



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

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 242512**

**Present:**

- versus -

CARPIO, J., *Chairperson*,\*  
CAGUIOA, *Acting Chairperson*,\*\*  
REYES, J. JR.,  
LAZARO-JAVIER, and  
ZALAMEDA, JJ.

**MARINO BAYA y YBIOA,**  
Accused-Appellant.

**Promulgated:**

14 AUG 2019

X ----- X

**DECISION**

**REYES, J. JR., J.:**

Statutory rape and statutory acts of lasciviousness are punishable under the Revised Penal Code and Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

**The Case**

This is an ordinary appeal from the July 18, 2017 Court of Appeals (CA) Decision<sup>1</sup> in CA-G.R. CR-HC No. 08131, affirming with modification

\* On official leave.

\*\* Per Special Order No. 2688 dated July 30, 2019.

<sup>1</sup> Penned by then Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Eduardo B. Peralta, Jr. and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp.2-18.

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the January 13, 2016 Regional Trial Court (RTC) Joint Decision<sup>2</sup> in Criminal Case Nos. 06-884, 07-281 to 07-288, finding the accused guilty of two counts of acts of lasciviousness and two counts of rape.

### **The Facts**

✓ In nine separate Informations, accused Marino Baya y Ybiosa (Baya), alias Rene, was charged with five counts of rape and four counts of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b), Article III, Republic Act 7610 (RA 7610) for sexually abusing three minors: 1) seven-year old AAA, 2) nine-year old BBB, and 3) nine-year old CCC.<sup>3</sup>

#### **Criminal Case No. 06-884**

##### **[Acts of Lasciviousness against AAA]**

On or about the 28<sup>th</sup> day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, intent to abuse, arouse and gratify his sexual desire, did then and there, wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a human being, as he did then and there place his hand in the short pants of AAA, a seven (7) year-old minor born on April 9, 1999, and thereafter [fondled] her vagina.<sup>4</sup>

#### **Criminal Case No. 07-286**

##### **[Acts of Lasciviousness against AAA]**

Sometime between 1<sup>st</sup> and 27<sup>th</sup> day of September 2006, inclusive, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there place his hand in the short pants of AAA, a seven (7) year-old girl born on 09 April 1999, and thereafter [fondled] her vagina.<sup>5</sup>

#### **Criminal Case Nos. 07-281, 07-282, 07-283, 07-284**

##### **[Four counts of rape against BBB, similarly worded]**

Sometime in September 2006, before the 26<sup>th</sup> day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to abuse a

<sup>2</sup> Penned by Judge Philip A. Aguinaldo; CA *rollo*, pp. 14-27.

<sup>3</sup> Pursuant to *People v. Cabalquinto*, GR. No. 167693, September 19, 2006, 533 PHIL 703-719, the Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed.

<sup>4</sup> Records, p. 1.

<sup>5</sup> Id. at 58.

child and to gratify his sexual desire did then and there, wilfully, unlawfully and feloniously have carnal knowledge of a girl under 12 years of age, as he did then and there insert his penis into the vagina of BBB, a nine (9) [year-old] girl born on 01 November 1996 that thereby debase, degrade and demean the intrinsic worth and dignity of BBB as a child and human being.<sup>6</sup>

**Criminal Case No. 07-285**  
**[Rape against BBB]**

On or about the 26<sup>th</sup> day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to abuse a child and to gratify his sexual desire did then and there, wilfully, unlawfully and feloniously have carnal knowledge of a girl under 12 years of age, as he did then and there insert his penis into the vagina of BBB, a nine (9) [year-old] girl born on 01 November 1996, that thereby debase, degrade and demean the intrinsic worth and dignity of BBB as a child and as a human being.<sup>7</sup>

**Criminal Case No. 07-287**  
**[Acts of Lasciviousness against CCC]**

On or about the 26<sup>th</sup> day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there, wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there fold the short pants of CCC, an eight (8) year-old girl born on 16 May 1997, in such a manner that exposes her vagina; mount CCC; and then, move (rub) his penis [backward] and [forward] while pressed against the external part of the vagina of CCC.<sup>8</sup>

