tapos inaalis [ko po] yung kamay niya tapos po nilalagay niya ulit. Tapos sinarado niya po yung pinto tapos inumpisahan niya [na po] akong gahasain. **Hinuhubaran po niya ko pati rin po siya naghuhubad din tapos pumatong nap o [sic] siya sa akin tapos pinipilit po niyang ipasok yung ari niya sa ari ko pero lumalaban po ako kaya hindi niya po naipapasok** tapos po sinabi [ko po] na ayoko po tapos magagalit po siya sasabihin niya sa akin na wag na daw po akong lalapit at ako na rin daw po ang bahala sa pag-aaral ko. Natatakot po ako nung mga oras na yun.
>
> T: Maaari mo bang sabihin kung ilang beses pa ulit nangyari yung sinasabi mong panggagahasa sa iyo ni Efren?
>
> S: Simula nung unang beses niya kong gahasain, **mga tatlong beses po sa isang linggo niya ako gahasain magpapalipas lang siya ng dalawang araw tapos uulitin na naman po niya yun.** Nung lumipat po kami sa Canumay West noong January 2012, ganun pa rin po ginagawa niya sa akin palagi niyang dinidikit yung ari niya sa ari ko hindi lang niya naipapasok kasi po lumalaban ako. (Emphasis supplied)

vagina.[18] Appellant was allegedly unable to fully penetrate AAA's vagina because she kept fighting back.[19]

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[18] TSN, March 1, 2016, p. 11.

[19] Id. at 9-12; in her own words, AAA related before the RTC, thus:

PROSECUTOR: Do you remember around July 2010 when you were Grade 4, as you were sleeping something happened between you and Efren?
AAA: Yes, sir.
Q: Where were you living at that time?
A: Canuway West.
Q: Before Canuway West, where were you living?
A: Northville I, Bignay.
Q: Will you tell us what happened at that time?
A: When I was sleeping, sir.
Q: Around what time was this?
A: 7 am.
Q: As you were sleeping what happened?
A: He touched me on my vagina, sir.
Q: You said you were sleeping, when he was *hinihipuan ka,* what happened?
A: I felt that there is a *malikot na gumagapang sa hita ko.*
Q: So, when you say you felt, you woke up?
A: Yes, sir.
Q: And when you wake up, who did you see?
A: Efren Agao, sir.
Q: When you saw him what happened?
A: He immediately put his hand on my vagina and suddenly he removed his clothes and also removed my clothes.
Q: At that time, where was your mother?
A: She is in her place of work.
Q: Other than your mother, you and Efren, who else was living in that house at that time?
A: None, sir.
Q: When that happened did you not shout to get the attention probably of your neighbor?
A: Not anymore, sir, because he told me not to tell anyone about it.
Q: After he undressed himself and you, by the way, who did he [undress] first?
A: Him, sir.
Q: As he was undressing himself, did you not [try] to go out of the house?
COURT: Put on record that the witness is crying.
A: No, sir.
Q: After he undressed you, what did he do?
A: He mounted on me, sir.
Q: After he mounted on top of you, what did he do?
A: He wanted to insert his penis in my vagina, sir.
Q: How did you know that he wanted to do that?
A: He told me, sir.
Q: Did you see his penis?
A: Yes, sir and I also felt it.
Q: Was it hard?
A: Yes, sir.
Q: But was he able to fully penetrate your vagina?
A: No, sir.
Q: Using the female doll, at what part of your vagina where his penis was at that time?
A: *Dito po sa may gitna.*
Q: Witness pointed to the pelvic area. When you say *sa may gitna,* you mean *sa may hiwa?*
A: Yes, sir.
Q: Why he wasn't fully inserted his penis?
A: I was fighting, sir.
Q: How?
A: I was kicking him, sir.
Q: How did he react when you kick him?
A: He get angry, sir.
Q: What did he say to you?
A: *Wag na daw po ako lalapit sa kanya. Ako na din daw po bahala sa pag-aaral ko.*
Q: How did you feel at that time?
A: I was afraid, sir.
Q: Did you bleed?

She further testified that appellant continued to molest her, including another time in January 2012, when appellant raped her while she was sleeping. AAA testified that during the latter incident, she woke up to find appellant touching her breast and then, later, trying to insert his penis into her vagina.[20] She added that similar to the incident in 2010, appellant was also unable to fully penetrate her vagina as she also put up a fight.[21]

Throughout all this time, despite the repeated assaults, she continued not to tell anyone, not even her own mother BBB, for fear that BBB would not believe her, and that she would only be humiliated. On cross-examination, it was further established that AAA chose not to tell anyone about appellant's abuse because she was afraid that appellant might harm her and BBB.[22] It was also shown that up until the beginning of appellant's chronic abuse of AAA, the latter did not harbor any ill feelings towards appellant.[23]

Only after AAA and her mother BBB left appellant in June 2014, or over two years since the last assault on her took place, did AAA muster the courage to tell her aunt about the harrowing assaults she repeatedly experienced at the hands of appellant.[24] Her aunt, in turn, told her friend who was a police officer. When AAA told her father, CCC about it, the latter accompanied her to the police station, where she finally lodged a complaint against appellant.[25]

Upon physical and genital examination on AAA by Police Chief Inspector Jocelyn P. Cruz (PCI Cruz), it was found that there was no evident injury at the time of examination.[26] PCI Cruz opined that an erect penis, if it merely touches the *labia*, would not cause hymenal laceration. She added that even if there was penetration, if the same happened sometime in July 2010 and January 2012, it was medically possible that there were injuries and

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A: No, sir.
Q: How many times did he do those things to you?
A: Three times in a week, sir.
Q: Whenever he would do that, would he be able to fully penetrate in your vagina?
A: No, sir.
Q: Why not?
A: Because whenever he wanted to insert his penis I would fight him. (Emphasis supplied)

[20] Id. at 13.
[21] Id.
[22] Id. at 20.
[23] Id. at 22; AAA's testimony reads:
Atty. Alipio: At any rate, before this incident happened, do you have any misunderstanding or ill feelings against Efren Agao?
AAA: None, sir.
Q: Do you know if Efren Agao will be convicted in this case, he will be imprisoned from 20 to 40 years?
A: Yes, sir.
Q: And yet you still maintain that Efren Agao raped you?
A: Yes, sir.
[24] Id. at 14.
[25] Id. at 14-15.
[26] Records, p. 10.

lacerations sustained then, but the same may have already healed at the time of the physical examination.[27]

In his defense, appellant denied the allegations levelled against him, and countered that he never molested AAA, but instead treated her like his own daughter.[28] He added that the allegations were triggered by CCC who signified that he wanted to get AAA, and that AAA was only coached by CCC into spinning false accusations against him.[29] Adding proof that the accusations were baseless and that AAA did not harbor any ill feelings against him, appellant testified that AAA even visited him several times during his detention, until she was taken by the City Social Welfare Development Office.[30]

Ruling of the RTC

In its Joint Decision[31] dated March 15, 2017, the RTC found appellant guilty beyond reasonable doubt of two counts of Statutory Rape, sentenced him to suffer the penalty of imprisonment of *reclusion perpetua* for each count, and ordered him to pay AAA the amount of ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱25,000.00 as exemplary damages, all subject to interest at the rate of six percent (6%) *per annum* from the finality of decision until full payment.[32]

In finding appellant's guilt beyond reasonable doubt, the RTC gave credence to AAA's testimony, and appreciated it as categorical, consistent, and straightforward.[33] It held that though there was no laceration noted in AAA's hymen, with appellant's penis only merely touching the *labia*, the crime of rape was nevertheless consummated.[34] Citing *People v. Besmonte*,[35] it held that carnal knowledge, as an element of rape, does not require full penile penetration of the female organ. Instead, consummation occurs once the penis of the accused, capable of consummating the sexual act, touches either the *labia* or the *pudendum*.[36] It further noted PCI Cruz's testimony to the effect that lack of injury or laceration on the date of examination does not rule out laceration at the time of the assault, as the latter could have possibly healed with the passing of time.[37]

The RTC, however, did not appreciate the qualifying circumstance of the stepdaughter-stepfather relationship between AAA and appellant, finding instead that although the Informations alleged that appellant was the stepfather of AAA, the prosecution failed to show proof that appellant was

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27 TSN, August 5, 2015, p. 6.
28 TSN, August 24, 2016, p. 4.
29 Id.
30 Id. at 5.
31 Records, pp. 105-112. Penned by Judge Nancy Rivas-Palmones.
32 Id. at 112.
33 Id. at 111.
34 Id. at 110
35 735 Phil. 234 (2014).
36 Id. at 247, Records, p. 109.
37 Records, pp. 110-111.

legally married to BBB. In addition, it also found that although there was no dispute that appellant was the common-law spouse of BBB, the information failed to allege the same.[38] Without appreciating relationship between appellant and AAA, the RTC found appellant guilty only of Statutory Rape.[39]

On appeal[40] to the Court of Appeals (CA), appellant argued that: (1) there was no consummated act of rape, as the prosecution failed to prove the same beyond reasonable doubt; (2) AAA's testimony was marked with incredibility and inconsistency; and (3) the CA erred in its failure to appreciate the suspiciously belated reporting of the rape incidents.[41] In its response, the People, through the Office of the Solicitor General, countered that: (1) the RTC correctly ascribed greater credence to AAA's positive testimony; (2) it also properly found appellant guilty beyond reasonable doubt of the crime of consummated rape; and (3) the award of damages imposed against appellant should be modified.[42]

Ruling of the CA

In its Decision[43] dated January 15, 2019, the CA affirmed the RTC's conviction, but modified the same with respect to the award of damages. Particularly, the awards of moral damages, civil indemnity, and exemplary damages for each count were all increased to ₱75,000.00, with legal interest at the rate of six percent (6%) *per annum* from finality of decision until full satisfaction, in conformity with prevailing jurisprudence.[44]

In affirming appellant's conviction, the CA found that the RTC correctly gave weight to AAA's testimony and her positive identification of appellant as the one who raped her.[45] It held that on the matter of ascribing credibility to the testimony of a witness, the valuations of the RTC are given utmost respect because it had the opportunity to observe the demeanor of the witnesses, and its findings may only be disturbed on appeal, upon a showing that the RTC overlooked material facts which, if considered, would alter its decision.[46]

The CA also noted that AAA did not appear to have been motivated by any ill will against appellant.[47] It further echoed the RTC's ruling that the absence of vaginal laceration was immaterial, for neither full penetration of the vaginal orifice nor the rupture of the hymen was necessary, given that mere introduction of the male organ to the *labia* of the victim's genitalia

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38 Id. at 111.
39 Id. at 112.
40 CA *rollo*, p. 13.
41 Id. at 40.
42 Id. at 81.
43 *Rollo*, pp. 3-19. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Remedios A. Salazar-Fernando and Amy C. Lazaro-Javier (now a Member of this Court) concurring.
44 Id. at 18-19, citing *People v. Jugueta*,783 Phil. 806 (2016).
45 Id. at 9-10.
46 Id. at 13.
47 Id.

already consummates the crime of rape.[48] The CA also dismissed appellant's argument that AAA's delay in reporting the incidents of rape cast doubt on the same, ruling instead that such delay may not be taken against the victim unless it was shown to have been unreasonable and unexplained. In this case, given that AAA sufficiently explained that she was only able to report the assaults after she and her mother left the custody of appellant, the same delay could not be deemed to have been unreasonable.[49]

Finally, the CA found that the RTC correctly convicted appellant of Simple Rape, without the appreciation of the qualifying circumstance of stepfather-stepdaughter relationship as indicated in the Informations, because the prosecution failed to adduce any proof that BBB and appellant were married.[50]

On appeal[51] to this Court, appellant manifests[52] that he adopts the issues he raised in his Brief[53] dated November 16, 2017 which was filed before the CA. The People, for its part, likewise manifests[54] that it affirms its discussion of the merits of its case in its own Brief[55] dated March 22, 2018 with the CA.

