Supreme Court of the Philippines
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-appellee,

- versus -

XXX,[*]
Accused-appellant.

G.R. No. 275013

Present:

LEONEN, *SAJ, Chairperson*
LAZARO-JAVIER,
LOPEZ, J.,
KHO, JR., and
VILLANUEVA, *JJ.*

Promulgated:
FEB 19 2026

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D E C I S I O N

LAZARO-JAVIER, *J*.:

The Case

This appeal[1] assails the following dispositions of the Court of Appeals in CA-G.R. CR Blg. 47747:

1) Decision[2] dated September 19, 2023, modifying accused-appellant XXX conviction from attempted rape to statutory rape in Criminal Case No. 43464-R, and affirming his convictions for attempted rape in

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* In line with Amended Administrative Circular No. 83-2015, as mandated by Article 266(A) of the Revised Penal Code as amended by Republic Act No. 8353, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

1 *Rollo*, pp. 3–6.

2 *Id.* at 11–30. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Jennifer Joy C. Ong and Maximo M. De Leon, Special Fourth Division, Court of Appeals, Manila.

Criminal Case No. 43465-R, and for acts of lasciviousness in Criminal Case No. 43466-R, with modification of the imposed penalty; and

2) Resolution[3] dated April 3, 2024, denying XXX's motion for reconsideration.

Antecedents

By three separate Informations, XXX was charged with statutory rape, qualified rape, and lascivious conduct, respectively, viz.:

Criminal Case No. 43464-R

That on or about the 5th day of May, 2020 at [redacted], [redacted], in the City of [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, armed with a pair of scissors, did then and there willfully, unlawfully and feloniously have sexual intercourse with Private Complainant [AAA], an eleven (11) year old minor, by inserting his penis inside her vagina, to her damage and prejudice, in violation of the above-cited provision of law.

The offense is attended by the aggravating circumstance of use of a deadly weapon.

CONTRARY TO Article 266-A, paragraph 1(d) in [relation] to Article 266-B paragraph 10 of the Revised Penal Code.[4]

Criminal Case No. 43465-R

That on or about the 6th day of May, 2020 at [redacted], [redacted], in the City of [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, did then and there willfully, unlawfully, and feloniously have sexual intercourse with Private Complainant [AAA]" an eleven (11) year old minor, by inserting his penis inside her vagina, to her damage and prejudice, in violation of the above-cited provision of law.

CONTRARY TO Article 266-A, paragraph 1(d) in relation to Article 266-B paragraph 10 of the Revised Penal Code.[5]

Criminal Case No. 43466-R

That on or about the 7th day of May, 2020 at [redacted], in the City of [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, taking advantage of his moral ascendancy over the Private Complainant-minor, with intent to arouse or gratify his own sexual desire, with lewd design, by taking advantage of his

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3 CA *rollo*, pp. 196–197. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Jennifer Joy C. Ong and Maximo M. De Leon, Special Fourth Division, Court of Appeals, Manila.

4 *Rollo*, pp. 33–34.

5 *Id.* at 34.

> influence and moral ascendancy, by means of coercion, influence and other consideration, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the person of Private Complainant "[AAA]," an eleven (11)[-]year[-]old minor, by undressing her and thereafter kissing her, the latter who because of her tender age has no means to resist and or defend herself from such acts of exploitation which are prejudicial to Private Offended Party-minor's development and/or welfare, to her damage and prejudice, in violation of the above-cited provision of law.
>
> CONTRARY TO Article 366 of the Revised Penal Code in relation to Sec. 5(b), Article III of RA 7610.[6]

The cases were consolidated before Branch [redacted], Regional Trial Court, [redacted] City. On arraignment, XXX pleaded not guilty to all three charges.[7]

Proceedings before the Regional Trial Court

Version of the Prosecution

Complainant AAA** testified that she was 11 years old when the three incidents happened. Per her Certificate of Live Birth,[8] she was born on [redacted], 2008. She was raped by her [redacted] – referring to XXX – who was their neighbor on [redacted], [redacted], [redacted] City.[9]