**Criminal Case No. 07-288**  
**[Acts of Lasciviousness against CCC]**

Sometime in September 2006, but prior to the 26<sup>th</sup> day of September 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, intent to gratify his sexual desire and abuse a child, did then and there, wilfully, unlawfully and feloniously abuse sexually a child under twelve years of age that thereby debase, degrade and demean her intrinsic worth and dignity as a child and human being, as he did then and there [fondled] the vagina of CCC, an eight (8) year-old girl born on 16 May 1997.<sup>9</sup>

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<sup>6</sup> Id. at 48-55.

<sup>7</sup> Id. at 56.

<sup>8</sup> Id. at 62.

<sup>9</sup> Id. at 66.

During arraignment, Baya pleaded not guilty in Criminal Case Nos. 06-884,<sup>10</sup> 07-285 to 07-287.<sup>11</sup> However, he was not arraigned in Criminal Case Nos. 07-281 to 07-284 and 07-288.<sup>12</sup>

During pre-trial, the parties stipulated on the jurisdiction of the court, the identity of the accused, and the existence of the victims and arresting officers' sworn statements.<sup>13</sup> Thereafter, trial proceeded.

The prosecution presented BBB and CCC as witnesses. The Court dispensed with the presentation of PO1 Gil Inape,<sup>14</sup> one of the arresting officers who executed a sworn statement. The parties stipulated that he has no personal knowledge of the incident and he would be testifying only as to the contents of the sworn statement.<sup>15</sup>

The prosecution presented the following documents as evidence: 1) AAA's *Sinumpaang Salaysay*, 2) BBB's *Sinumpaang Salaysay*, 3) CCC's *Sinumpaang Salaysay*, 4) the arresting officers' *Pinagsamang Malayang Sinumpaang Salaysay*, 5) Initial Medico-Legal Report on AAA, 6) Initial Medico-Legal Report on BBB, 7) Initial Medico-Legal Report on CCC, 8) BBB's birth certificate, and 9) CCC's birth certificate.<sup>16</sup>

BBB testified that in the afternoon of September 26, 2006, Baya's sister (Joy) asked her, AAA and CCC to fold her clothes in her house. The victims were watching the television while folding the clothes at the second floor. Baya was inside the room while the victims were doing their chores.<sup>17</sup>

When Joy went out of the house, Baya asked the victims to lie down together. He removed BBB's shorts and panty, positioned himself on top of her, and, inserted his penis into her vagina. She told him that she felt pain during the intercourse but he did nothing. After abusing her, AAA and CCC were next. BBB saw that Baya also violated AAA and CCC because they were all lying side by side. When Baya was done, he gave them money. She mentioned that there were five other similar incidents, but she could no longer remember the dates.<sup>18</sup>

CCC corroborated BBB's narration. She testified that on September 26, 2006, Joy asked BBB and CCC to fold her clothes. They were watching the television while folding the clothes. Baya was in the room. Once Joy left the house, Baya saw an opportunity to abuse the victims. He asked them to lie down next to each other. He first abused BBB, then CCC. He raised

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<sup>10</sup> Id. at 36-38.

<sup>11</sup> Id. at 84-86.

<sup>12</sup> *Rollo*, pp. 5-6.

<sup>13</sup> Records, pp. 126-128.

<sup>14</sup> Also referred to as "PO1 Gil Lanaque" in some parts of the *rollo*.

<sup>15</sup> Records, p. 176.

<sup>16</sup> Id. at 192-195.

<sup>17</sup> TSN, April 15, 2009, pp. 4-8; TSN, May 6, 2009, pp. 2-13.

<sup>18</sup> Id.

