EN BANC

G.R. No. 248049 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee **v. EFREN AGAO y AÑONUEVO,** Accused-Appellant.

Promulgated:

October 4, 2022

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DISSENTING AND CONCURRING OPINION

LEONEN, *J.*:

I would have concurred except that the *ponencia* introduces doctrine which I cannot countenance. I therefore dissent.

The experience of a rape survivor cannot be trivialized by abstract invocations of due process and mechanical references to anatomical drawings on the pretense of establishing a "clearer parameter"[1] and to "[loosen] the constricted uncertainty of semantics"[2] that allegedly accompany rape cases. "Honest justice"[3] cannot be had merely by reducing life-altering trauma into sterile diagrams divorced from the context of the offense itself.

With much respect, I fail to see why there is a necessity to discuss the various degrees of penetration in the guise of clarifying the "perceived uncertainty"[4] in the penalties for rape. Regretfully, the discussion regarding the anatomy of the vagina and its relation to penetration reverses established progressive doctrine, downplays the crime of rape, and makes invisible the sordid violation of the dignity of the victim.

Rape is no longer a crime against chastity. It is now a crime against the dignity of a human being.

Rape is not punished in degrees as the trauma that comes from it is not experienced in degrees. The woman and girl victim views the violation as a whole. To tell her that her experience is that of frustrated or attempted rape would be to disregard her experience, her trauma, and the violation of her dignity which the law punishes.

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1 *Ponencia*, p. 22.
2 *Ponencia*, p. 22.
3 *Ponencia*, p. 22.
4 *Ponencia*, p. 2.

Continued male violence in our patriarchy hides within subtle legal distinctions which burden the victim disproportionately. In this case, the *ponencia* uses an amorphous yet misguided application of the rights of the accused without understanding the full patriarchal concept of rape. It, unfortunately, has not gone beyond rape as a protection of chivalry's male roles and stature *vis-à-vis* female.

There is no such thing as attempted rape. All rape is rape. All rape violates dignity. The finer points of the parts of the vagina touched by the penis is irrelevant.

The *ponencia*, regrettably, is not a progressive step. It will license once more the kind of masculinity that has cheapened women to sexual objects whose value is reduced to their vagina and the pleasure men derive from them.

I urge that we do not do the unnecessary: "clarify" doctrine when it is not needed and, in the process, contribute to the suffering of more women and girl victims.

I urge for the reconsideration of this further objectivization of women. We must reconsider for the sake of our wives, our daughters, and our granddaughters.

This case stemmed from an appeal of the January 15, 2019 Decision of the Court of Appeals finding accused-appellant Efren Agao y Añonuevo guilty beyond reasonable doubt of two counts of statutory rape under Article 266-A, paragraph 1, and Article 266-B of the Revised Penal Code, as amended, with relation to Republic Act No. 7610.

The Informations against accused-appellant 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, 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 minor 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[5] 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 human being.

CONTRARY TO LAW."[6]

According to the narration of facts, AAA's mother lived with accused-appellant and AAA treated him as her stepfather. AAA testified that the abuse started when she was 10 years old, when the accused-appellant would touch her genitals while bathing her. She added that the first incident of rape happened in July 2010, at about 7:00 a.m., when she awoke to accused-appellant touching her breasts and vagina and then trying to insert his penis into her vagina. Specifically, she testified that accused-appellant managed to have his erect penis touch the outer fold of her vagina, or the *labia majora*, but was unable to fully penetrate her vagina because she kept fighting back.[7] She stated that this incident happened again sometime in January 2012, but that accused-appellant was again unable to fully penetrate her vagina because she kept fighting back.[8]

When the incidents were reported to the police, AAA's physical examination showed no evident injury to her genitals.[9]

In a March 15, 2017 Joint Decision, the Regional Trial Court held accused-appellant guilty beyond reasonable doubt, noting that while "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."[10]

The Court of Appeals affirmed the Joint Decision but made modifications on the award of damages.[11]

The *ponencia* affirms the statement of facts of the case and finds no issue with AAA's clear and categorical testimony of her harrowing experience. The charge for Criminal Case No. 1454-V-14, however, was

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5 This appears to be a typographical error since AAA's date of birth is December 6, 1999, which would make her 12 years old in January 2012.