AAA identified XXX in open court. She testified that she had been fetching water for him even before the rape incidents. He paid her PHP 10.00 every time she got water for him.[10]

On May 5, 2020, AAA brought two gallons of water to XXX's house. When she was about to go out of the house, he told her to get back inside. He told her to remove her pants and she complied. He kissed her on the lips and lay her down on the bed. Afterwards, he told her to remove her panties. He inserted his penis into her vagina twice and touched her breasts. He pointed garden scissors near her stomach while he was raping her.[11]

Yet, AAA further testified that XXX was not able to insert his penis into her vagina. She did feel pain and the experience was not pleasant.[12]

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6 *Id.* at 34–35.
7 *Id.* at 35.
** Sometimes spelled as "[redacted]" in some parts of the records.
8 Records, p. 12.
9 *Rollo*, p. 35.
10 *Id.* at 36.
11 *Id.*
12 *Id.* at 37.

On May 6, 2020, AAA was playing with someone when XXX called her to fetch water. She fetched water and brought it to his house. As she was about to go out of the door, he blocked the doorway and told her to go back to his bedroom. Once inside the bedroom, he kissed her. She did not feel XXX insert his penis into her vagina although he tried to insert it.[13]

On May 7, 2020, AAA was gathering chayote tops while XXX was sitting outside his house. XXX helped her and then told her to buy cigarettes. After buying the cigarettes, she went back to XXX's house, where he told her to remove her clothes and then kissed her. She saw her mother, who got angry and left crying. AAA went back to her house and they went to the police station to file a report.[14]

On cross-examination, AAA testified that during the May 5 and 6, 2020 incidents, XXX instructed her to remove her shorts, told her to lie on the bed, and touched her breasts. He did not do anything else.[15]

On re-direct examination, AAA confirmed that XXX told her to remove her clothes and lie down on the bed. He kissed her lips, touched her breasts, and did nothing more. But when asked again, she confirmed that he inserted his penis into her vagina. She did not confirm this information on cross-examination because she was shy. During the May 5, 2020 incident, she confirmed that he was not able to insert his penis into her vagina but only tried to insert it. His penis only touched her labia. During the May 6, 2020 incident, his penis slid into her vagina but he was not able to insert it.[16]

BBB, AAA's mother, testified that on May 7, 2020, she saw AAA on top of XXX. AAA was not wearing clothes from the waist down while XXX was embracing AAA. On seeing the two of them, she left the house crying because she was hurt as she did not expect XXX to do that. After she got home, she breastfed her baby while AAA followed her. She talked to AAA, who only cried. AAA did not tell her anything about the May 5 and 6, 2020 incidents. [17]

The testimony of Dr. Elizabeth Batino (Dr. Batino), one of the physicians who examined AAA, was stipulated by the parties. Per the Medico-Legal Certificate she issued, the "anogenital findings are indicative of acute trauma to the perihymenal area and is highly suggestive of sexual contact or sexual abuse."[18]

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13 *Id.* at 37–38.
14 *Id.* at 38.
15 *Id.*
16 *Id.*
17 *Id.* at 38–39.
18 *Id.*

On cross-examination, Dr. Batino said that the insertion of a penis caused the abrasion from the 12 o'clock to 4 o'clock positions of the perihymenal area. The perihymenal area is the tissue around the hymen.[19]

Version of the Defense

XXX testified that AAA collected water for him thrice a day. He denied inserting his penis into AAA's vagina on May 5 and 6, 2020. XXX claimed that BBB came to him to borrow money but he did not remember when.[20]

On cross-examination, XXX admitted there were times when he asked AAA to enter his house. He denied taking advantage of AAA every time she entered his house. He also denied BBB's claim that she saw him and AAA in bed on May 7, 2020.[21]

On re-direct examination, XXX stated that AAA would come to his house to play with other children. Each time she received payment from him, she would leave his house.[22]

Ruling of the Regional Trial Court

By Judgment[23] dated June 14, 2022, the trial court found XXX guilty of attempted rape in Criminal Case Nos. 43464-R and 43465-R and acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610, thus:

> **WHEREFORE**, premises considered:
>
> **1. In Criminal Case Nos. 43464-R and 43465-R:**
>
> The Court finds Accused XXX **GUILTY** beyond reasonable doubt for two counts of the crime of Attempted Rape, as defined and penalized under Article 266 in relation to Article 51 of the Revised Penal Code, and hereby sentences him to suffer an indeterminate penalty of six (6) years of *prision correccional* as the minimum term to eight (8) years and one (1) day of *prision mayor* as the maximum term in both cases. He is likewise ordered to pay the private complainant the amount of P[HP] 25,000.00 as civil indemnity, P[HP] 25,000.00 as moral damages and P[HP] 25,000.00 as exemplary damages for each case.
>
> **2. For Criminal Case No. 43466-R:**
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> The Court finds the Accused [XXX] **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness, in relation to Section 5(b),

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19 *Id.* at 39.
20 *Id.*
21 *Id.*
22 *Id.* at 40.
23 *Id.* at 33–48. Penned by Judge Ivan Kim B. Morales, Branch [redacted], Regional Trial Court, [redacted].

> Article III of R.A. No. 7610, and hereby sentences him to suffer an indeterminate penalty of thirteen (13) years of *reclusion temporal* as the minimum term to seventeen (17) years of *reclusion temporal* as the maximum term. He is likewise ordered to pay the private complainant the amount of P[HP] 50,000.00 as civil indemnity, P[HP] 50,000.00 as moral damages and P[HP] 50,000.00 as exemplary damages.
>
> All damages awarded in the three cases shall earn legal interest of 6% per annum until fully paid.
>
> **SO ORDERED.**[24] (Emphasis in the original)

The trial court found that the age of AAA was duly proved and she was indeed 11 years and 5 months old when the incidents happened in May 2020. XXX's identity was also duly proved by the separate positive identification by AAA and BBB. However, AAA was inconsistent in her testimony on whether XXX was able to insert his penis into her vagina on May 5 or 6, 2020.[25] The Medico-Legal Certificate showed that there was an abrasion from the 12 o'clock to the 4 o'clock positions at the perihymenal area, thus corroborating the claim that XXX tried to insert his penis into AAA's vagina. Verily, the prosecution failed to prove in Criminal Case Nos. 43464-R and 43465-R that there was carnal knowledge. Thus, XXX was only liable for attempted rape in Criminal Case Nos. 43464-R and 43465-R.[26]

In Criminal Case No. 43466-R, XXX was guilty of sexual abuse. On May 7, 2020, XXX instructed AAA to remove her pants/shorts and underwear. He then kissed her and touched her breasts.[27]

Lastly, the trial court did not give credence to XXX's defense of denial.[28]

Proceedings Before the Court of Appeals

On appeal, XXX faulted the trial court for rendering a verdict of conviction. For the May 5 and 6, 2020 incidents, he argued that since AAA gave very contradictory testimonies on material and substantial matters, there is serious doubt as to her credibility. AAA's testimony was mere fabrication and her actions were not consistent with a victim of sexual abuse. AAA did not take any precaution to prevent a repeat of the alleged sexual abuse. Nor did she report the sexual abuse incident to her parents or the authorities. It was absurd that she still allowed herself to be in the company of XXX despite the alleged prior sexual abuse. She never resisted XXX's advances and even voluntarily undressed herself. The same could also be said with respect to the

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24 *Id.* at 47–48.
25 *Id.* at 41–43.
26 *Id.* at 45–46.
27 *Id.* at 46–47.
28 *Id.* at 47.

May 7, 2020 incident as she voluntarily undressed herself for XXX. The fact of sexual abuse was not duly proven by the findings in the medico-legal certificate. The presence of abrasion did not mean that the same was caused by him. As for his defense of denial, the court should keep an open mind.[29]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Henry S. Angeles and Associate Solicitor Angelique M. Mendoza, riposted that the elements of attempted rape were all duly proven by the prosecution. Further, the elements of acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610 were also present. XXX's arguments pertaining to the alleged inconsistencies in AAA's testimony did not affect her credibility as her testimony duly established the elements of attempted rape and sexual abuse. It was proven that XXX threatened AAA with a pair of garden shear scissors by pointing it at her at the same time warning her not to tell anyone about the incident. XXX also abused his influence over AAA, coupled with threats of harm, thus, causing AAA not to report her harrowing experience to anyone. The medico-legal certificate was merely corroborative and could even be dispensed with.[30]