CCC's shorts and pressed his penis into her vagina. However, her shorts were tight, so his penis did not penetrate her vagina.<sup>19</sup>

CCC narrated that Baya abused her on different occasions by inserting his penis into her vagina, by sucking her breasts, or kissing her. However, she could no longer recall the dates.<sup>20</sup> She confirmed that she saw what Baya did to BBB. However, she testified that AAA was not in the house.<sup>21</sup>

For his defense, Baya testified that in the afternoon of September 26, 2006, he was in his sister's house fixing the flooring at the first floor. He denied committing the acts charged against him, because he was in the company of his nephews and nieces. Although he admitted knowing the victims because his sister would ask them to do chores for her, he was unaware of their whereabouts on that fateful day. He claimed that the victims' aunt and grandmother held a grudge against him for not fixing their house and store, and for failing to give medicine for urinary tract infection.<sup>22</sup>

### The RTC Decision

On January 13, 2016, the RTC rendered a Joint Decision finding Baya guilty beyond reasonable doubt of one count of acts of lasciviousness against AAA in Criminal Case No. 06-884, two counts of rape against BBB in Criminal Case Nos. 07-281 and 07284, and one count of acts of lasciviousness against CCC.<sup>23</sup>

The RTC gave credence to the testimonies of BBB and CCC as to the incidents involving them and that of AAA. Their testimonies were straightforward, detailed, and credible. BBB and CCC both positively identified Baya as their abuser and that of AAA.<sup>24</sup>

BBB's Initial Medico-Legal Report showed clear evidence of blunt force or penetrating trauma. AAA and CCC's Initial Medico-Legal Reports indicated no evident injury at the time of the physical examination, but these do not exclude sexual abuse. The RTC held that these do not diminish the victims' credibility because laceration is not an element of acts of lasciviousness.<sup>25</sup>

✓ BBB and CCC's birth certificates confirmed that they were minors at the time of the incident. BBB was 10 years, 10 months and 27 days old, while CCC was 9 years, 4 months and 13 days old at the time of the

<sup>19</sup> TSN, January 20, 2010, pp. 2-8; TSN, July 21, 2010, pp. 3-16.

<sup>20</sup> TSN, January 20, 2010, pp. 7-8.

<sup>21</sup> TSN, January 20, 2010, pp. 2-8; TSN, July 21, 2010, pp. 3-16.

<sup>22</sup> TSN, February 22, 2012, pp. 3-14.

<sup>23</sup> *CA rollo*, pp. 26-27.

<sup>24</sup> *Id.* at 24.

<sup>25</sup> *Id.* at 25.

incident. Although AAA has no birth certificate, the RTC presumed her to be between 12 to 18 years old.<sup>26</sup>

In Criminal Case No. 06-884, the RTC sentenced Baya to an indeterminate penalty of six months of *arresto mayor* in its maximum as the minimum period to four years and two months of *prision correccional* in its medium as the maximum period. He was ordered to pay AAA ₱5,000.00 as civil indemnity and ₱5,000.00 as exemplary damages.<sup>27</sup>

In Criminal Case Nos. 07-281 and 07-284, the RTC sentenced him to *reclusion perpetua* for each count of rape against BBB. He was ordered to pay BBB ₱75,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages for each count.<sup>28</sup>

As for the acts committed against CCC, the dispositive portion of the RTC decision did not indicate the criminal case number subject of the penalties. The RTC sentenced Baya to an indeterminate penalty of *reclusion temporal* in its minimum as the minimum period to *reclusion temporal* in its maximum as the maximum period. He was ordered to pay ₱50,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.<sup>29</sup>

Baya appealed his conviction to the CA.

### The CA Decision

On July 18, 2017, the CA rendered a Decision affirming with modification the RTC Joint Decision.<sup>30</sup>

In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the CA acquitted Baya because AAA did not testify to prove the commission of the crime. The RTC based its decision on BBB and CCC's testimonies that they saw Baya abusing AAA. However, upon clarificatory questions of the judge on BBB and CCC, they stated that there were only three persons in the room where the crime took place: BBB, CCC, and Baya. The CA ruled that guilt beyond reasonable doubt was not established. Thus, acquittal is in order.<sup>31</sup>

In Criminal Case Nos. 07-281 to 07-284 for rape against BBB, the CA remanded the case to the RTC for arraignment of the accused.<sup>32</sup>

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<sup>26</sup> Id.