Issue

The core issue presented before the Court is whether the CA correctly affirmed the RTC decision which found appellant guilty of two counts of rape through sexual intercourse as defined under Article 266-A, paragraph 1 and Article 266-B of the RPC as amended by R.A. 8353 in conjunction with R.A. 7610.

The Court's Ruling

The appeal is without merit.

Appeal in criminal cases opens the entire case for review, with the reviewing tribunal vested with the duty to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned.[56]

In deciding this appeal, the Court is guided by the following principles framed specifically for the review of rape cases: (1) an accusation of rape, while easy to make, is difficult to prove and even harder for the person accused, though innocent, to disprove; (2) because rape, by its very nature, involves only two persons, the testimony of the complainant should be scrutinized with the greatest caution; (3) the evidence for the prosecution must

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48 Id. at 13-14.
49 Id. at 17.
50 Id. at 17-18, citing *People v. Manggasin*, 365 Phil. 683 (1999).
51 Id. at 20-21.
52 Id. at 35-38. Manifestation with Profuse Apology dated November 18, 2019.
53 CA *rollo*, pp. 34-48.
54 *Rollo*, pp. 30-34. Manifestation and Motion in Lieu of Supplemental Brief dated November 6, 2019.
55 CA *rollo*, pp. 74-94.
56 *People v. De Guzman*, 840 Phil. 759, 765 (2018).

stand or fall on its own merits and must not be allowed to draw strength from the weakness of the evidence for the defense; and (4) the complainant's credibility assumes paramount importance because her testimony, if credible, is sufficient to support the conviction of the accused.[57]

Under the aegis of the foregoing framework, the Court has reviewed the records of this case and finds no reason to overturn the verdict of guilt handed down by the RTC and affirmed by the CA, but finds it proper to modify the finding of two counts of Statutory Rape, the second one being only Simple Rape.

The Court finds, as correctly discerned by the lower courts, that the prosecution sufficiently established, through the primary and positive testimony of the wronged child herself, that appellant gained carnal knowledge of her, and is therefore guilty beyond reasonable doubt of the crime of rape in the consummated stage.

The Court also holds that the straightforward, candid and consistent testimony of AAA of the rape sufficiently established that appellant's erect penis did touch the *labia* of her vagina which, under prevailing jurisprudence, falls within the operative definition of consummated rape.

Furthermore, pursuant to the balance that must be struck between the fundamental freedoms of the accused and the abused child, and the Court's affirmation notwithstanding, it nevertheless finds both a need as well as a suitable jurisprudential platform to clarify the parameters that must attend the courts' appreciation of the stages of commission of rape in light of prevailing jurisprudence that has evolved in its definition of what constitutes "the slightest touch" that consummates the same. The Court here discerns that an explication is in order given the determined inexactitude in the evolution of the minimum physical threshold that distinguishes between attempted and consummated rape.

Admittedly, despite the fact that the act of rape has long been removed from the realm of private crimes,[58] the Court's practical and doctrinal imaginations and expressions appear to still be colored by old, discarded notions of what rape is and is not, made even worse by the social stigmatization associated with it. As far as jurisprudence goes, as will be shown in the succeeding tracking of relevant case law, categorical descriptions of the kind or degree of genital contact that amounts to consummated rape through penile penetration has been unclear or skirted around at times, owing, for one, to the sensitive nature of the assault. Thus, the unmistakably sexual nature of the crime of rape has previously compelled the Court to sidestep the otherwise unavoidable vulgarity that attends the crime, and into the use of euphemistic but largely inaccurate descriptions, that

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[57] *People v. Castromero*, 345 Phil. 653, 662 (1997).

[58] Since the passage of R.A. 8353, which expanded the definition of the crime of rape and re-classified it as a crime against persons.

have only so far convoluted matters regarding the act of rape that should have been kept unambiguous and definitive.

For one, diverging cases show that, despite clear testimony of child victims of repeated attempts and degrees of penetration of an erect penis, the accused therein were convicted merely of attempted rape precisely because of the absence of the clear operative definition of penile penetration that qualifies as consummated rape, especially in cases of younger victims, in view of the physical natural resistance of their underdeveloped anatomy. For another, as raised during deliberations, a clarification is overdue given that an error in the appreciation of the exact anatomical situs of the genital contact amounts to the justice system's complicity in the improper imposition of penalties.

The apparent avoidance in the straightforwardness or clarity now presents the Court with the need to reiterate and clarify for the bench and the bar, the biologically accurate definition of what constitutes the slightest penile contact which consummates rape through penile penetration. Without discounting how the instant clarification of anatomical threshold may extend or apply to rape by sexual assault, the Court's present discussion will be focused on rape of a woman through penile penetration, and will be three-tiered: (i) it will begin with a tracing of the evolution of the operative definition of consummated rape through penile penetration with an illustration of how cases have diverged, then (ii) elaborate on what slightest genital contact contemplates with particular reference to the anatomical situs thereof, and (iii) finally apply said clarified parameters to the instant appeal.

I
Evolution of the Wrong of Rape[59]

The origin of the crime of rape as it is now defined traces its source to the Código Penal of 1870, which was introduced in the Philippines in 1887, and was not superseded until the effectivity of the RPC in 1932,[60] as amended by R.A. 8353, Section 2, which in turn defines the crime of rape under Article 266-A thereof, thus:

> Article 266-A. *Rape; When and How Committed.* – Rape is committed –
>
> 1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
>   a. Through force, threat, or intimidation;
>
>   b. When the offended party is deprived of reason or otherwise unconscious;
>
>   c. By means of fraudulent machination or grave abuse of authority; and

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[59] David Archard, *The Wrong of Rape*, THE PHILOSOPHICAL QUARTERLY (2007), Vol. 57, No. 228, pp. 374-393.

[60] Ruben F. Balane, *The Spanish roots of Philippine Law*, ESTUDIOS DE DEUSTO (2018), Vol. 66, No. 1, pp. 23-31.

> 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.

In Philippine jurisprudence, the conceptualization of the wrong of rape, more specifically the meaning of "carnal knowledge" has been consistently defined as the act of a man having sexual intercourse or sexual bodily connections with a woman.[61] Most recently, through R.A. 11648[62] the first type of rape under Article 266-A was further redefined and broadened as an act which may be committed "[b]y a person who shall have carnal knowledge of another person."

The operative definition of carnal knowledge, however, has been subject to further evolution, with the main vein of contention running along the different thresholds that are drawn between the stages of its commission. In other words, although "carnal knowledge" has always been conceptually clear, the metes and bounds of where or at which physical contact point it actually legally begins has been the subject of further refinement.

The Court's more nuanced approach to the study and determination of the stages of the crime of rape began with the case of *People v. Orita*[63] (*Orita*), where the Court first held that taking into account the nature, elements and manner of its execution, it was deemed that the commission of the frustrated stage was inconceivable. This was reiterated in the later cases of *People v. Orande*[64] and *People v. Quiñanola*[65] (*Quiñanola*), where the Court held that until Congress sees it fit to define the term frustrated rape and penalize it, its continued usage in the statute book should be considered a persistent lapse in language.

With only the attempted and consummated stages left possible for the commission of rape, the series of cases that followed thereafter grappled with the question of where the line could be drawn between a mere attempt at rape, on the one hand, or its consummation, on the other. Given that the intrinsic nature of rape is one fraught with repulsive intimacy and covertness, the

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[61] See *People v. Bon*, 444 Phil. 571, 579 (2003); *People v. Bormeo*, 292-A Phil. 691 (1993); *People v. Miclat, Jr.*, 435 Phil. 561 (2002).

[62] AN ACT PROVIDING FOR STRONGER PROTECTION AGAINST RAPE AND SEXUAL EXPLOITATION AND ABUSE, INCREASING THE AGE FOR DETERMINING THE COMMISSION OF STATUTORY RAPE, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," REPUBLIC ACT NO. 8353, ALSO KNOWN AS "THE ANTI-RAPE LAW OF 1997," AND REPUBLIC ACT NO. 7610, AS AMENDED, OTHERWISE KNOWN AS "THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT," dated March 4, 2022.

[63] 262 Phil. 963, 977 (1990).

[64] 461 Phil. 403, 419 (2003).

[65] 366 Phil. 390, 415 (1999).

Court's efforts to clarify the line between the two stages have so far resulted in dispositions of borderline cases that are varying and perceptively both semantically and pragmatically unclear. Contrary to the observation made during the deliberations, the overdue discussion of the anatomical situs and threshold of consummated rape by penile penetration does not reverse progressive doctrine nor does it render invisible the sordid violation of the dignity of the victim. On the stark contrary, the clarification sheds light on the obscurity of the language and the tendency with which the Court may have repulsed from confronting distinctions, and instead makes plain the point of genital contact which, when crossed, provides the courts with categorical factual basis to find that the gravest assault on the victim's body, integrity and dignity has already been consummated, and not merely attempted.