Ruling of the Court of Appeals

By its Decision[31] dated September 19, 2023, the Court of Appeals affirmed with modification. In Criminal Case No. 43464-R, XXX was convicted of statutory rape while his conviction for attempted rape in Criminal Case No. 43465-R was affirmed. In Criminal Case No. 43466-R, his conviction for acts of lasciviousness was also affirmed, albeit the imposed penalty was modified. Thus:

> DAHIL DITO, ang apela ay hindi pinahihintulutan. Ipinagtitibay ng Hukuman ang hatol ng pagkakasala sa Judgment ng RTC na may petsang ika-24 ng Agosto, taong 2022 ngunit iwinawasto ang karampatang mga kaparusahan at danyos na nasasaad doon. Sa Criminal Case No. 43464-R, hinahatulan ng Hukuman si [XXX] ng pagkakasala sa batas para sa krimeng statutory rape at pinapatawan ng parusang *reclusion perpetua*. Inuutusan rin ang nasasakdal na magbayad sa biktima ng mga danyos para sa civil indemnity, moral damages, at exemplary damages sa halagang Pitumpu't Limang Libong Piso (PHP 75,000.00) bawat isa.
>
> Para naman sa Criminal Case No. 43466-R, sinasang-ayunan ng Hukuman ang hatol ng pagkakasala para sa krimeng acts of lasciviousness kaugnay ng RA 7610 at pinapatawan ang nasasakdal ng indeterminate na panahon ng pagkakakulong na labindalawang taon at isang araw (12 years and 1 day) na *reclusion temporal* minimum hanggang labing-apat na taon, walong buwan, at isang araw (14 years, 8 months and 1 day) na *reclusion temporal* medium alinsunod sa Indeterminate Sentence Law at sa *Ladines v. People*. Ipinagtitibay ng Hukuman ang ipinataw na mga danyos sa civil

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29 CA *rollo*, pp. 49–74.
30 *Id.* at 94–118.
31 *Rollo*, pp. 11–30.

indemnity, moral damages, at exemplary damages na Limampung Libong Piso (PHP 50,000.00) bawat isa.

Ang nasasakdal ay inuutusang magbayad ng tubo (interest) na six percent o anim na porsyento (6%) na tatakbo mula sa panahong maging tiyak (final) ang hatol hanggang sa mabayaran nang buong nasasakdal ang lahat ng mga danyos.

ITO AY IPINAG-UUTOS.[32]

In convicting XXX of statutory rape in Criminal Case No. 43464-R, the Court of Appeals observed that it was duly proven that AAA was not yet 12 years old when the incident happened. Though she repeatedly said that XXX was not able to insert his penis into her vagina, this was not enough to discredit her answers to the presiding judge's questions that XXX did insert his penis into her vagina. Additionally, AAA asserted in her sworn affidavit that XXX had carnal knowledge of her. AAA's testimony was also corroborated by Dr. Batino's medico-legal certificate and that AAA informed Dr. Batino that she was raped. A child should not be expected to know the difference between the mons pubis and labia majora and expect her to give a specific description of what happened. It was already sufficient for the Medico-Legal Certificate to show that there was an abrasion from 12 o'clock to 4 o'clock positions of the perihymenal area. [33]

As for the penalty in Criminal Case No. 43466-R, the law imposes the penalty of *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law, XXX should be sentenced to 12 years and one day of *reclusion temporal*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum.[34]

XXX sought reconsideration which was denied under the assailed Resolution dated April 3, 2024.

The Present Appeal

XXX now seeks anew a verdict of acquittal. For the purpose of this appeal, the OSG [35] and XXX, [36] respectively, manifested that in lieu of supplemental briefs, they are adopting their respective briefs filed before the Court of Appeals.

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32 *Id.* at 29–30.
33 *Id.* at 22–25.
34 *Id.* at 28–29.
35 *Id.* at 61–64.
36 *Id.* at 52–56.