6 Ponencia, p. 3.

7 Id. at 4–5.

8 Id. at 6.

9 Id. at 6.

10 Id. at 7–8.

11 Id. at 8–9.

modified from statutory rape to that of simple rape, since AAA was already 12 years old when the incident occurred in January 2012.[12]

I agree with these findings as well as the modification of the second criminal case to simple rape due to AAA's age at the time of the incident. The *ponencia*, however, goes further than the factual findings and tries to "clarify" a perceived confusion in jurisprudence between attempted rape and 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.[13]

It then proceeds to go into an exhaustive discussion of the "the exact anatomical situs of the pertinent body parts referred to in existing jurisprudence,"[14] even providing this Court with an illustration of the anatomy of the vulva.[15] Using this illustration, it concludes that:

> 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. In other words, the penis' mere touch of the pudendum would not result in any degree of penetration since the pudendum is a muscular part located over the *labia majora* and therefore mere touch of or brush upon the same would only constitute attempted rape, not consummated. Similarly, a penis' mere grazing 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 cleft of the *labia majora*, however minimum in degree.[16]

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[12] Id. at 38. Republic Act No. 11648, enacted July 26, 2021, has since increased the minimum age for sexual consent to 16 years old.

[13] Id. at 10.

[14] Id. at 2.

[15] Id. at 23.

[16] Id. at 25.

While it is admirable that the *ponencia* has introduced a novel way to distinguish between the attempted and consummated stages of the crime (i.e. rape is consummated only when the penis touches the vulval cleft of the *labia majora*), it is respectfully submitted that this kind of discussion may not be as progressive as the *ponencia* perceives it to be.

I fear that continuing with this type of erudition disregards the strides the law has made into not only reclassifying the crime of rape, but also into shaping our very notions of what rape is and how it could be committed.

Prior to its amendment, Article 335 of the Revised Penal Code penalized rape as a crime against chastity. Rape could only be committed against someone who was biologically a woman:

> ARTICLE 335. *When and How Rape is Committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.
>
> The crime of rape shall be punished by *reclusion temporal*.[17]

People v. Jumawan[18] explains that the protection of a woman's chastity was not rooted in the protection of a woman's person, but rather in the archaic treatment of women as property—specifically, a man's property:

> The evolution of rape laws is actually traced to two ancient English practices of 'bride capture' whereby a man conquered a woman through rape and 'stealing an heiress' whereby a man abducted a woman and married her.
>
> The rape laws then were intended not to redress the violation of the woman's chastity but rather to punish the act of obtaining the heiress' property by forcible marriage or to protect a man's valuable interest in his wife's chastity or her daughter's virginity.
>
> If a man raped an unmarried virgin, he was guilty of stealing her father's property and if a man raped his wife, he was merely using his property.

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[17] REV. PEN. CODE, art. 335.

[18] 733 Phil. 102 (2014) [Per J. Reyes, First Division].

> Women were subjugated in laws and society as objects or goods and such treatment was justified under three ideologies.
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> Under the chattel theory prevalent during the 6th century, a woman was the property of her father until she marries to become the property of her husband. If a man abducted an unmarried woman, he had to pay the owner, and later buy her from the owner; buying and marrying a wife were synonymous.
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> From the 11th century to the 16th century, a woman lost her identity upon marriage and the law denied her political power and status under the feudal doctrine of coverture.
>
> A husband had the right to chastise his wife and beat her if she misbehaved, allowing him to bring order within the family.
>
> This was supplanted by the marital unity theory, which espoused a similar concept. Upon marrying, the woman becomes one with her husband. She had no right to make a contract, sue another, own personal property or write a will.[19]

In 1990, then Representative Raul Roco filed a House Bill attempting to reclassify rape from a private crime to a public crime, to expand its scope include marital rape, and to radically change its meaning to include the forceful insertion of instruments or objects into the genitals. This was met with reservations, and the 8th Congress adjourned with the bill remaining at committee level.[20] During the 9th Congress, a number of female legislators and women's groups decided to take part in the refiling of a more comprehensive anti-rape bill but it was, again, unfortunately met by strong opposition. By the 10th Congress, the bill was again pushed, this time using the traditional definition of rape, as legislators were more open to the reclassification of the crime from private to public, but not to the more radical definitions pushed by the women's groups.[21]

Republic Act No. 8353, repealing Article 335 of the Revised Penal Code and reclassifying rape as a crime against persons, was finally promulgated in 1997. While the traditional definition of rape has been carried over (i.e. carnal knowledge of a woman against her will), the second paragraph now used the gender-neutral word "person," implying that the offender need not be a man and the offended party need not be a woman.[22]