Recalibration of Stages of Commission: Attempted vs. Consummated

As early as 1990, the Court has built on its trajectory in refining the acts which would constitute the stages of the commission of rape by sexual intercourse through penile penetration in the particular context of sexual abuse of minors. In *Orita,* the Court decisively disabused the notion that perfect penetration and hymenal rupture are necessary for consummation, and clarified that *any penetration* of the female organ by the male organ, *however slight*, is sufficient to warrant conviction, *viz.*:

> x x x In a long line of cases (*People v. Oscar*, 48 Phil. 527; *People v. Hernandez*, 49 Phil. 980; *People v. Royeras*, G.R. No. L-31886, April 29, 1974, 56 SCRA 666; *People v. Amores*, G.R. No. L-32996, August 21, 1974, 58 SCRA 505), We have set the uniform rule that for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the [*labia*] or lips of the female organ, without rupture of the hymen or laceration of the vagina is sufficient to warrant conviction. Necessarily, rape is attempted if there is no penetration of the female organ (*People v. Tayaba*, 62 Phil. 559; *People v. Rabadan, et al.*, 53 Phil. 694; *United States v. Garcia*, 9 Phil. 434) because not all acts of execution [were] performed. The offender merely commenced the commission of a felony directly by overt acts. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can ever be committed.[66] (Italics in the original omitted)

Proceeding from *Orita*, the efforts of the Court to expound on as well as further sharpen the operative definition of "touch" as that which consummates rape followed. In *People v. Dela Peña*[67] (*Dela Peña*), the Court fine-tuned the definition of "touch" *vis-à-vis* consummated rape, provided an operative context thereto, and ruled that *mere touching of a vagina by a penis capable of penetration is considered consummated rape.*[68] In this case, the Court held that its earlier decisions, where it considered rape to have been

[66] *People v. Orita*, supra note 63, at 976-977.
[67] 303 Phil. 595 (1994).
[68] Id. at 599.

consummated despite the fact that the attacker's penis merely touched the external portions of the vagina, were within the situational context of "the presence of the existence of an erectile penis capable of full penetration."[69] Here, the Court expounded on the operational context for its ruling that the mere touching of the penis on the external portions of the vagina is enough, to wit:

> It is likewise settled that the absence of physical findings on medical examination does not negate a finding that carnal knowledge had actually occurred. The absence of seminal fluid, spermatozoa, abrasions, lacerations, hematoma[,] etc., around the genital area or the presence of an intact hymen does not automatically lead to a conclusion that no act of rape had occurred or that the act was in fact consensual. In fact, the absence of a medical certificate is not indispensable in the crime of rape. **However, our decisions finding a case for rape even if the attacker's penis merely touched the external portions of the female genitalia were made in the context of the presence of the existence of an erectile penis capable of full penetration.** The physiologic impossibility of penetration absent an erection — complete or otherwise — cannot be gainsaid. If, because of the victim's vigilant attempts at warding off her attacker's sexual advances an accused in a case of rape is unable to accomplish the act of completely penetrating his victim's vaginal orifice, a charge for rape under existing jurisprudence can be sustained anyhow, because full penetration would have been accomplished if the penis were erect, were it not for the victim's vigilance or the occurrence of other circumstances which might have frustrated the accomplishment of complete penetration. That is not the case here.[70] (Emphasis supplied)

Then in the 1997 case of *People v. Escober*[71] (*Escober*), the Court held that what is fundamental is that the entrance, *or at least the introduction*, of the male organ to the *labia* of the *pudendum*, is proved. Still in the same year, in *People v. Castromero*[72] (*Castromero*), the accused's penis merely touched the minor victim's private parts and did not penetrate — "*[a]ng kanyang pag-aari ay **lumapat** sa aking pag-aari.*"[73] The Court here nevertheless found that the rape already reached its consummated stage. Harking back to *Dela Peña*, and once more ruling that the *mere touching* of the external genitalia by a penis capable of consummating the sexual act constitutes carnal knowledge, the Court there reasoned thus:

> In determining whether the rape was consummated or merely attempted, we observe that in this case there was no complete or perfect penetration of the complainant's sex organ. The salient portions of her testimony are as follows:
>
> *Q While he was on top of you, what was he doing?*
> *A He tried to insert his penis to my vagina.*
>
> *Q When he was trying to insert his private part to your private part, what happened?*

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[69] Id. at 600.
[70] Id. at 599-600.
[71] 346 Phil. 513, 522 (1997).
[72] Supra note 57.
[73] Id. at 665.

> *A His penis touched my vagina.*
>
> *FISCAL CASTILLO:*
> *May I request Your Honor, that the Tagalog word "Ang kanyang pag-aari ay **lumapat sa aking pag-aari**".*
>
> *Q What happened next?*
> *A Because of the movement sideways his penis touched my private parts.*
>
> x x x x
>
> To consummate rape, perfect or complete penetration of the complainant's private organ is not essential. Even the slightest penetration by the male organ of the lips of the female organ, or [*labia*] of the [*pudendum*], is sufficient. In *People vs. Dela Peña*, this Court held that "the mere touching of the external genitalia by a penis capable of consummating the sexual act constitutes carnal knowledge." **Josephine's testimony that appellant's organ touched the opening of her vagina can lead to no other conclusion than that the appellant's manhood legally invaded, however slightly, the lips of her private organ.** Clearly, rape was consummated in this case. Because the sexual assault was perpetrated by force and intimidation, Appellant Castromero is thus guilty of rape pursuant to Article 335 of the Revised Penal Code.[74] (Emphasis supplied)

In the succeeding case of *Quiñanola*, the Court again echoed *Dela Peña*, and reiterated that in light of discerning whether or not carnal knowledge was had, "*mere touching*" of the penis consummates the crime. In this case, the Court further refined the operative definition of the required genital contact for purposes of finding consummated rape, by outlining that the **genital contact has to be either of the two alternative scenarios: (1) the penis which merely enters the *labia* or the lips of the vagina, or (2) the penis capable of consummation merely touches the external genitalia**, *viz.*:

> In the context it is used in the Revised Penal Code, "carnal knowledge," unlike its ordinary connotation of sexual intercourse, **does not necessarily require that the vagina be penetrated or that the hymen be ruptured**. The crime of rape is deemed consummated even **when the man's penis merely enters the [*labia*] or lips of the female organ** or, as once so said in a case, by the "***mere touching* of the external genitalia by a penis capable of consummating the sexual act.**"[75] (Emphasis supplied)

Proceeding from the standing doctrine in *Quiñanola*, the Court further drew distinctions with respect to the genital contact that is contemplated by the consummated stage of rape, through several 1999 Decisions.

In the case of *People v. Oliver*[76] (*Oliver*), the Court reiterated that rape is consummated "when the penis *touches the pudendum*, however slightly."[77]

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[74] Id. at 664-666.
[75] *People v. Quiñanola*, supra note 65, at 410.
[76] 362 Phil. 414 (1999).
[77] Id. at 424, citing *People v. Caballes*, 340 Phil. 213, 225 (1997); *People v. Andan*, 336 Phil. 91, 115 (1997); *People v. Magana*, 328 Phil. 721, 745 (1996). (Italics supplied)

In the same year, in *People v. Alojado*,[78] the Court described consummated rape as that which consists of even the slightest penetration. Then, in the *En Banc* case of *People v. Puertollano*[79] (*Puertollano*), it was iterated that *mere touching*, or less than penetration, amounts to consummation, to wit:

> The **mere touching by the male's organ or instrument of sex of the [*labia*] of the [*pudendum*] of the woman's private parts is sufficient to consummate rape.** As we have said in unnumbered cases, full or deep penetration of the victim's vagina is not necessary to consummate sexual intercourse; it is enough that there be even the slightest penetration of the male organ into the female sex organ.[80] (Emphasis supplied)

Then, in the later oft-cited case of *People v. Campuhan*[81] (*Campuhan*), the Court clarified the standing definition of "touch" in reference to its ruling in *Orita*, and elucidated that the minimum genital contact that is required for a finding of consummated rape must be either (1) the penis touching the *labia majora*, or (2) the penis sliding into the female organ, thus:

> x x x Thus, *touching* when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that **the penis indeed touched the [*labias*] or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape.** As the *labias, which are required to be "touched" by the penis*, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, **to touch them with the penis is to attain some degree of penetration beneath the surface**, hence, the conclusion that touching the [*labia majora*] or the *labia minora* of the *pudendum* constitutes consummated rape.
>
> x x x x
>
> x x x 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.**[82] (Emphasis and underscoring supplied)

Following *Campuhan* was the case of *People v. Ombreso*[83] (*Ombreso*), involving the rape of a six-year-old girl, the facts of which are similar to the case at bar. In *Ombreso*, the allegation that the accused's erect penis "touched

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[78] 364 Phil. 713, 724 (1999), citing *People v. Mangalino*, 261 Phil. 436 (1990). See also *People v. Echegaray*, 327 Phil. 349 (1996); *People v. Faigano*, 324 Phil. 212 (1996); *People v. Abella*, 298-A Phil. 661 (1993); *People v. Tesimo*, 281 Phil. 593 (1991); and *People v. Castillo*, 274 Phil. 940 (1991).

[79] 367 Phil. 636 (1999).

[80] Id. at 645.

[81] 385 Phil. 912 (2000).

[82] Id. at 920-922.

[83] 423 Phil. 966 (2001).

the upper part of complainant's vaginal opening" was deemed sufficient for a finding of consummated rape, *viz.*:

> Thus, although there was no full penetration, and therefore no laceration of the hymen as the examining physician said, **accused-appellant's penis nonetheless touched the upper part of complainant's vaginal opening. As accused-appellant repeatedly pushed his organ into complainant's vagina, the latter suffered pain.** Unlike in *Campuhan*, where this Court found that accused did not attain erection, and his penis was flaccid, here, accused-appellant's penis, according to the victim, was erect and, for a long time, accused-appellant tried to make a full penetration. This was no mere "stroking" or "grazing of the surface of the female organ," as this Court described what took place in the *Campuhan* case. What happened in this case was a penetration, albeit not a full one because of the relative smallness of complainant's vagina. **Although the victim many times said "just here" in pointing to the spot in her genitalia which was touched by accused-appellant's male organ, "just here," as she demonstrated, meant the "upper part of [her] vaginal opening." It was therefore consummated rape which accused-appellant committed.**[84] (Emphasis supplied)

Following *Ombreso*, in the case of *People v. Comanda*[85] (*Comanda*), the Court held that the "*briefest of contacts*" or the "mere introduction" of the penis to the vagina consummates the rape, particularly that the penis reaches the *pudendum* or, at the very least, the *labia*, to wit:

> x x x The position of the parties during sexual intercourse is not material in the crime of rape. For rape to be consummated, the hymen of the victim need not be penetrated or ruptured. **It is enough that the penis reaches the [*pudendum*], or, at the very least, the [*labia*]. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence. The mere introduction of the penis into the aperture of the female organ, thereby touching the [*labia*] of the [*pudendum*], already consummates the crime of rape.**[86] (Emphasis supplied)

In March 2001, the Court, in *People v. Francisco*[87] (*Francisco*) attempted to **reconcile the two alternative minimum genital contacts by clarifying that they are one and the same, in that for the penis to even merely touch the *labia majora* or the *labia minora* of the vagina, the penis would have already attained some level of penetration of the female organ.** The Court here clarified that there must be sufficient proof that the penis indeed touched the *labia* or slid into the female organ, and not merely stroked the external surface thereof, in the absence of which the crime can only be either attempted rape or acts of lasciviousness. In discussing its compunction to find the rape committed therein in its consummated stage, the Court turned on the insufficiency of proof:

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84 Id. at 987-988.
85 553 Phil. 655 (2007), citing *People v. Bascugin*, 473 Phil. 100 (2004).
86 Id. at 674-675.
87 406 Phil. 947 (2001).