Our Ruling

The appeal must fail.

AAA is a credible witness

First. We affirm the trial court's finding that AAA's testimony is credible and straightforward and, as such, is sufficient to convict XXX. As a general rule, the findings of facts and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.[37] Hence, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected.[38]

Second. True, AAA gave inconsistent testimony on whether XXX was able to insert his penis into her vagina on May 5 and 6, 2020. But, she later explained that she only said this because she was shy or even ashamed to admit that XXX inserted his penis in her vagina. At any rate, her testimony that his penis touched her vagina speaks volumes of consummated rape especially when taken vis-à-vis the medical finding of Dr. Batino, one of the physicians who examined AAA, that "anogenital findings are indicative of acute trauma to the perihymenal area and is highly suggestive of sexual contact or sexual abuse."[39]

Third. AAA's failure to resist or immediately report what was done to her, as well as her allegedly nonchalant and obliging demeanor after the incidents of sexual molestation, do not affect her credibility.

Notably, AAA referred to XXX as "[redacted]" – a person she considers to have moral ascendancy over her. Her alleged failure to resist and her silence could not negate her harrowing experience. Silence of the rape victim does not negate her sexual molestation or make her charge baseless, untrue, or fabricated. Force and intimidation must be appreciated in light of the victim's perception and judgment when the assailant committed the crime. In rape perpetrated by close kin, or in this case a close and familiar neighbor, actual force or intimidation need not be employed.[40] At any rate, not every survivor of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. And although the conduct of the survivor immediately following the alleged sexual assault

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37 *People v. Traigo*, 734 Phil. 726, 729 (2014) [Per J. Brion, Second Division].
38 *People v. Mamaruncas*, 680 Phil. 192, 198 (2012) [Per J. Del Castillo, First Division].
39 *Rollo*, p. 39.
40 *People v. XXX*, 889 Phil. 281, 294 (2020) [Per J. Leonen, Third Division].

is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape survivors, as not every survivor can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.[41]

As for AAA's failure to immediately report the rape incident, such delay does not affect her credibility. Delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be mere concoction or impelled by some ill motive.[42]

Fourth. AAA was not shown to have been improperly motivated to falsely accuse XXX, her neighbor and benefactor, of such a heinous crime as rape. In the absence of ill-motive, a rape survivor's simple, candid, straightforward, and unflawed testimony is entitled to full faith and credence.[43]

Be that as it may, against AAA's positive identification of XXX, who performed lecherous advances on her, he merely interposed denial. Denial is the weakest of all defenses. It easily crumbles in the face of positive identification of the accused as the perpetrator of the crime.[44] More, AAA's mother, BBB, even corroborated AAA's testimony regarding the May 7, 2020 incident.

XXX is guilty of statutory rape in Criminal Case No. 43464-R

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.[45] Thus, to sustain a conviction thereof, the prosecution must prove: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[46]

As proven during the trial, AAA was only 11 years old when XXX had carnal knowledge of her on May 5, 2020. As stated, AAA's age was proven by her birth certificate. On re-direct examination, AAA did categorically state that XXX tried to insert his penis into her vagina twice but his penis only touched her *labia*. Further, such testimony was corroborated by the Medico-

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41 *People v. Saludo*, 662 Phil. 738, 758–759 (2011) [Per J. Leonardo-De Castro, First Division].
42 *People v. Tulagan*, 849 Phil. 197, 219 (2019) [Per J. Peralta, *En Banc*].
43 *People v. De Guzman*, 644 Phil. 229, 243 (2010) [Per J. Mendoza, Second Division].
44 *People v. Glino*, 564 Phil. 396, 420 (2007) [Per J. Reyes, Third Division].
45 *People v. Manaligod*, 831 Phil. 204, 211 (2018) [Per J. Martires, Third Division].
46 *Id.*

Legal Certificate of Dr. Batino where it was indicated that there was an abrasion from 12 o'clock position to 4 o'clock position at the perihymenal area—in short there was an abrasion just outside the hymen located in the cavity between the *labia menora*. Indeed, 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.[47]