<sup>27</sup> Id. at 26.

<sup>28</sup> Id. at 27.

<sup>29</sup> Id.

<sup>30</sup> *Rollo*, p. 17.

<sup>31</sup> Id. at 12-13.

<sup>32</sup> Id. at 13.

In Criminal Case No. 07-285 for rape against BBB, the CA found Baya guilty under Art. 266 (A), Par. 1 (d) of the RPC. The CA explained a clerical error in the trial court's decision for indicating Criminal Case No. 07-284 instead of Criminal Case No. 07-285. The records show that Baya had not been arraigned in Criminal Case No. 07-284. As such, the trial court had not acquired jurisdiction over the accused, and the CA remanded the case for arraignment.<sup>33</sup>

Further, the body of the trial court's decision finding Baya guilty of rape pertains to the allegations covered by the Information of Criminal Case No. 07-285. The CA affirmed the conviction on the correct criminal case number. The CA imposed the penalty of *reclusion perpetua* and ordered Baya to pay the BBB the modified amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, all subject to 6% interest from the finality of the decision until fully paid.<sup>34</sup>

In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the CA affirmed the conviction.<sup>35</sup> The CA modified the penalty and imposed an indeterminate prison sentence of 13 years, 9 months and 10 days of *reclusion temporal* as minimum to 16 years, 5 months and 9 days of *reclusion temporal* as maximum. The CA ordered Baya to pay CCC ₱15,000.00 as fine, ₱20,000.00 as civil indemnity, and ₱15,000 as moral damages, all subject to 6% interest from the finality of the decision until fully paid.<sup>36</sup>

However, in Criminal Case No. 07-288 for acts of lasciviousness against CCC, the CA also remanded the case to the RTC for arraignment of the accused.<sup>37</sup>

Aggrieved, Baya appealed his conviction before the Court.

### **The Issue Presented**

The sole issue presented before the Court is whether or not the CA erred in:

- I. Acquitting Baya of acts of lasciviousness against AAA;
- II. Convicting Baya of rape against BBB; and
- III. Convicting Baya of acts of lasciviousness against CCC.

### **The Court's Ruling**

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<sup>33</sup> Id. at 14.

<sup>34</sup> Id. at 16-17.

<sup>35</sup> Id. at 14.

<sup>36</sup> Id. at 18.

<sup>37</sup> Id. at 13.

The Court affirms with modification the CA's Decision.

**I.**

In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the other victims, BBB and CCC, were inconsistent on whether AAA was present in the room at the time of the incident.

**BBB's TSN dated April 15, 2009, pp. 4-5**

Q4: Sino yung ginahasa niya?  
A: Kami po.

Q5: Sinong kami?  
A: Si BBB.

Q6: Sino si BBB, ikaw?  
A: Opo.

Q7: Sino pa?  
A: Si CCC tsaka si AAA.

**BBB's TSN dated May 6, 2009, p. 5-7**

27Q: Habang natutupi kayo, sa'n dun yung ate Joy mo?  
A: Wala po siya do'n.

28Q: Sino lang ang kasama mo dun?  
A: Si CCC.

29Q: Sino pa?  
A: AAA.

x x x x

40Q: Sinong nanonood ng Wowowee nu'n?  
A: Kami po.

41Q: Sino sino kayo?  
A: CCC, ako po.

**Questions from the court to BBB, TSN dated May 6, 2009, p. 10**

Court: The Court would like to ask some clarificatory questions. BBB, nung kinantot ka ni kuya Rene, sinong kasama mo?

Witness: Si CCC po.

Court: Dalawa lang kayo sa kwarto pangatlo si kuya Rene?  
Witness: Opo.