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19 Id. at 126–128 *citing* Cassandra M. DeLaMothe, *Liberta Revisited: A Call to Repeal the Marital Exemption for All Sex Offenses in New York's Penal Law*, 23 FORDHAM URBAN LAW JOURNAL, 861 (1995) *available at* <http://ir.lawnet.fordham.edu/ulj> *last accessed on* March 31, 2014; Maria Pracher, *The Marital Rape Exemption: A Violation of a Woman's Right of Privacy*, 11 GOLDEN GATE U. L. REV., 725 (1981) *available at* <http://digitalcommons.law.ggu.edu/ggulrev/vol 11/iss3/1>, *last accessed on* March 31, 2014.

20 Myrna N. Lavides, *The Congressional Committee and Philippine Policymaking: The Case of the Anti-rape Law*, 43 PHIL. J. PUB. ADM. 3 & 4, 231 (1999).

21 Id. at 232–233.

22 ARTICLE 266-A. *Rape; When And How Committed.* – Rape Is Committed

. . . .

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

The reclassification of rape as a crime against persons raised the expectation that jurisprudence would proceed to focus on the "offense's nature as a violation of a person rather than as a violation of a woman's honor."[23]

Article 266-A presently states:

> 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 is unconscious;
>
> (c) By means of fraudulent machination or grave abuse of authority; and
>
> (d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

In previous cases, this Court has already recognized how the "concept of rape was revolutionized" to cover cases of sexual offenses that were previously not denominated as such:

> With the enactment of Republic Act No. 8353 (R.A. No. 8353), otherwise known as the Anti-Rape Law of 1997, the concept of rape was revolutionized with the new recognition that the crime should include sexual violence on the woman's sex-related orifices other than her organ, and be expanded as well to cover gender-free rape. The transformation mainly consisted of the reclassification of rape as a crime against persons and the introduction of rape by "sexual assault" as differentiated from the traditional "rape through carnal knowledge" or "rape through sexual intercourse."
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> . . . .
>
> Paragraph 1 under Section 2 of R.A. No. 8353, which is now Paragraph 1 of the new Article 266-A of the Revised Penal Code, covers rape through sexual intercourse while paragraph 2 refers to rape by sexual

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instrument or object, into the genital or anal orifice of another person.

[23] AMPARITA S. STA. MARIA, IMAGES OF WOMEN IN IMPUNITY, HUMAN RIGHTS TREATISE ON THE LEGAL AND JUDICIAL ASPECTS OF IMPUNITY (2001).

> assault. Rape through sexual intercourse is also denominated as "organ rape" or "penile rape." On the other hand, rape by sexual assault is otherwise called "instrument or object rape," also "gender-free rape," or the narrower "homosexual rape."[24] (Citations omitted)

The Court has since promulgated progressive rulings in relation to the nature of rape.[25] In *People v. Quintos*,[26] we held that "[t]he circumstances when rape may be committed under Article 266-A of the Revised Penal Code should be defined in terms of the capacity of an individual to give consent."[27] This Court has likewise, in a long line of cases,[28] declared that the crime of rape is punishable as it is a violation of the victim's dignity:

> Rape, including other forms of sexual abuse, should no longer be viewed as a crime against chastity, which focuses on the dishonor to the victim's father or family. Rape and sexual abuse is a strike against the person of the victim. It is a violation of one's autonomy, a "violation of free will, or the freely made choice to engage in sexual intimacy."[29]

This more progressive view of rape is in line with our obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[30] wherein the Philippines, as a State Party, is obliged "[t]o take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women[.]"[31] State Parties are expected:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.][32]

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24 *People v. Salvania*, 557 Phil. 428, 452–454 (2007) [Per J. Tinga, *En Banc*].

25 In *People v. Jumawan*, 733 Phil. 102 (2014) [Per J. Reyes, First Division], this Court ruled that rape is possible even if the offender and the victim are married. In *People v. Penilla*, 707 Phil. 130 (2013) [Per J. Perez, Second Division], it was ruled that prostituted persons may be victims of rape. In *People v. Suarez*, 750 Phil. 858 (2015) [Per J. Perez, First Division], this Court ruled that the victim's failure to make a tenacious resistance does not make her submission to the act voluntary.

26 746 Phil. 809 (2014) [Per J. Leonen, Second Division].