XXX is guilty of statutory rape in Criminal Case No. 43465-R

In Criminal Case No. 43465-R, AAA testified that, on May 6, 2020, XXX tried to insert his penis into her vagina while they were in the bedroom of XXX's house. As confirmed by AAA, his penis only slid on her vagina but he was unable to insert it. The trial court laid out AAA's testimony regarding the May 6, 2020 incident in this wise:

> During her direct testimony on August 3, 2020 for the May 6, 2020 incident (Criminal Case No. 43465-R), [AAA] testified:
>
> INTERPRETER:
>
> And then lifted the male doll and placed it on top of the girl doll with genitals touching each other.
>
> PROS PERALTA:
>
> Q: So ganyan ang itsura nyan?
> A: Opo.
>
> Q: Noong ipinasok niya 'yong titi nya dyan sa [pepe] mo ganyan ang itsura niya?
> A: Opo.
>
> Q: At naramdaman mo ba kung naipasok niya yung tita (sic) niya sa pepet mo?
> A: hindi po.
>
> Q: Hindi mo siya naramdaman. So hindi niya naipasok, ganyan ba yon?
> A: Hindi po naipasok."
>
> [AAA] maintained the same statements during her cross-examination despite being reminded that she is under oath and she has to tell the truth, to wit:
>
> "ATTY. CARILLO:

47 *People v. Agao*, 930 Phil. 559, 592 (2022) [Per J. Caguioa, *En Banc*].

Q: Doon sa inireklamo mo naalala mo ba kung ano yung mga ginawa sa iyo?
A: Hindi na po masyado.

Q: Pero naalala mo pa kahit konti?
A: Opo.

Q: Kung naalala mo pa kahit konti, pwede mo ba akong sabihan anu-ano yung gunawa sa iyo?
A: Hinawakan nya po yung dede ko po.

ATTY. CARILLO:

Q: tapos ano pa?
A: Pinababa nyo (sic) yung shorts ko po.

Q: Tapos meron pa ba?
A: Pinahiga nya po ako dun sa kama nya po.

Q: Tapos meron pa ba?
A: Wala napo.

. . . .

ATTY. CARILLO:

Q: Tinanggal din?
A: Opo.

Q: Pagkatapos nun wala na?
A: Wala na po.

Q: So klaro tayo ah May 5 eto yung mga nangyari tapos eto din. Sigurado ka sa mga kwento mo ah.
A: Opo.

Q: At alam ko nagsasabi ka ng totoo kasi sabi mo kanina bawal magsinungaling, tama?
A: Opo."

Even on re-direct examination by the prosecutor, [AAA] continued to testify that XXX was not able to insert his penis inside her vagina.[48]

At first glance, XXX's inability to insert his penis into AAA's vagina might be construed as attempted rape. Yet, though he did it only once, the fact is that XXX tried to insert his penis into AAA's vagina. He performed all the overt acts of the crime of rape, but for one reason or another that was beyond his control, he was unable to insert his penis into AAA's vagina. This is definitely not attempted rape and there is no such thing as frustrated rape.

In attempted rape, the concrete felony is rape, but the offender does not perform all the acts of execution of having carnal knowledge. If the slightest

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48 CA *rollo*, pp. 22–24.

penetration of the female genitalia consummates rape, and rape in its attempted stage requires the commencement of the commission of the felony directly by overt acts without the offender performing all the acts of execution that should produce the felony, the only means by which the overt acts performed by the accused can be shown to have a causal relation to rape as the intended crime is to make a clear showing of his intent to lie with the female. Accepting that intent, being a mental act, is beyond the sphere of criminal law, that showing must be through his overt acts directly connected with rape. He cannot be held liable for attempted rape without such overt acts demonstrating the intent to lie with the female. In short, the State, to establish attempted rape, must show that his overt acts, should his criminal intent be carried to its complete termination without being thwarted by extraneous matters, would ripen into rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, i.e., penetration of the penis into the vagina, before the interruption.[49]

To repeat, XXX was in no way interrupted or thwarted by extraneous circumstances after he commenced his act of sexual intercourse. He did perform all the necessary acts for sexual intercourse but simply could not insert his penis into AAA's vagina. Notably, AAA did not testify that she resisted or tried to defend herself from XXX. Nor was there any testimony indicating that XXX was distracted or interrupted by anyone or anything at the time he tried to insert his penis into her vagina. Though AAA said she did not feel anything, XXX, at the very least, had touched his penis onto AAA's vagina–erect and with intention and not by pure accident or coincidence. Surely, there was consummation of the crime of rape here as XXX's overt acts cannot be merely classified as attempted or even frustrated.