**CCC's TSN dated July 21, 2010, p. 4**

Q5: Konti lang. So, kung maaalala mo mabibilang mo ba sa daliri yung mga tao na nanduon nung mga panahon na yun? Lilinawin ko lang, ang tinatanong ko yung mismong tinitirhan ni Kuya Rene. Ilan tao kayo na nanduon nung mga panahon na yun nung kasama niyo kamo si Kuya Rene?

A: Tatlo lang po.

Q6: Sino-sino yung tatlong tao na yun?

A: Si Kuya Rene po tsaka ako, tsaka po si BBB.

Q7: Hindi niyo kasama si AAA?

A: Wala po siya nuon eh.

Q8: Ah wala siya nuon. Wala siya nun nuong time na yun?

A: Opo sa iba pong bahay yun.

**Questions from the court to CCC, TSN dated July 21, 2010, p. 11-14**

The Court: So, may katanungan ang korte. Sino yun naunang na-rape?

Witness: Si BBB po.

The Court: Ah si BBB. Pagkatapos, nanduon ka sa kuwarto kung saan na-rape si BBB?

Witness: Opo.

The Court: Pagkatapos sinong sumunod?

Witness: Ako po.

The Court: Pagkatapos ka, sinong sumunod?

Witness: Si AAA po.

x x x x

The Court: So, approximately, 5 x 5. Nung na-rape itong [si] BBB, ikaw na ngayon ang sumunod. Saan nagpunta si BBB pagkatapos niyang na-rape?

Witness: Nanunuod pa rin po ng tv pagkatapos.

The Court: So, pagkatapos mo, si AAA naman ang sumunod?

Witness: Kasi po wala po siya duon eh nandun po siya sa may kabilang bahay.

C. Interpreter: Sinong siya?

Witness: Si AAA po.

The Court: So, dalawa lang sila, CCC at saka itong si BBB.

With AAA's non-presentation in court and the uncertainty of BBB and CCC's testimonies on AAA's presence during the incident, Baya's guilt was not established beyond reasonable doubt. The Court sustains the CA's ruling of acquittal on acts of lasciviousness against AAA.

## II.

The Court observed that the Information for Criminal Case No. 07-285 charged Baya of rape against BBB in relation to RA 7610. The Information did not include Article 266-A of the RPC, as amended by Republic Act 8353 (RA 8353) or the Anti-rape Law.

Still, Section 5(b), Article III of RA 7610 states that if the victim is below 12 years old, the offender shall be prosecuted under the RPC.

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.

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That **when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case 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; (Emphasis supplied)

The provision above referred to the old article on rape and acts of lasciviousness of the RPC, because RA 7610 was approved on June 17, 1992, prior to the enactment of RA 8353 on September 30, 1997. RA 8353 repealed Article 335 of the RPC, and formed new provisions as found in Articles 266-A to 266-D under Crimes against Persons. With this legal development, Section 5(b), Article III of RA 7610 should be amended to replace Article 335 with Article 266-A of the RPC. Thus, even if the Information did not include the relevant provision of the RPC, Baya was still prosecuted and convicted under the RPC because RA 7610 mandated it.

Furthermore, in *People v. Ejercito*,<sup>38</sup> the Court explained that RA 8353, amending the RPC, should be uniformly applied in rape cases against minors.

Between Article 266-A of the RPC, as amended by RA 8353, xxx and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more

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<sup>38</sup> *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

special in nature, regardless of the time of enactment, should prevail. In *Teves v. Sandiganbayan*:

It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute.** Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other.** (Emphases in the original)

After much deliberation, **the Court herein observes that RA 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of RA 7610 which, applying *Quimvel's* characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.** (Emphasis supplied)

The pronouncement above was reiterated in the more recent case of *People v. Tulagan*.<sup>39</sup> After review of the records in Criminal Case No. 07-285 for rape against BBB, the prosecution's evidence established the elements under Article 266-A of the RPC, as amended by RA 8353.

Article 266-A states that 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
  - 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. (Emphasis supplied.)