27 Id. at 829.

28 *See People v. Reyes*, 158 Phil. 342 (1974) [Per J. Fernando, Second Division]; *People v. Nazareno*, 91 Phil. 445 (1977) [Per C.J. Paras, *En Banc*]; *People v. Casinillo*, 288 Phil. 688 (1992) [Per J. Davide, Jr., Third Division]; *People v. Guibao*, 291 Phil. 63 (1993) [Per J. Regalado, Second Division]; *People v. Jimenez*, 320 Phil. 428 (1995) [Per J. Regalado, Second Division]; *People v. Jalosjos*, 421 Phil. 43 (2001) [Per J. Ynares-Santiago, *En Banc*]; *Ricalde v. People*, 751 Phil. 793 (2015) [Per J. Leonen, Second Division]; and *People v. San Pedro*, G.R. No. 219850, July 14, 2021 [Per J. Gaerlan, First Division].

29 *People v. San Pedro*, G.R. No. 219850, July 14, 2021 [Per J. Gaerlan, First Division] 11, *citing* J. Leonen, Dissenting Opinion in *Bangayan v. People*, G.R. No. 235610, September 16, 2020 [Per J. Carandang, Third Division]. This pinpoint citation refers to a copy of the Decision uploaded to the Supreme Court website.

30 The Philippines signed the Convention on July 15, 1980 and ratified it on August 5, 1981.

31 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), July 15, 1980, U.N. Doc. A/RES/34/180 (1979), Art. 2.

32 CEDAW, art. 5(a).

The Committee on the Elimination of Discrimination Against Women previously recognized several problems with legislation involving violence against women, including "treating sexual violence against women as crimes against the honour of the family or crimes against decency rather than violations of women's right to physical integrity."[33] The Committee specifically recommended State Parties to "ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity."[34]

Thus, rape should be interpreted not as an honor-based offense, but as a consent-based offense. It is an exercise of power over a person, rather than a purely sexual act. The prevalence of physical violence in many rape cases shows that sex is used as a weapon to assault a person.[35] It is not so much a violation of chastity as much as it is a violation of dignity through degradation and humiliation[36] that often results in "severe, long-lasting physical and psychic harm."[37]

I remain firm in my view that the reconceptualization of rape, and our more gender-sensitive laws and legal lenses, require us to examine human sexuality and sexual acts as more than just unwanted penile penetration.

Sexual intercourse is not merely the penetration of a penis in a vagina. It involves numerous other acts that may or may not require penetration. At its core, sexual intercourse is a powerful expression of intimacy between human beings. It "requires the shedding of all inhibitions and defenses to allow humans to explore each other in their most basic nakedness."[38] As I stated in *People v. Caoili*:[39]

> The persistence of an archaic understanding of rape relates to our failure to disabuse ourselves of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity. It is not. Sexual intercourse may be done for pleasure. It may be done for religious purposes. It may be a means to any end.

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33 Nathalie Stadelman, *The International and Regional Legal Frameworks to Address Violence against Women*, in A PARLIAMENTARY RESPONSE TO VIOLENCE AGAINST WOMEN: CONFERENCE OF CHAIRPERSONS AND MEMBERS OF PARLIAMENTARY BODIES DEALING WITH GENDER EQUALITY, Inter-Parliamentary Union (2009), *available at* <http://archive.ipu.org/PDF/publications/vaw_en.pdf#page=71> *last accessed on* October 4, 2022.

34 UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19 (1992), *available at* <https://www.refworld.org/docid/52d920c54.html> *last accessed on* October 4, 2022.

35 Venus V. Lique, *The Anti-Rape Law and the Changing Times: Nature, Issues and Incidents*, 43 ATENEO L.J. 141 (1998).

36 Id. The article stated that according to studies, rapists are not always after sex, but the power emanating from the victim's degradation, pain, and humiliation.

37 *People v. Jumawan*, 733 Phil. 102, 130 (2014) [Per J. Reyes, First Division], citing *People v. Liberta*, Court of Appeals of New York, 474 N.E. 2D 567 (1984).

38 Dissenting Opinion of J. Leonen in *People v. Caoili*, 815 Phil. 839 (2017) [Per J. Tijam, *En Banc*].

39 815 Phil. 839, 946 (2017) [Per J. Tijam, *En Banc*].

> Hence, sexual intercourse encompasses a wide range of sexual activities not limited to those involving penetration, genitals, and opposite sexes. Sexual intercourse is a sexual activity that is participated by at least two individuals of the same or opposite sex for purposes of attaining erotic pleasure. It may be penetrative or simply stimulative. It may or may not involve persons of opposite sexes. When forced, sexual intercourse constitutes rape.
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> This understanding of sexual intercourse would prevent courts from unnecessarily and unjustly convicting persons of lesser crimes when they are undoubtedly guilty of rape.[40]

Human beings have full autonomy to decide who to be intimate with and what acts may be shared through that intimacy. Rape is a crime because it violates that autonomy.

Now this Court is faced with determining the "anatomical situs" of where exactly a biological man's penis needs to touch a biological woman's vagina in order for it to be rape. But rape is no less an act of rape regardless of the "situs." The degree of penetration does not make one case of rape less heinous than the other. This is because all forced sexual acts involve the desecration of the person's will and dignity. In *People v. Quintos*:[41]

> The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable. . . [O]ne experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.
>
> "The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.
>
> Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.[42] (Citations omitted)

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40 Id. at 948 *citing* Richardson, Niall, Clarissa Smith, and Angela Verndly, *Studying Sexualities: Theories, Representations, Cultures*, 5 (2013).

41 746 Phil. 809 (2014) [Per J. Leonen, Second Division].

42 Id. at 832– 833.

Even prior to the enactment of Republic Act No. 8353, this Court has already accepted as doctrine that "[a] broken hymen is not an essential element of rape."[43] In *People v. Salinas*:[44]

> In rape cases, 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 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.[45]

The absence of half measures in a crime as heinous as rape was what prompted this Court to accept that there is no such crime as "frustrated rape." *People v. Orita*[46] explains:

> Clearly, in the crime of rape, from the moment the offender has carnal knowledge of his victim he actually attains his purpose and, from that moment also all the essential elements of the offense have been accomplished. Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime. Thus, the felony is consummated. In a long line of cases . . . , 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 . . . because not all acts of execution was 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.[47] (Citations omitted)

The *ponencia* is correct in stating that this Court has, in past cases, diverged from the ruling in *Orita*, resulting in different interpretations of what may constitute genital contact. However, instead of simply upholding the doctrine in *Orita* and stating that a partial touching of the genitals is as traumatic to the victim as full penetration, the *ponencia* went so much as to provide a pseudo-medical analysis, with the sole purpose of lessening a rapist's liability. By providing an exhaustive—and extensive—description of the parts of the vagina to determine when rape is considered consummated, the *ponencia* has unwittingly limited the scope of rape.

This Court should view Article 266-A of the Revised Penal Code from the eyes of the victim, not from the point of view of the perpetrator. All rape

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43 *People v. Salinas*, 302 Phil. 305, 310 (1994) [Per J. Cruz, First Division].
44 302 Phil. 305 (1994) [Per J. Cruz, First Division].
45 Id. at 310.
46 262 Phil. 963 (1990) [Per J. Medialdea, First Division].
47 Id. at 976–977.

victims suffer the same trauma. All rape victims suffer the same indignity. To continue the discussion started by the *ponencia* would be to accept that the victim will now bear the burden to prove that the penis touched the "outer fleshy part" of her vagina and not merely the muscular part of the *pudendum*. It places the blame on the victim should she fight back and there would only be a slight touching of the *pudendum*, because only the lower offense of attempted rape can be charged then.

We are not discussing here whether the crime has been committed. There is no issue in this case that rape occurred. A discussion of the different degrees of commission presupposes that the crime *was committed.* There was rape. AAA was raped. To further discuss which part of her vagina was violated serves no other purpose than as a platform to determine how this Court can lessen her rapist's punishment.

To reduce a woman to merely a vagina that can be sexually conquered reduces her worth and dignity. By unnecessarily belaboring on the different physiological aspects of her vagina in the guise of protecting the accused's rights from "the [considerable] difference in the lengths of period of incarceration"[48] between the attempted and consummated rape of a minor, this Court takes a step back towards the previous heteronormative—and frankly, misogynistic—definitions of rape. It likewise undermines the severity of the trauma suffered by sexually abused women and children.

Rape is a crime because it is a violation of a person's consent to intimacy and sexual relations. Rape is a crime because it is a violation of a person's human dignity. No amount of anatomical discourse should ever erase the heinousness of this crime.

MARVIC M.V. F. LEONEN
Senior Associate Justice

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

[48] *Ponencia*, p. 42.