In *People v. Quiñanola*,[50] the Court had elegantly made the deduction that the term "frustrated rape" is a persistent lapse in language and that when an offender has performed all the acts of sexual intercourse, the crime can only be consummated rape:

> Let it be said once again that, as the Revised Penal Code presently so stands, there is no such crime as frustrated rape. In *People v. Orita*, the Court has explicitly pronounced:
>
> > "*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 (*People v. Oscar*, 48 Phil. 527; *People v. Hernandez*, 49 Phil.

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49 *Cruz v. People*, 745 Phil. 54, 71–72 (2014) [Per J. Bersamin, First Division].

50 366 Phil. 390 (1999) [Per J. Vitug, Third Division).

> 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 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.*
>
> "Of course, We are aware of our earlier pronouncement in the case of *People v. Eriñia*, 50 Phil. 998 [1927] where We found the offender guilty of frustrated rape there being no conclusive evidence of penetration of the genital organ of the offended party. However, it appears that this is a 'stray' decision inasmuch as it has not been reiterated in Our subsequent decisions. Likewise, We are aware of Article 335 of the Revised Penal Code, as amended by Republic Act No. 2632 (dated September 12, 1960) and Republic Act No. 4111 (dated March 29, 1965) which provides, in its penultimate paragraph, for the penalty of death when the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof. We are of the opinion that this particular provision on frustrated rape is a dead provision. The *Eriñia* case, supra, might have prompted the law-making body to include the crime of frustrated rape in the amendments introduced by said laws."
>
> The Court is not unaware that Republic Act No. 7659, amending Article 335 of the Revised Penal Code, has retained the provision penalizing with *reclusion perpetua* to death an accused who commits homicide by reason or on the occasion of an attempted or frustrated rape. *Until Congress sees it fit to define the term frustrated rape and thereby penalize it, the Court will see its continued usage in the statute book as being merely a persistent lapse in language.*[51] (Emphasis supplied)

Applying the method of deduction employed in *Quiñanola* here, XXX, having performed all the necessary acts for sexual intercourse, is guilty of consummated rape, specifically, statutory rape as all the elements present in Criminal Case No. 43464-R are likewise present here.

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[51] *Id.* at 414–415.

XXX is guilty of sexual abuse in Criminal Case No. 43466-R

Per *People v. Caoili*,[52] the offense designated as acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 of Republic Act No. 7610 should be used when the victim is under 12 years of age at the time the offense was committed. This finds support in the first proviso in Section 5(b) of Republic Act No. 7610 which requires that "when the victim is under 12 years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be." Thus, pursuant to this proviso, it has been held that before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for act of lasciviousness under Article 336 of the Revised Penal Code must be met in addition to the requisites for sexual abuse under Section 5 of Republic Act No. 7610.

The elements of acts of lasciviousness are: 1) the offender commits any act of lasciviousness or lewdness; 2) it is done under any of the following circumstances: a) through force, threat or intimidation; b) when the offended party is deprived of reason or otherwise unconscious; c) by means of fraudulent machination or grave abuse of authority; d) when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present; and 3) the offended party is another person of either sex.[53]

Here, the elements of acts of lasciviousness are all present. On May 7, 2020, XXX ordered AAA to remove her clothes and then kissed her. BBB, AAA's mother, saw AAA on top of XXX. AAA was not wearing clothes from the waist down while XXX was embracing AAA. Verily, since all the elements of acts of lasciviousness are present here and considering AAA was under 12 years old at the time, the offense constituted sexual abuse under Republic Act No. 7610.