The circumstance applicable in this case is Par. (d) considering that BBB was nine years old at the time of the incident as proven by her birth certificate. The fact of carnal knowledge was established through BBB and CCC's positive identification of Baya as their abuser. BBB testified he removed her shorts and panty, positioned himself on top of her, and inserted his penis into her vagina. BBB's Initial Medico-Legal Report showed "clear

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<sup>39</sup> *People v. Tulagan* G.R. No. 227363, March 12, 2019.

evidence of blunt force or penetrating trauma.” With the prosecution sufficiently establishing all the elements of rape applicable in this case, Baya’s guilt was proved beyond reasonable doubt. Therefore, the Court sustains the CA’s conviction on rape.

### III.

In Criminal Case No.07-287 for acts of lasciviousness against CCC, Baya was charged of violating Article 336 of the RPC, in relation to Section 5(b), Article III of the RA 7610.

In *People v. Ladra*,<sup>40</sup> the Court held that “before an accused can be held criminally liable for lascivious conduct under Section 5(b) of RA 7610, the requisites of the crime of [a]cts of [l]asciviousness as penalized under Article 336 of the RPC x x x must be met.”

Article 336 of the RPC states that acts of lasciviousness is committed by:<sup>41</sup>

1. Anyone who commits any act of lasciviousness or lewdness;
2. The offended party is another person of either sex;
3. The act/s 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 twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present; (Emphasis supplied)

On the other hand, Section 5(b), Article III of RA 7610 provides that:

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:

x x x x

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as**

<sup>40</sup> *People v. Ladra*, G.R. No. 221443, July 17, 2017.

<sup>41</sup> *Id.*

**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; (Emphasis supplied)

The elements of acts of lasciviousness under Section 5(b) of RA 7610 are:<sup>42</sup>

- (1) the accused commits the act of sexual intercourse or lascivious conduct;
- (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
- (3) that the child, whether male or female, is below 18 years of age.

Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases or the IRR of RA 7610 defines lascivious conduct as:

h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person

Here, CCC testified that Baya raised her shorts and pressed his penis into her vagina. However, since the shorts were tight, his penis did not penetrate her. BBB corroborated CCC's testimonies. Clearly, the act complained of constitutes as lascivious conduct under the IRR of RA 7610.

The element of minority is proved by CCC's birth certificate, which showed that she was nine years old on September 26, 2006, having been born on May 16, 1997. The prosecution sufficiently established all the elements of acts of lasciviousness under the RPC and RA 7610, which proved Baya's guilt beyond reasonable doubt. Therefore, the Court sustains the CA's conviction on acts of lasciviousness.

#### IV. Penalties

As to the penalties in Criminal Case No. 07-285 for rape against BBB, the Court affirms with modification the CA's decision. In accordance with the Court's ruling in *People v. Jugueta*,<sup>43</sup> the exemplary damages is increased to ₱75,000.00.

<sup>42</sup> *People v. Ladra*, G.R. No. 221443, July 17, 2017.

<sup>43</sup> *People v. Jugueta*, 783 Phil. 806 (2016).

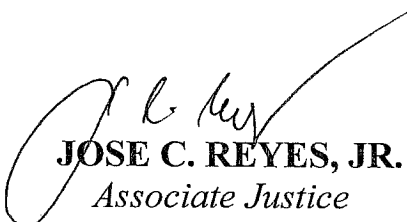
In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the Court modifies the penalty to *reclusion temporal* in its medium period as stated in Section 5(b) of Article III of RA 7610 and as discussed in *People v. Tulagan*.<sup>44</sup>

We also modify the award of damages as follows: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages in accordance with *Tulagan* case.

**WHEREFORE**, premises considered, the July 18, 2017 Court of Appeals Decision in CA-G.R. CR-HC No. 08131 is **AFFIRMED WITH MODIFICATION**:

1. In Criminal Case No. 06-884 for acts of lasciviousness against AAA, the accused Marino Baya y Ybiososa is **ACQUITTED** for failure to prove his guilt beyond reasonable doubt.
2. In Criminal Case Nos. 07-281, 07-282, 07-283, 07-284, and 07-288 are **REMANDED** to the court of origin for arraignment of the accused.
3. In Criminal Case No. 07-285 for rape against BBB, the Court finds Baya **GUILTY** beyond reasonable doubt and **IMPOSES** the penalty of *reclusion perpetua* and **ORDERS** him to pay BBB the ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all subject to 6% interest from the finality of this Decision until fully paid.
4. In Criminal Case No. 07-287 for acts of lasciviousness against CCC, the Court finds Baya **GUILTY** beyond reasonable doubt and **IMPOSES** the penalty of *reclusion temporal* in its medium period and **ORDERS** him to pay CCC ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all subject to 6% interest from the finality of this Decision until fully paid.

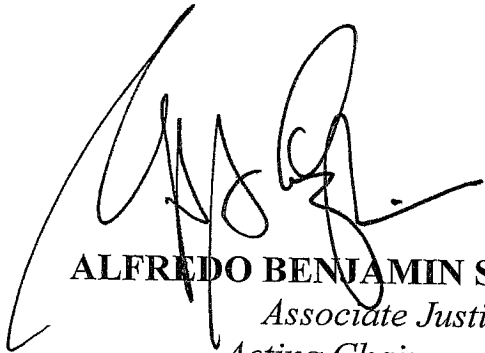
**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
Associate Justice

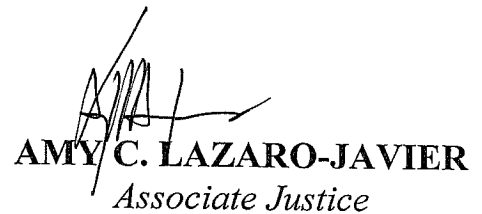
<sup>44</sup> *People v. Tulagan* G.R. No. 227363, March 12, 2019.

**WE CONCUR:**

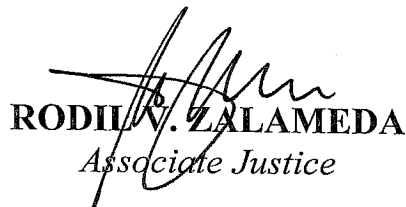
(On Official Leave)  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Acting Chairperson*



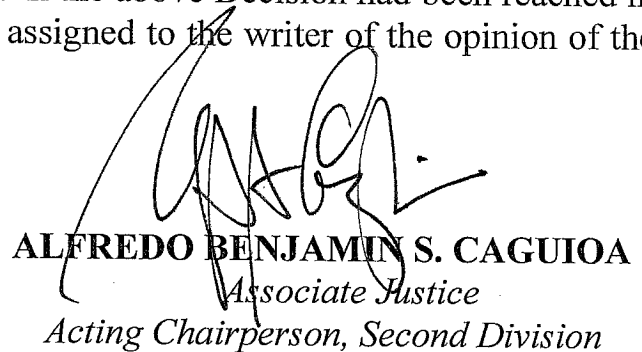
**AMY C. LAZARO-JAVIER**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*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.

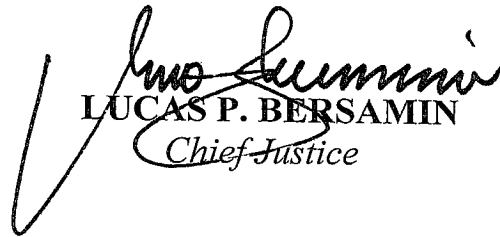


**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*Acting Chairperson, Second Division*

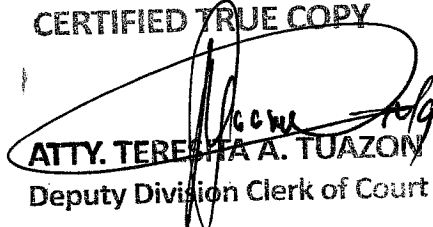
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**CERTIFICATION**

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

  
LUCAS P. BERSAMIN  
*Chief Justice*

CERTIFIED TRUE COPY

  
ATTY. TERESITA A. TUAZON  
Deputy Division Clerk of Court

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