> [T]here 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* 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. "But in the absence of any showing of the slightest penetration of the female organ *i.e.*, touching 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.[88] (Emphasis supplied)

Seven months after *Francisco*, the Court repeated said ruling in *People v. Mariano*[89] (*Mariano*) and held that the ascertainment of whether the penis of the accused did enter the labial threshold of the female organ was necessary in order to find consummation, and failure of the medico-legal report to support the allegation of completed rape results in reasonable doubt in favor of the accused.[90]

Taking altogether the evolution of the definition of what constitutes the minimum genital contact that warrants a finding of consummated rape from the above survey of case law, it appears that the ***consummation*** of rape is founded upon the ***prosecution's proof that the erect penis of the accused was, at the very least, introduced to the labia majora of the victim's vagina as a precursor for vaginal penetration***, regardless of whether the penetration, full or partial, was actually obtained. Up to this point, the minimum genital contact threshold for consummated rape was quite literally the merest introduction of the penis to the *labia* of the vagina.

However, the cases that followed thereafter would vacillate between "mere touch" on the one hand, and "slightest penetration" on the other, so that the clear minimum genital contact of the penis touching the *labia majora* of the vagina was confounded.

Diverging cases

An even closer look at the case law that followed *Mariano* on the matter of borderline rape cases indicates that in the cases where the initial finding of consummated rape was modified to attempted rape, said modifications ultimately turned on *the prosecution's failure to establish the manner and nature of penile penetration, i.e.*, that the erect penis of the accused touched the *labia* of the *pudendum* of the victim's vagina as a precursor for vaginal penetration, as operatively defined in *Campuhan.*

What the Court here vitally observes, and which is now the focus of the instant clarification, is that this hesitation to appreciate the

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[88] Id. at 961.
[89] 420 Phil. 727 (2001).
[90] Id. at 741.

presence of the minimal genital contact that is required for consummation to be found persisted *despite* clear testimonial indication that the penis was in fact introduced to the aperture of the vagina in the manner that was contemplated in the earlier definitive rulings in *Orita, Dela Peña, Escober, Quiñanola, Oliver, Campuhan* and *Castromero.* In the said cases, to recall, the Court already found as consummated rape that level of genital contact which was described as *"[pag]lapat"* or the nudging or pressing upon the vagina by the penis.

As will be shown, the Court, in the succeeding cases, found only attempted rape even in the face of categorical testimonies to the effect that the penis of the accused in these cases was introduced to the vagina of the minor victims in manners or degrees that are semantically similar to the description of the manner of penile contact appreciated in the case of *Castromero*, wherein the Court found for consummated rape. **The Court now finds that the following differing rulings or appreciations of description of genital contact are more borne out of an unclear and often confounded operative definition of the threshold of genital contact that is required, than failure on the part of these minor victims to testify to the same.**

First, in the case of *People v. Tolentino*,[91] despite a clear testimony on the part of the victim that the accused therein kept "trying to force his sex organ into" her vagina, the Court there held that there was no sufficient proof offered to show that the penis touched the *labia* of the victim's vagina, to wit:

> The prosecution did not ask her the appropriate questions to get some more important details that would demonstrate beyond any shadow of doubt that TOLENTINO's penis reached the [*labia*] of the [*pudendum*] or the lips of RACHELLE's vagina. It should have, for instance, asked whether TOLENTINO's penis was firm and erect or whether RACHELLE's legs were spread apart to bring us to the logical conclusion that, indeed, TOLENTINO's penis was not flabby and had the capacity to directly hit the [*labia*] of the [*pudendum*] or the lips of RACHELLE's vagina. There is paucity of evidence that the slightest penetration ever took place. x x x
>
> x x x In this case, there is no doubt at all that TOLENTINO had commenced the commission of the crime of rape by (1) directing RACHELLE to lie down, (2) removing his shorts and hers, and (3) **"trying to force his sex organ into" RACHELLE's sex organ. But there is no conclusive evidence of the penetration, however slight, of RACHELLE's sex organ.** The penetration was an essential act of execution to produce the felony. Thus, in the absence of a convincing evidence thereof, TOLENTINO should be given the benefit of the doubt and can be convicted of attempted rape only.[92] (Emphasis supplied)

Still, in the 2000 case of *People v. Arce, Jr.*[93] (*Arce*) involving the rape of a nine-year-old girl, the minor victim repeatedly used the word "*idinikit*" to describe the position of the erect penis *vis-à-vis* her genitalia. The Court

[91] 367 Phil. 755 (1999).
[92] Id. at 764-765.
[93] 417 Phil. 18 (2001).

notes that "*idinikit*" is semantically similar to the word "*lapat*" which the Court appreciated as consummated rape in the earlier case of *Castromero*. Despite this, the Court in *Arce* was unconvinced that the rape was consummated because the victim's testimony indicated that appellant therein was not able to insert his penis into her vagina nor did she declare that there was the slightest penetration.

Similarly, in *People v. Dimapilis*,[94] the Court also found therein accused guilty only of attempted rape, mainly ruling that the testimony of the 10-year-old victim was confusing and made conflicting assertions regarding the entry of the penis into her vagina, despite the fact that on repeated occasions, as the Court therein recognized, the minor victim narrated that the accused "forced his organ into hers,"[95] "tried to insert his organ into hers and she felt it when he pressed it against her private part,"[96] and "tried to penetrate her, albeit unsuccessfully in view of the natural resistance at her opening and her propitious cry of pain."[97]

Still in the case of *People v. Quarre*,[98] involving a father accused of raping his two minor daughters aged 12 and 16, the Court held that the "bare and true words of the victim,"[99] left uncleansed of ambiguous references by a medico-legal report, left it unpersuaded as to the precise character of the sexual act alleged therein.[100] In said case, despite the repeated narration of one of the minor victims that the accused therein kept trying to insert his penis into her vagina, and despite said minor victim's particular notation of the fact that in the accused's attempts at penile penetration she felt persistent pain, the Court there held that the rape was only in the attempted stage.[101]

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[94] 397 Phil. 607 (2000).
[95] Id. at 616.
[96] Id. at 617.
[97] Id. at 618.
[98] 427 Phil. 422 (2002).
[99] Id. at 432.
[100] Id. The Synopsis of the case states:

> The Supreme Court found no evidence beyond reasonable doubt that accused-appellant consummated the slightest penetration of Marilou's vagina. Consisting of only the bare and true words of the victim, there being no medico-legal examination report that would have cleansed her testimony of ambiguous references to the precise character of the sexual act, the evidence looms with the moral uncertainty that the penis of accused-appellant ever touched the *labia* of the *pudendum*. A perusal of the transcript of the testimony of Marilou disclosed repeated denials of penile insertion. Considering that there was neither testimonial nor physical evidence to provide adequate basis for the finding of consummated rape, the accused should only be properly punished for attempted rape.

[101] Id. at 432-433. The testimony of the minor therein read in part:

> COURT:
> Let's make this clear.
> Q: The only thing that your father did to you while he was on top of you was to kiss you on the different parts of your body, is that the only thing that he did to you?
> **A: There was, maam, I felt that he was trying to insert his private part into my private part but I resisted that's why he got angry, maam.**
> **Q: Was he successful in inserting his private part into yours?**
> **A: He tried to insert his private part into my private part and I felt pain, but it did not enter into my private part, it merely made "*dikit,*" maam.**
> **Q: And despite that length of time you are telling the Court that your father was not able to penetrate you?**
> A: No, maam, he was also trying to insert his finger to my private part. I felt pain and I resisted and I was able to ward off his attempt, maam.
> Q: So he was not able to insert his finger into your private part, is that what you mean?

More, in the similar case of *People v. Brioso*,[102] the Court held that since there was no other evidence, apart from the victim's testimony, that could confirm whether there was penetration of the *labia*, the accused therein could only be convicted of attempted rape. This, despite the consistent testimony of the minor victim therein that the accused kept trying to insert his erect penis into her vagina, albeit unsuccessful, with the cited testimony clearly reading in part:

> Q: You said you were dragged by your stepfather to that bed. When you were dragged to the bed, what happened next?
> A: He forced me to lie down and he removed my shorts and panty.
>
> Q: While doing this, what if anything did you do?
> A: I cried because I could do nothing.
>
> Q: When he removed your garments and you were made to lie on the bed, what happened next?
> A: He also undressed himself and tried to insert his penis to my vagina, but it did not succeed.
>
> Q: Now, on what part of your body did you feel that his penis touched?
> A: My vagina.
>
> Q: So, what happened after that?
> A: He dressed up and I also dressed up and went upstairs.
>
> Q: So, how long therefore, was he on top of you?
> A: Around five (5) minutes.
>
> **Q: While on top of you on that duration as you approximated it, what if anything did you feel?**
> **A: Painful.**
>
> **Q: Which is painful?**
> **A: My vagina.**
>
> **Q: Why is it painful?**
> **A: Because he was trying to insert his penis to my vagina.**[103] (Emphasis supplied)

At this point, the Court notes that although all the aforementioned cases were decided by mentioning what constitutes "slightest penetration" under the *Dela Peña* and *Campuhan* standard, with the downgrading of the initial convictions to attempted rape all "on the account of the paucity of evidence to prove that there had been penile penetration, even of the slightest kind, of the victim's genitals," all the above cases also failed to appreciate the genital contact that took place in the manner and circumspection that the Court appreciated them in the cases of *Dela Peña* and *Campuhan*.

A: He was not able to insert his finger into my private part, maam, but I felt pain because he was forcing his finger into mine.
Q: Does the court understand that he was not able to insert his private part into yours?
A: No, maam, only "*dikit*." (Emphasis supplied)

[102] 600 Phil. 530, 542 (2009).

[103] Id. at 539-540.

Even more instructive is the Court's observation of an unmistakable lack of clarity and consistency in the operative definition of the minimum genital contact which, as we have seen in the jurisprudential arc, has been more of a subjective moving target than a pinned down exposition. **In other words, the appreciation of the minimum genital contact that consummates rape, *i.e.*, whether the erect penis of the accused touched the *labia* of the *pudendum* of the victim's vagina as a precursor for vaginal penetration, has been confounded, with said opacity easily resolvable by informing jurisprudence of the exact anatomical situs of the pertinent body parts referred to in settled jurisprudence, which, unlike other inexact matters that surround a rape testimony, are as inarguable as they are true.**

For while it is tragically true that, as Senior Associate Justice Marvic M.V.F. Leonen posits, the crime of rape is not suffered in degrees and the destruction in its wake is utterly complete,[104] the existing provisions in the RPC and its amendments on rape continue to define that the *offense itself*, not its trauma, is committed in stages. On this score, and short of judicially legislating a new definition of the crime of rape, the Court must choose to apply itself to ensuring that no obscurity either unduly benefits the accused (in that the accused is convicted for attempted rape when in fact the crime was consummated) or unduly burdens the victims with the heartbreaking task of jumping through hoops of propounded questions in order to try and prove the genital assault required which jurisprudence itself has not so far made clear. Far from "licensing" the toxic masculinity that reduces women to mere sexual objects,[105] the Court pries loose the constricted uncertainty of the semantics, unravels the clearer parameter, and finds that the safety and dignity of all persons are worth the disconcerting conversation that must be had, if it is to dispense with honest justice.

II
Clarifying the parameters for appreciation of "slightest penetration" in cases of rape by sexual intercourse through penile penetration

The Court, in its wisdom, has long laid down jurisprudence to the effect that the level of penetration that is sufficient to appreciate consummation of rape by penile penetration is established by using a minimum litmus test, *i.e.*, mere touching of an erect penis on the *labia* of the female genitalia. Perhaps this was done in order to sidestep discourse that ran along the discussions that seek to demand the degree of particularity (*i.e.*, ask "how deep a penetration is deep enough") that may only be sharp at the level of legal doctrines, but insufferably nebulous and unknowable at the level of actual cases.

On this score, the Court recalls that the prevailing fine-tuned operative definition of the minimum threshold for a finding of consummated rape, from

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[104] Opinion of Senior Associate Justice Leonen, p. 1.
[105] Id.

the nuanced jurisprudential development that began in *Orita* all the way to *Mariano* is when the prosecution established that **the erect penis of the accused touched the *labia* of the *pudendum* of the victim's vagina as a precursor for penile penetration, regardless of whether the penetration, full or partial, was actually obtained.**

This operative definition, however, as will be demonstrated, calls for a clarificatory rephrasing, as its physical characterization below proves the same to be either inconsistent or otherwise problematic and uncertain. For the avoidance of doubt and for pedagogical purposes, the Court finds it necessary to herein include a brief descriptive discussion of the parts of the external female genitalia including a clear indication of the situs of the pertinent parts, in order to categorially delineate for the bench and the bar which physical threshold, when crossed, constitutes rape in the consummated stage.

The vulva, or *pudendum*, is a collective term for the external female genital parts that are visible in the perineal area.[106] According to Aikaterini Deliveliotou and George Creatsas, in their article "Anatomy of the Vulva,"[107] the parts of the vulva that are crucial for a clear discussion of the consummation of rape are as follows:

> The vulva consists of the [*mons pubis*], the [*labia majora*], the [*labia minora*], hymen, the clitoris, the vestibule of the vagina, the urethral orifice, Skene's glands, Bartholin's glands, and the vestibular bulbs x x x.
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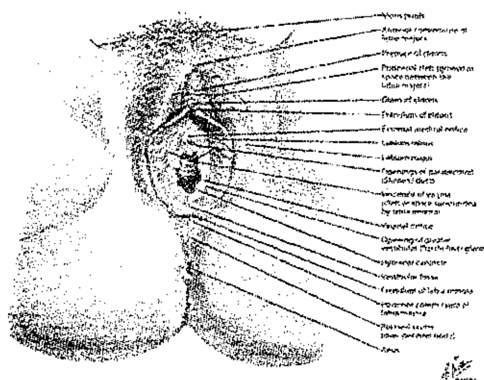
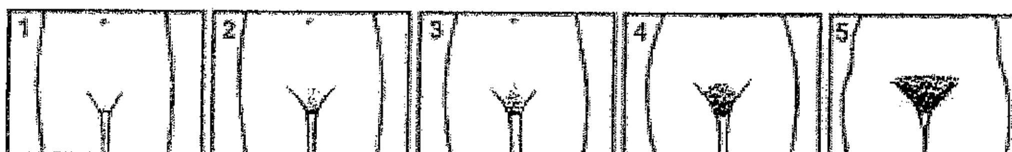
> The anterior and posterior boundaries of the vulva extend from the [*mons pubis*] to the anus, respectively; its lateral boundaries lie at the

[106] Aikaterini Deliveliotou and George Creatsas, *Anatomy of the Vulva*, THE VULVA: ANATOMY, PHYSIOLOGY AND PATHOLOGY, supra note 15, at 1.

[107] Id. at 1-8. The anatomy of the vulva is illustrated below as follows.



(Id. at 2) As suggested by Associate Justice Singh and for ease of reference of members of the bench and bar who do not have sufficient medical backgrounds, consider below the illustration of the external appearance of the female genitalia, with the vulval cleft appearing as the fleshy external part of the vagina in the illustrated stages of female pubic hair development, as it appeared in Miranda A. Farage, Howard I. Maibach, Aikaterini Deliveliotou and George Creatsas, *Changes in the Vulva and Vagina Throughout Life*, THE VULVA: ANATOMY, PHYSIOLOGY AND PATHOLOGY (Eds. Farage, M. and Maibach, H.) (2006), p. 32:



genitocrural folds. The vulvar epithelium exhibits regional differences in tissue structure based on embryonic derivation. The skin-bearing [*mons pubis*], perineum, and [*labia*] are derived from the embryonic ectoderm. Vulvar skin, like skin at other sites, has a keratinized, stratified, squamous epithelial structure with hair follicles, sebaceous glands, and sweat glands. The thickness degree of keratinization of vulvar skin decreases progressively from the [*labia majora*], over the clitoris, to the [*labia minora*]. The vulvar vestibule, derived from the embryonic endoderm, is nonkeratinized. x x x

[Mons Pubis]
The [*mons pubis*] (mons Veneris) is the rounded eminence in front of the pubic symphysis, which is formed by a collection of adipose tissue beneath the integument. During puberty, it becomes covered with hair up to its junction with the abdominal wall. The hair pattern, or escutcheon, of most women is triangular. Genetic and racial differences produce a variety of normal hair patterns, with approximately one in four women having a modified escutcheon with a diamond pattern.

[Labia Majora]
The [*labia majora*] are a pair of prominent longitudinal, cutaneous folds of fibroadipose tissue that are homologous to the scrotum in the male. The structures bear epidermal tissue resembling the dartos tunic of the scrotum, as well as adipose tissue, areolar tissue, blood vessels, nerves, and glands. The [*labia majora*] also include the terminal extension of the round ligament and, occasionally, a peritoneal diverticulum, the canal of Nuck.

The size of the [*labia majora*] is related to fat content. Each is approximately 7 to 8 cm in length and 2 to 3 cm in width. The [*labia majora*] extend downward and backward from the [*mons pubis*], thus forming the lateral boundaries of a fissure or cleft (the pudendal cleft or rima) into which the vagina and urethra open.[108]

Guided by the foregoing anatomical description, the Court now reiterates, even as it clarifies, that rape of a female victim by a male person through penile penetration reaches the consummated stage as soon as the penis penetrates the cleft of the *labia majora*, also known as the vulval or pudendal cleft,[109] or the fleshy outer lip of the vulva, in *even the slightest degree*. Simply put, **mere introduction, however slight, *into the cleft* of the *labia majora* by a penis that is capable of penetration, regardless of whether such penile penetration is thereafter fully achieved, consummates the crime of rape.**

Necessarily, the Court must now revisit and clarify the language of the descriptions in the cases of *Dela Peña*, *Oliver*, *Puertollano*, *Campuhan*, *Ombreso*, *Comanda*, and *Francisco*, which have collectively described that

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108 Aikaterini Deliveliotou and George Creatsas, *Anatomy of the Vulva*, THE VULVA: ANATOMY, PHYSIOLOGY AND PATHOLOGY, supra note 15, at 2-3.

109 The cleft between the "*labia majora*" is called the pudendal cleft, or "cleft of Venus," and it contains and protects the other, more delicate structures of the vulva. These are lined by skin on the outside and basal layer of cells (*stratum malpighii*), a thin granular layer on the insides. (Dr. Anya Mandal, MD, *Vulva Structures*, NEWS-MEDICAL.NET, available at <https://www.news-medical.net/health/Vulva-Structures.aspx>.)

the act of rape is considered consummated as soon as the penis touches either the *pudendum* or the *labia* of the victim's vagina.

With careful and decisive reference to the anatomical illustration above, the Court clarifies that when jurisprudence refers to "mere touching," it is not sufficient that the penis grazed over the *pudendum* or the fleshy surface of the *labia majora.* **Instead, what jurisprudence considers as consummated rape when it describes a penis touching the vagina is the penis *penetrating the cleft of the labia majora, however minimum or slight.*** Similarly, a mere grazing by the penis of the fleshy portion, not the vulval cleft of the *labia majora,* will also constitute only attempted rape and not consummated rape, since the same cannot be considered to have achieved the slightest level of penetration. **Stated differently, the Court here elucidates that "mere touch" of the penis on the *labia majora* legally contemplates not mere surface touch or skin contact, but the slightest penetration of the vulval or pudendal cleft, however minimum in degree.**

For this seeming nebulous operative definition to remain unclarified, *i.e.*, for the definition that a penis that touches any part of the female genitalia is tantamount to consummated rape, would be both a physical and legal negation of the concept of attempted rape. In other words, if any nature and degree of touch of a penis of the female genitalia can be considered consummated rape, then effectively, all sexual assaults involving a penis and the vulva would only either be acts of lasciviousness or consummated rape, with no gradation of the attempted stage in between. Since the same cannot be reasonably presumed to be the legislative intendment with respect to defining the stages of rape, the Court must clarify and fine-tune, as it now does, the unveiled, straightforward definition of exactly the threshold genital contact that constitutes consummated rape.

To be sure, the Court's clarification herein remains faithful to the original definition as laid down in the earliest recalibration in *Orita*, where while the Court disabused the notion that full penetration was required for rape to be in the consummated stage, it nevertheless qualified that the "slightest penetration" was nevertheless required, albeit imperfect or slight, otherwise the rape would be deemed to have been in its attempted stage.[110] So that while the Court requires the proof of the minimum genital contact as here clarified, the notion of having to distinguish between depths or extent of penetration remains out of the question.

In point of fact, in the case of *Escober*, the Court already articulated this careful equivocation towards the idea of making further distinctions as to penetration degrees, to wit:

> **There are no half measures or even quarter measures nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. The rape is deemed**

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[110] *People v. Orita*, supra note 63, at 976-977.

> **consummated in either case.** In a manner of speaking, bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.[111] (Emphasis supplied)

Given the foregoing, **for as long as the prosecutorial evidence is able to establish that the penis of the accused penetrated the <u>vulval cleft or the cleft of the *labia majora*</u> (*i.e.*, the cleft of the fleshy outer lip of the victim's vagina), however slight the introduction may be, the commission of rape already crossed the threshold of the attempted stage and into its consummation**. On the factual appreciation of whether this minimum threshold genital contact is obtained in an allegation of rape, the same is rightly left to the trial court's astute assessment from the entirety of the body of proof presented in each case.

Doubtlessly, the minimum test of erect penile contact preparatory for consummation is the soundest gauge of differentiating between attempted and consummated rape because, as illustrated by the present case, this bare minimum penile contact may be all that can be reasonably wrested from the testimony of a sexually abused child. **On the unenviable task of determining at which stage the crime of rape was committed, the courts are further enjoined to be circumspect in their careful appreciation of the language used to recount the manner, degree of penile contact, especially when the victim attesting to the same is a minor child.**

Appreciation of Stages of Commission of Rape for Pre-Puberty Victims

On this score, as recommended by Associate Justice Maria Filomena D. Singh (Associate Justice Singh), the Court deems it high time, as well, to further calibrate this genital contact threshold and rule, as it does, that for child victims in the pre-puberty age, the genital contact threshold for a finding of consummated rape through penile penetration is deemed already met once the entirety of the prosecution evidence establishes a **clear physical indication of the inevitability of the minimum genital contact threshold as clarified here, if it were not for the physical immaturity and underdevelopment of the minor victim's vagina**, which may include repeated touching of the accused's erect penis on the minor victim's vagina and other indicative acts of penetration.[112]

The Court marks the ages of nine years old and below as the age range when the "repeated touching" test is to be applied since, according to medical literature, particularly the mainly referenced Nelson Textbook of Pediatrics,[113] the first sign of puberty in girls occurs between 10 to 11 years old, *viz.*:

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[111] *People v. Escober*, supra note 71, at 522, citing *People v. Salinas*, 302 Phil. 305 (1994).
[112] Separate Concurring Opinion of Associate Justice Singh, p. 1.
[113] Kliegman, St. Geme, Blum, Shah. Tasker and Wilson (2020) (21st ed), Elsevier.

> The age of onset of puberty varies and is more closely correlated with osseous maturation than with chronological age. In females, the **breast bud** (thelarche) is usually the first sign of puberty (10-11 yr), followed by the appearance of pubic hair (pubarche) 6-12 mo later. The interval to the onset of menstrual activity (menarche) is usually 2-2.5 yr but be as long as 6 yr. In the United States, at least one sign of puberty is present in approximately 95% of females by 12 yr of age and in 99% of females by 13 yr of age.[114]

The Court takes judicial notice that in these cases, due to the underdeveloped genitalia of child victims in the pre-puberty age, an attempt of the penis to penetrate will already be likely indicative, at the very least, of the penis' introduction to the vulval cleft of the victim's vagina, with penetration considered made if it were not for the natural resistance of the victim's organ due to biological immaturity.

Circumspection required in appreciating testimonies of child victims in rape cases

Furthermore, as Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo) astutely adds, the Court further reiterates the jurisprudential guideposts which provide that when the necessary genital contact is not explicitly described through the testimony of the victim, whether minor or otherwise, courts can anchor their findings and appreciation of the genital contact on other aspects that would similarly depict the occurrence and circumstance of penile penetration.[115] These guideposts which are appreciable in all rape cases may reasonably find sharper import with respect to cases of rape involving minor victims, especially in view of the inherent limitations of the testimony of child witnesses. The courts are, therefore, enjoined to exercise circumspection in their appreciation, with the use of these surrounding or attendant circumstances which can aid the courts in their appreciation of penile penetration: (i) when the victim testifies that she felt pain in her genitals;[116] (ii) when there is bleeding in the same;[117] (iii) when the *labia minora* was observed to be gaping or has redness[118] or otherwise discolored;[119] (iv) when the hymenal tags are no longer visible;[120] or (v) when the sex organ of the victim has sustained any other type of injury.[121]

Once the testimony of the victim and/or the above attendant circumstances reveal that the threshold genital contact occurred, the courts have sufficient basis to find for consummation.

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[114] Id. at 2899.
[115] Concurring Opinion of Chief Justice Gesmundo, pp. 3-4.
[116] *People v. Campuhan*, supra note 81, at 925-926.
[117] See *People v. Orande*, supra note 64.
[118] See *People v. De la Peña*, 342 Phil 526 (1997).
[119] See *People v. Lazaro*, 319 Phil. 352 (1995).
[120] *People v. Campuhan*, supra note 81, at 926.
[121] See *People v. Talan*, 591 Phil. 812 (2008).

For the avoidance of doubt, the Court deems it necessary to remind the bench and bar of the need for circumspection given that as may be gleaned from the preceding brief history and the juxtaposition of cases that all involve minor rape victims, with all evidentiary appreciation turning on the child witness' testimony, it appears that the Court, in its valuation of child witness' testimonies in the specific context of rape cases, has repeatedly categorically ruled that the *testimony of the prosecution witness left it unconvinced* that the required degree of penetration did take place so as to consider the crime committed to have been in its consummated stage. It consistently found the testimonies of the child victims *wanting in the degree of explicitness* that would depict for the Court the very manner and extent of penile contact or penetration, *e.g.*, that descriptive words and phrases used by child victims to depict the assault, including "*binundul-bundol ang kanyang ari*,"[122] "poked,"[123] and "*idinidikit ang ari*"[124] were not explicit or specific enough to assess the nature of the penile contact.

The case at bar offers the Court the opportunity to clarify, streamline, and reconcile the diverging cases, as well as revisit the prevailing principles with respect to appreciating testimonies of child witnesses in the prosecution of rape cases, to the extent that the fairness of the trial is gauged not only in reference to the rights of the accused but also the rights of the minor victims. For admittedly, although existing rules of procedure already grant a discernible accommodation in favor of child witnesses, said rules only go into the manner of facilitating child testimonies in court. The Court now goes a step further, and lays down the guideline on the level of exactitude that must color the court's appreciation of the testimony, after it has been obtained from the child. This need to revisit how the courts appreciate testimonies of child witnesses in the peculiar context of rape cases is far from a wasteful academic exercise, or a tinkering of precedents for the sake of it. Far from it, the instant reexamination rises from both the substantial body of literature in child development which concedes the many inherent limitations of children in the schema of a rape or sexual abuse trial, as well as the appreciable jurisprudential inconsistency in taking these intrinsic limitations into account.

For another, the Court deems it not only permissible but more so an imperative that precedents, when brought under the light of an actual case and exposed with its incongruence, must be reconsidered. Perhaps the Court may not be faulted in pursuing such a reexamination with circumspection and compassion, not in the least when its ruling is tethered to the lives of sexually abused children, and the odds that are stacked against them.

To be sure, the present revisit by the Court does not militate against the principle that all doubts must be resolved in favor of the accused. This principle, although encompassing, does not negate the fact that not all crimes are alike, and sexual crimes, by their very nature, are rightly approached

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122 See *People v. Tolentino*, supra note 91.
123 See *People v. Francisco*, supra note 87.
124 See *People v. Arce, Jr.*, supra note 93.

differently, or at the very least, warrant a nuanced one. The nature of sexual crimes is peculiar principally because the prosecution of sexual crimes rests heavily, if not solely, on the testimony of the victim. Unlike other crimes where other pieces of evidence may be available to prove their elements, the prosecutorial proof in sexual crimes almost singularly rely on the testimony of the victim. The Court would, therefore, be remiss if it unqualifiedly stops at resolving all doubts in favor of the accused, without taking into account two key considerations: (1) the distinctive nature of sexual crimes, and (2) the inherent limitations of a child when giving testimony in the prosecution of such crimes.

Nature of child testimonies in adversarial trials must be taken into account in the context of rape

In the prosecution of criminal cases, witness testimonies often prove pivotal to the establishment of facts. More particularly in rape cases, the conviction or acquittal of the accused often depends almost entirely on the credibility of the complainant's testimony. Rape is, by nature, generally unwitnessed, with the victim usually left to testify for herself, and her testimony considered most vital and received with the utmost care.[125]

In the Philippine jurisdiction, the existing guideline that finds closest relevance to the case at bar is the Rule on Examination of Child Witness[126] (Rule) which governs the examination of child witnesses in all criminal proceedings and non-criminal proceedings that involve them.[127] This Rule mainly covers the facilitation of the testifying of minor witnesses, with the goal of creating a court environment that minimizes the possible trauma on the child witnesses, and assists in enabling them to deliver the most credible testimonies possible.[128] Among other adjustments made in the configuration of a witness examination, this Rule allows for the appointment of a facilitator to pose questions to the child,[129] the involvement of support persons,[130] the employment of testimonial aids such as anatomically correct dolls,[131] and emotional security items.[132] The Rule further modifies the mode of question, and permits the asking of leading questions,[133] and the narrative form of testimony.[134]

Demonstrably, however, the matter of ***appreciating*** testimony already wrested from the child remains unaddressed by this Rule. Stated differently,

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[125] *People v. Comanda*, supra note 85, at 664.
[126] A.M. No. 00-4-07-SC, dated November 21, 2000.
[127] RULE ON EXAMINATION OF CHILD WITNESS, Sec. 1.
[128] Id. at Sec. 2.
[129] Id. at Sec. 10.
[130] Id. at Sec. 11.
[131] Id. at Sec. 16.
[132] Id. at Sec. 17.
[133] Id. at Sec. 20
[134] Id. at Sec. 19.

this existing Rule is primarily geared towards facilitating the giving of the testimony of the child. The Court here, on the other hand, directs the instant clarification towards judges and justices, with respect to how the testimonies of child witnesses must be ***appreciated*** *after* they have been given.

Specifically, although this Rule already exists to provide a generic accommodation for child witnesses, the more nuanced scenario of ascribing credibility, belief, and the overall valuation of the testimony of child witnesses in sexual assault cases presents for the Court a whole new context, precisely because the subject matter requires both levels of specificity on the one hand, and sensitivity on the other, (*e.g.*, accurate description of penile insertion) that are reasonably considered strange to the schema of any child. This scenario, therefore, presents a new, unique barrier to the clarity and articulation of the child's testimony, such that the present Rule pertaining to child witnesses, with its broader application, has shown to be insufficiently applicable.

In other words, the jurisprudence and existing Rule on child witness examination are under-inclusive, and do not squarely consider the needs of child witnesses in rape cases, because they remain largely unmindful of the linguistic descriptive ability and limitations of an abused child. The case at bar presents the Court with the occasion to rethink this demonstrated predisposition towards this descriptive precision, in order to incorporate into the equation the intrinsic limitations of a child witness' testimony. The Court now adds that not only caution but more so circumspection is in order. In sexual abuse cases involving children, the level of exactness that the preceding case law seem to be seeking may be too difficult in the case of child victims as to render its attainment practically impossible.

Illustratively, studies in "The Child Witness: A Training Manual" of the United Nations Children's Fund suggest that child testimonies are steeply affected by the courtroom's general adversarial setting, with a tone of hostility that children are not mature enough to cope with. Especially with respect to sexual abuse testimonies, such must be considered in light of children's limited vocabulary knowledge and awareness of the sexual terminologies, *viz.*:

> Body parts and sexual terminology is the area where it is most obvious that children have limited vocabulary. However, it is also an area that is of crucial importance in cases of child sexual abuse. Although we may think that body part terminology forms part of everyday words, research has shown that children are not as aware of their body part words as we would think. And this applies even to non-sexual body parts. Studies have found that the number of body part words both understood and named increases with age, and some words are not fully acquired until after 6, like ankles and elbows. A child will say that someone touched his leg but will not be able to be more precise. Is it the thigh, the knee, the shin, the ankle?
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> Adults should, therefore, not assume body part words are everyday words and seek clarification. One of the biggest difficulties in obtaining information about sexual abuse from children is the fact that children, who

> are not sexually active, do not understand what sex is. This is further exacerbated by the fact that children under the age of 6 do not have an understanding of their sexual anatomy. These children do not know that they have a separate anus and a vagina. Many children under this age believe that they use one orifice for both bodily functions.
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> In the forensic context, children will often in their disclosure use a general word to describe a body part. It may not be clear what exactly they are referring to, yet this information is vitally important for the court.[135]

There is ample research that has long argued that court involvement with respect to prosecution of child sexual abuse traumatizes the child victims.[136] Child witnesses in sexual abuse cases are subjected to varying limitations, from cognitive maturity to linguistic eloquence. The strength of the testimonies in borderline cases such as the one at bar is impressed with their various constraints on account of their age-determined developmental abilities, vulnerabilities, needs, and other limitations that affect their capability to comprehend court proceedings and intelligently and precisely respond to complex questions during examinations.[137]

A longitudinal psychological study on children in the courtroom even surmised that in responding to lawyer's questions on the witness stand, child witnesses rarely asked for clarification and often attempted to answer questions which they actually deemed ambiguous or without sense.[138] This observed reluctance of child witnesses bears squarely upon the probative weight of their accounts. It is therefore, only consistent with due process for both the complainant and the accused that, in the prosecution of rape, where the crucible of proof closes in on the testimony of the victim, the evaluation and appreciation of the accuracy of the primary testimony should be properly informed of the limitations of the child thrust at its center.

Child witnesses are also exposed to a hostile and unfamiliar environment in the form of a courtroom during an adversarial proceeding, so that the evidence in these types of trials are often "derived not out of truth but as a result of bullying or coercion."[139] Studies have further shown that the

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[135] UNICEF, THE CHILD WITNESS: A TRAINING MANUAL, p. 40.

[136] Id.

[137] Elita Joy G. Pinga and Anna Victoria M. Veloso, *The Child Witness and the Law: The Truth (And Nothing But)*, PUBLIC POLICY, (July-December 2006) Vol. X, No. 2, pp. 70-71, available at <https://cids.up.edu.ph/wp-content/uploads/2022/03/The-Child-Witness-and-the-Law-vol.10-no.2-July-Dec-2006-4.pdf>.

[138] Rachel Zajac, Julien Gross and Harlene Hayne, *Asked and Answered: Questioning Children in the Courtroom*, PSYCHIATRY, PSYCHOLOGY AND LAW, Vol. 10 Number 1 2003, p. 199. The study adds:

> Finally, the unique structure of the cross-examination interview may hinder a child's ability to provide reliable and valid testimony. Contrary to interactions outside the courtroom, where adults readily provide a framework for children's recollections, children's narratives in the legal setting are far less supported. During cross-examination, the defence lawyer asks questions in such a way as to structure and control the information to be recounted. Structural cues that children rely on, such as those that signal a change in conversation topic, are seldom present during the cross-examination process. (Citations omitted)

[139] Annie Cossins, *Cross-Examination in Child Sexual Assault Trials: Evidentiary Safeguard or an Opportunity to Confuse?*, MELBOURNE UNIVERSITY LAW REVIEW, Vol. 33 (2009), p. 75, citing Judy Cashmore, The Evidence of Children (1995), Crime Prevention Committee, Parliament of Victoria,

intimidating atmosphere of a courtroom causes anxiety in children, and undermines their capacity to offer accurate testimonial evidence.[140]

Another important difficulty that arises when communicating with young children is not their capacity to recall an event but their insufficient verbal skills to relate the memory. This becomes even more problematic when gathering information in a forensic context.[141] The evidentiary odds are often stacked against children's opportunity to offer the best, clearest, most accurate testimonial evidence, with a "clear mismatch" between the linguistic capabilities and the linguistic norm in court, which includes strangely phrased questions, or questions that are designed to confuse or create the appearance of inconsistencies, and the like.[142] Children's testimonies are also prone to improper questioning, which bear directly on their credibility, and often result in unreliable descriptions of abuse.[143]

Finally, the exacting task of eliciting from a child witness the pivotal pieces of information upon which the prosecution's case stands is further confounded by the persistent rape myths and stereotypes that are still applied to a child who cries sexual assault. Stated simply, therefore, to require from the prosecution a high degree of semantic specificity in the testimony of child victims, to the point that the gradation of penetration may be ascertained with persuasiveness, is too tall an order to be met by the child, and therefore becomes a standard of testimonial proof the achievability of which is more apparent than it is real. For if the treatment were otherwise, it would be unjust to appreciate children's testimonies based on criteria set for testimonies of adults.

To be sure, the courts do not presently require that children should be able to describe the nature of penetration against them using technical or scientifically accurate words. Certainly, the courts do not ask of children the use of technical terms such as *labia minora* or *majora, mons pubis, pudendum* and the like. This would be a nuanced error in the casting of the premise, and is not what the instant recalibration proceeds from.

Instead, it is acknowledged that although in black letter, the courts supposedly afford a level of leniency in favor of children when they testify on the witness stand, this accommodation seems to be, as far as the oscillating jurisprudence shows, not wholly and consistently translated to all actual court cases that call for it. In other words, the Court now no longer insists that it already affords accommodation in view of children's inherent limitations, when these accommodations do not consistently reflect themselves on all child rape cases where the question of threshold between attempted and

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Combating Child Sexual Assault: An Integrated Model, Parl Paper No 47 (1995) 191; New South Wales, Royal Commission into the New South Wales Police Service, Final Report (1997) vol 5, 1086.

[140] John E. Myers, *Decade of International Legal Reform Regarding Child Abuse Investigation and Litigation: Steps toward a Child Witness Code*, MCGEORGE LAW REVIEW, 28 Pac. L. J. 169 (1996), available at <https://scholarlycommons.pacific.edu/mlr/vol28/iss1/>.

[141] See *People v. Francisco*, supra note 87.

[142] See *People v. Dimapilis*, supra note 94.

[143] Id.

consummated rape is put to the fore. Truly, the courts, short of requiring children to use technical terms to describe penetration, nevertheless demonstrably search for more accurate depictions of said penetrations than the children, in their studied linguistic and cognitive limitations, can ever be prevailed upon to provide.

Moving forward, therefore, in the specific context of trying cases of rape, the Court enjoins the courts: (i) to be circumspect in their appreciation of the entire body of evidence submitted before them, including the testimonial evidence offered by the minor victims in cases involving them; (ii) take into full account the jurisprudential guideposts which depict the nature and degree of genital contact when not explicitly described through the testimony of the victim, minor or otherwise; and (iii) particularly with respect to minor victims, give due regard to their inherent linguistic limitations as witnesses, in order to avoid demanding the highest exacting level of linguistic accuracy as they have been jurisprudentially demonstrated to have required in the past.

Instant threshold of genital contact may be applied by analogy to acts of rape by sexual assault

Moreover, as proffered by Chief Justice Gesmundo[144] and as raised during deliberations, the Court further finds merit in extending the same threshold of genital contact ***by analogy*** to acts of rape by sexual assault as described in Article 266-A, paragraph 2 of the RPC, as amended, thus:

> Article 266-A. Rape: *When And How Committed.* — Rape is committed:
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> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
>   a) Through force, threat, or intimidation;
>
>   b) When the offended party is deprived of reason or otherwise unconscious;
>
>   c) By means of fraudulent machination or grave abuse of authority; and
>
>   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, **or any instrument or object, into**

[144] Concurring Opinion of Chief Justice Gesmundo, p. 8.

> **the genital or anal orifice of another person.** (Emphasis and underscoring supplied)

Stated differently, the extension of the instant anatomical threshold applies to rape by sexual assault such that a finding that the accused has penetrated **the vulval cleft of the victim through the use of any instrument or object** warrants a factual finding of consummated rape by sexual assault.

To be sure, the Court here concedes that the inclusion of the foregoing anatomical descriptive discussion is as much unprecedented as it is necessitous, for in determining physical degrees of sexual assault in the crime of rape by sexual intercourse through penile penetration, there is no other way to reconcile the evolving and, at times, varying jurisprudence than to increasingly incorporate into these legal pronouncements the anatomically accurate and unquestionably specific body parts that these cases in jurisprudence constantly refer to. As Chief Justice Gesmundo supposes, the visual and descriptive clarification herein should enable the country's prosecutors to build and present their cases with sufficient clarity, and for the courts to appreciate them with the same degree of unambiguity.[145]

Further to the instant clarification, in the converse, the Court also clarifies that when there is no touching by the penis of the vulval cleft of the victim's genitalia in a case of rape through penile penetration, there can be no finding of consummated rape but only attempted rape or acts of lasciviousness, as the case may be, with the distinctions determinable based on various indications that may reveal either the absence or presence of "intent to lie"[146] on the part of the accused,[147] which include the presence of an erect penis.[148]

The Court further notes that, perhaps, the inconsistency in the appreciation of testimonial depiction of the genital contact that already consummates the rape committed is not a failure of the imagination nor a deficit in compassion, but simply a lack of certainty as to what the required genital contact as described in preceding jurisprudence really anatomically entailed. For one, the Court understands that over and above an explicit examination of matters that were once relegated to imprecise euphemisms, an intelligent interrogation of these excruciating details is inescapable if it is to dispense justice in a manner that is both consistent with the contemplation of jurisprudential precedents, as well as appreciable in the painful realities of actual rape cases.

Proceeding from this clarification, and to help decrease the trauma which the rape victims experience during testimonies, those that have been correctly described during the deliberations as aggravated by the usual pummeling of probing, pointed and hostile questions from the defense, this

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145 Concurring Opinion of Chief Justice Gesmundo, p. 8.
146 *People v. Banzuela*, 723 Phil. 797, 820 (2013).
147 Concurring Opinion of Chief Justice Gesmundo, pp. 5-6.
148 See *Cruz v. People*, 745 Phil. 54, 74 (2014).

clarification of the anatomical threshold in the instant case hopes to spare the victims, especially the minors, the harrowing task of recounting the smallest, most profoundly humiliating details of the attack beyond what is needed. With this clarification, both the prosecution and the courts will have a floor anatomical threshold, the establishment of which is all that is needed to factually confirm for the Court the consummation of this kind of rape.

For another, the Court reminds that the crucial import of this recalibration or clarification is no more evident than in the net resulting penalties imposable on the convicted accused who, either in the attempted or the consummated stage, has nevertheless been found by the Court to have sexually assaulted a minor, at the very least. Namely, the penalty for attempted rape is two (2) degrees lower than the prescribed penalty of *reclusion perpetua* for consummated rape of a minor under 12 but not below seven years of age. Two (2) degrees lower from *reclusion perpetua* is *prision mayor*, the range of which is six (6) years and one (1) day to twelve (12) years. Absent any aggravating or mitigating circumstances and applying the Indeterminate Sentence Law, the maximum penalty imposable upon an accused convicted of attempted rape of a minor is *prision mayor* in its medium period, while the minimum shall be taken from the penalty next lower in degree, which is *prision correccional*, the range of which is six (6) months and one (1) day to six (6) years, in any of its periods.[149] In palpable contrast, a penalty of *reclusion perpetua* awaits an accused that is convicted of consummated rape of a minor.

Stated plainly, lest the Court be misunderstood, the unclear definition has, considering the diverging cases, resulted in instances where the accused was meted a significantly lighter penalty (*i.e.*, penalty for attempted rape) than the heavier penalty which the act as committed should have incurred (*i.e.*, penalty for consummated rape). It goes without saying, therefore, that the difference in the lengths of period of incarceration is considerable and, insofar as borderline cases of attempted *vis-à-vis* consummated rape of minors are concerned, appears to be too high a cost to be paid for unclear definitions of the genital contact that distinguish between the two stages of commission.

Finally, as raised during deliberations, there also appears to be a distortion in the scale of penalties involving rape, sexual assault and acts of lasciviousness under the RPC, as amended, *vis-à-vis* sexual intercourse and lascivious conduct under Section 5(b) of R.A. 7610, as amended. Specifically, the Court notes, upon the juxtaposition of these crimes and their prescribed penalties, that acts of lasciviousness under the RPC in relation to R.A. 7610 and lascivious conduct under R.A. 7610 warrant severe punishments of *reclusion temporal* in its medium period and *reclusion temporal* in its medium period to *reclusion perpetua*, respectively. Comparatively, however, attempted rape carries a penalty which is two degrees lower than the prescribed penalty or *prision mayor*. Stated differently, the crime of attempted rape effectively carries a lighter penalty when compared to acts of

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[149] *People v. Baluyot*, G.R. No. 227422, March 18, 2019 (Unsigned Resolution).

lasciviousness and lascivious conduct. This, despite the reasonable conclusion that the crime of attempted rape rises from the more detestable criminal intent to have sexual intercourse with the minor victim against her will.

Thus, and in view of the constitutional limitation on the Court, it therefore entreats the Legislature to reinterrogate and examine this inconsistency in the scale of penalties in rape, sexual assault, acts of lasciviousness, and lascivious conduct, in order that they may most accurately approximate and reflect the penalty that each crime truly merits.

III
Application of the foregoing parameters in the present case

Applying this frame of analysis to the instant appeal, the Court finds that the lower courts correctly found herein appellant guilty of consummated rape, on both accounts. Demonstrably, AAA's account in open court vividly described how appellant's penis was hard and erect as he kept trying to penetrate her vagina as antecedent for full penetration, eventually succeeding to introduce his erect penis on the vulval cleft of her vagina, to wit:

> Q: After he undressed himself and you, by the way, who did he undressed first?
> A: Him, sir.
>
> Q: As he was undressing himself, did you not [try] to go out of the house?
>
> COURT: Put on record that the witness is crying.
>
> A: No, sir.
>
> Q: After he undressed you, what did he do?
> **A: He mounted on me, sir.**
>
> **Q: After he mounted on top of you, what did he do?**
> **A: He wanted to insert his penis in my vagina, sir.**
>
> **Q: How did you know that he wanted to do that?**
> **A: He told me, sir.**
>
> **Q: Did you see his penis?**
> **A: Yes, sir and I also felt it.**
>
> **Q: Was it hard?**
> **A: Yes, sir.**
>
> **Q: But was he able to fully penetrate your vagina?**
> **A: No, sir.**

Q: Using the female doll, at what part of your vagina where his penis was at that time?
A: *Dito po sa may gitna.*

Q: Witness pointed to the pelvic area. When you say *sa may gitna*, you mean *sa may hiwa?*
A: Yes, sir.

Q: Why he wasn't (*sic*) fully inserted his penis?
A: I was fighting, sir.[150] (Emphasis and underscoring supplied)

In the brief excerpt of AAA's testimony, the crucial facts of the appellant's erect penis and its touching of her vulval cleft (*i.e.*, "*sa may gitna*," "*sa may hiwa*") were established categorically and beyond doubt, and sufficiently established that the minimum penile-vaginal contact between the penis and the vulval cleft to enable a finding of consummated rape was, in fact, obtained.

The Court further finds that the CA erred in appreciating both incidents of rape as statutory. On the contrary, only the rape as charged under Criminal Case No. 1453-V-14 is statutory in nature, with AAA aged 10 years old at the time of the rape. On the other hand, the rape as charged under Criminal Case No. 1454-V-14 is simple rape, with AAA at age 13 at the time of said incident.

Further, appellant's attempts at ousting the positive and unequivocal testimony of the minor AAA are of no moment, as minor inconsistencies that are irrelevant to the elements of the crime charged are not material and will not sustain an acquittal.[151] Furthermore, jurisprudence is also replete with pronouncements from this Court that in child sexual abuse cases, the child victim's disclosure is the most important evidence of sexual abuse,[152] which in this case is further physically corroborated by medical evidence.

Imputations of concoctions and false testimonies are also of no import as it is likewise well-entrenched in our jurisdiction that courts are rightly inclined to lend credence to testimonies of young offended parties in charges of sexual abuse, considering not only their relative vulnerability but also the sheer trauma, scandal, and undue exposure brought on by a public trial, which the offended minor would reasonably wish to avoid if not for the fact that her accusations are as inconvenient as they are true. What is decisive in a rape charge is that the commission of rape by the accused against the complainant has been sufficiently proven. In this respect, the testimony of AAA, even on its own, is credible, and sufficiently sustains a conviction. Further, the CA correctly affirmed the RTC with respect to its non-appreciation of the qualifying circumstance of the stepdaughter-stepfather relationship between AAA and appellant, since the marriage between AAA's mother, BBB, and appellant was only alleged in the Information but not proved.

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[150] TSN, March 1, 2016, pp. 10-11.
[151] See *People v. Linsie*, 722 Phil. 374, 384 (2013).
[152] *People v. Bohol*, 415 Phil. 749, 761 (2001).

A Final Note

The irreversibility of the crime of rape is not lost on the Court, and the rape myths that persist, the ambient sexism that color the moral imaginations, and the stigma that hounds its victims must all be examined under the light, unvarnished, if society is to meet around the central, shared values of human dignity and life. The Court must be able to interrogate the darkest corners of crimes as closely as possible to ask how justice can be truly served in these spaces, lest it betray a mere artifice of its civilities. Perhaps no truer than in crimes that are too confronting, the Court must be able to put a human face to the suffering and refuse to be too offended to call things for what they are. At the risk of testing its strength under the weight of its decisions, the Court must remain honest, clear-sighted and unflinching, for to look away is violence.

WHEREFORE, the Court **DISMISSES** the appeal and **ADOPTS** with **MODIFICATION** the findings of fact of Branch 172, Regional Trial Court of Valenzuela City, as affirmed by the Court of Appeals in its Decision dated January 15, 2019 in CA-G.R. CR-HC No. 09405, and **AFFIRMS** said Decision with **MODIFICATION**, and hereby finds appellant Efren Agao *y* Añonuevo **GUILTY** beyond reasonable doubt of one (1) count of Statutory Rape in Criminal Case No. 1453-V-14, and one (1) count of Simple Rape in Criminal Case No. 1454-V-14 through sexual intercourse, for which he is sentenced to suffer the penalty of *reclusion perpetua* for each count.[153] The Court further **AFFIRMS** the award of damages pursuant to prevailing jurisprudence.

The letter[154] dated October 23, 2019 of Atty. Julie May Taguiam, Officer-in-Charge, Inmate Documents and Processing Division of the Bureau of Corrections, New Bilibid Prison Reservation, Muntinlupa City, in compliance with the Resolution[155] dated August 19, 2019, informing the Court that appellant was received for confinement at the New Bilibid Prison on May 27, 2017 is **NOTED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[153] In accordance with the guidelines as laid down in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, 896 SCRA 307.
[154] *Rollo*, p. 27.
[155] Id. at 25-26.

WE CONCUR:

See separate concurring opinion

ALEXANDER G. GESMUNDO
Chief Justice

I dissent. See separate opinion

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

(no part)
AMY C. LAZARO-JAVIER
Associate Justice

(on official business)
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

(on official business)
JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

(on official business)
ANTONIO T. KHO, JR.
Associate Justice

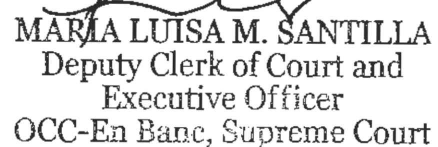
(on official business but left her vote; see attached Separate Concurring Opinion)
MARIA FILOMENA D. SINGH
Associate Justice

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 cases were assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY



MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Court