Imposable Penalties and Damages

The crime of rape is defined and penalized under Article 266-A of the Revised Penal Code, viz.:

> Article 266-A. Rape: When And How Committed. - Rape is committed:

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52 815 Phil. 839, 893 (2017) [Per J. Tijam, *En Banc*].

53 *People v. Manuel*, 892 Phil. 374, 399–400 (2020) [Per J. Delos Santos, Third Division].

> 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.

As for the prescribed penalty, Article 266-B of the Revised Penal Code provides:

> Article 266-B Penalty – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Under Article 266-B of the Revised Penal Code, the imposable penalty is *reclusion perpetua* to which XXX was correctly sentenced by the Court of Appeals in Criminal Case No. 43464-R.

In Criminal Case No. 43465-R, XXX, being also guilty of statutory rape in this case, must likewise be sentenced to *reclusion perpetua.*

In Criminal Case No. 43466-R, Section 5(b) of Republic Act No. 7610 provides:

> Section 5. Child Prostitution and Other Sexual Abuse. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> . . . .
>
> (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] and

Based on the foregoing, the penalty for lascivious conduct, when the child is under 12 years of age shall be *reclusion temporal* in its medium period, which ranges from 14 years, eight months and one day to 17 years and four months. Accordingly, applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 15 years, six months, and 20 days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or 12 years and one day to 14 years and eight months.[54] Here, the Court of Appeals correctly sentenced XXX to 12 years and one day of *reclusion temporal*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum.

Additionally, XXX is fined PHP 15,000.00. In *People v. Trocio*,[55] it was recognized that the gravity of the case and the resultant trauma on the child warranted the imposition of the fine prescribed in Section 31(f) of Republic Act No. 7610.

Going now to the monetary awards, the Court affirms the awards of PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages in Criminal Case No. 43464-R as these are in accord with prevailing jurisprudence.[56] These monetary awards are similarly imposed in Criminal Case No. 43465-R, in light of XXX's conviction for statutory rape.

Lastly, in Criminal Case No. 43466-R, the Court affirms the awards of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages as provided in *People v. Tulagan*.[57]

These amounts shall earn 6% interest per annum from finality of this Decision until fully paid.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated September 19, 2023 and Resolution dated April 3, 2024 of the Court of Appeals in CA-G.R. CR Blg. 47747 are **AFFIRMED with MODIFICATION**.

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54 *Capueta v. People*, 883 Phil. 502, 515 (2020) [Per J. Delos Santos, Second Division].

55 929 Phil. 60, 72 (2022) [Per J. Inting, Third Division].

56 *People v. Jugueta*, 783 Phil. 806, 848 (2016) [Per J. Peralta, *En Banc*]:

> ...
> II. For Simple Rape/Qualified Rape:
> 2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:
> a. Civil indemnity – PHP 75,000.00
> b. Moral damages – PHP 75,000.00
> c. Exemplary damages – PHP 75,000.00

57 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

In Criminal Case No. 43464-R, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of statutory rape. He is sentenced to *reclusion perpetua*. He is also directed to **PAY** AAA PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages.

In Criminal Case No. 43465-R, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of statutory rape. He is sentenced to *reclusion perpetua*. He is also directed to **PAY** AAA PHP 75,000.00 as civil indemnity, PHP 75,000.00 as moral damages, and PHP 75,000.00 as exemplary damages.

In Criminal Case No. 43466-R, accused-appellant XXX is found **GUILTY** beyond reasonable doubt of acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to 12 years and one day of *reclusion temporal*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum. He is also ordered to **PAY** a fine of PHP 15,000.00. He is further directed to **PAY** AAA PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages.

The monetary awards are subject to 6% interest per annum from finality of this Decision until fully paid.

Finally, Branch [redacted], Regional Trial Court, [redacted], is **DIRECTED** to refer AAA to the Department of Social Welfare and Development for therapy and counselling to be extended to her and her family pursuant to Republic Act No. 8505 or the Rape Victim Assistance and Protection Act of 1998. It is further directed to submit its compliance within 10 days from notice of finality of this Decision.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

RAUL B. VILLANUEVA
Associate Justice

ATTESTATION

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

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice