



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, G.R. No. 230222  
*Plaintiff-Appellee,*

Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
 HERNANDO,  
 INTING,  
 DELOS SANTOS,  
 GAERLAN,\*\* JJ.

- versus -

VVV,\*  
*Accused-Appellant.*

Promulgated:

22 JUN 2020

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DECISION

INTING, J.:

Assailed in this ordinary appeal is the Decision<sup>1</sup> dated August 4, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 37242 affirming

\* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and For Other Purposes;" RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

\*\* Designated as additional member as per Special Order No. 2780 dated May 11, 2020; on leave.

<sup>1</sup> *Rollo*, pp. 2-15; penned by Associate Justice Rosmari D. Carandang (now a member of the Court) with Associate Justices Mario V. Lopez (now a member of the Court) and Myra V. Garcia-Fernandez, concurring.

with modification the Judgment<sup>2</sup> dated September 26, 2014 of Branch 18, Regional Trial Court (RTC), [REDACTED] Isabela in Criminal Case No. 5412. In the RTC Judgment, VVV (accused-appellant) was found guilty beyond reasonable doubt of Rape through sexual assault under paragraph 2, Article 266-A of the Revised Penal Code (RPC), as amended. In the assailed CA Decision, accused-appellant's conviction under paragraph 2, Article 266-A of the RPC was upheld; however, he was additionally found guilty of Rape through carnal knowledge under paragraph 1(a) of the same Article.

### *The Antecedents*

In an Information<sup>3</sup> dated June 15, 2010, accused-appellant was charged with Rape as defined and penalized under Article 266-A of the RPC, as amended. The accusatory portion of the Information reads:

That on or about the 10<sup>th</sup> day of June, 2010, in the municipality of [REDACTED], province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused with lewd designs, and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with his own daughter [AAA], who is a minor of 15 years old, by then and there inserting his finger in her private parts, against her will and consent.

With the aggravating circumstances that the [victim] is a minor below 18 years old and that the accused is the father of the victim.

CONTRARY TO LAW.<sup>4</sup>

On arraignment, accused-appellant pleaded not guilty.<sup>5</sup> Pre-trial and trial on the merits ensued.

As established by the prosecution, on June 10, 2010, at around 9:00 p.m., AAA was attending the wake of her grandmother at the latter's house in [REDACTED] Isabela. AAA was with her

<sup>2</sup> CA rollo, pp. 37-52; penned by Presiding Judge Rodolfo B. Dizon

<sup>3</sup> Records, pp. 1-2.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> See Order dated July 5, 2010, *id.* at 15.

father, herein accused-appellant, and her other siblings. Thereat, accused-appellant suddenly told AAA to get inside the room and give him a massage. After AAA obliged, accused-appellant told her to lie down. He then started to mash her breast. After a while, he put his hands inside her shorts and touched her vagina. He then inserted his forefinger into her vagina and made a push and pull motion for about three minutes. Thereupon, he pulled her right hand and placed it in his penis for about five minutes. He told her not to tell anyone about what happened; otherwise, he would maul and kick her. Afterwards, he took off her shorts and underwear, laid on top of her, inserted his penis into her vagina, and made a push and pull motion. He stopped after about five minutes and told her to sleep. Throughout the molestation, he was holding a *balisong* (knife) in his left hand. He then left the room and proceeded to play *tong-its*.<sup>6</sup>

AAA also decided to go outside the room as she could not sleep. At around 4:00 a.m. of June 11, 2010, she decided to approach her aunt, BBB, who was then sitting near the coffin of her grandmother. She told BBB about the incident as well as all the other sexual abuses that accused-appellant committed against her since 2008. BBB proceeded to [REDACTED] Police Station and reported the incident. Thereafter, BBB, with AAA, went to [REDACTED] Hospital for a medico-legal examination.<sup>7</sup>

Dr. Mary Grace Bartolome-Agcaoili (Dr. Agcaoili) examined AAA and found that her hymen was “crescentric, tanner stage 4.” While finding that AAA’s private part had no bleeding, discharges, or lacerations in the hymen, Dr. Agcaoili did not exclude the possibility of sexual abuse.<sup>8</sup>

For his part, accused-appellant interposed denial. He testified that in the evening of June 10, 2010, he brought his children to the house of his in-laws to attend the wake of his mother-in-law. Thereat, he did not see where AAA and her siblings were as he became busy drinking and playing cards.<sup>9</sup>

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<sup>6</sup> *Rollo*, p. 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

<sup>9</sup> TSN, August 27, 2013, pp. 6-8.

Accused-appellant vehemently denied the charge of Rape against him and asserted that it was filed out of hatred. He stated that he once scolded AAA for having a drinking spree in another *barangay* and that there were times that she would not come home and sleep in their house.<sup>10</sup>

Accused-appellant also testified that he had quarrels with his wife regarding money matters, particularly on the fact that she would send money to his in-laws for the purchase of medicines, and that he had a disagreement with his in-laws when he disapproved of their wish to let his wife go to the United States of America (USA) in the hope that she would also be able to help her brothers to go abroad.<sup>11</sup> Moreover, accused-appellant stated that his in-laws did not speak to him after he refused to let his wife go to the USA.<sup>12</sup> He claimed that his in-laws, his wife, and his daughter conspired for him to be put in jail.<sup>13</sup>

On September 26, 2014, the RTC rendered its Judgment<sup>14</sup> finding accused-appellant guilty of sexual assault under paragraph 2, Article 266-A of the RPC. The RTC sentenced him to suffer the penalty of imprisonment of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum; and to indemnify AAA in the following amounts: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

Aggrieved, accused-appellant appealed to the CA.

Upon a reading of the Information, the CA observed that accused-appellant was charged with two offenses: (1) rape through sexual intercourse under paragraph 1(a), and (2) rape as an act of sexual assault under paragraph 2, both of Article 266-A of the RPC, as amended. The CA found that accused-appellant was charged with having carnal knowledge of AAA, his 15-year-old daughter, by means of force and intimidation; and, at the same time, he was charged with committing an act of sexual assault against AAA by inserting his finger into her private

<sup>10</sup> *Id.*

<sup>11</sup> TSN, December 16, 2013, pp. 15-18.

<sup>12</sup> *Id.* at 18.

<sup>13</sup> *Id.* at 19.

<sup>14</sup> CA rollo, pp. 37-52.

part.<sup>15</sup> The CA noted that the Information merely lacked the conjunctive word “and.”<sup>16</sup> Furthermore, the CA found that the prosecution was able to prove during trial the guilt of accused-appellant for the two charges of rape.

Thus, on August 4, 2016, the CA rendered the assailed Decision<sup>17</sup> affirming with modification the RTC Judgment, *viz.*:

WHEREFORE, premises considered, this Court AFFIRMS with MODIFICATION the Judgment dated September 26, 2014 of the Regional Trial Court (RTC) of Ilagan City, Isabela.

For rape through carnal knowledge/sexual assault under Art. 266-A paragraph 1 (a) of the Revised Penal Code (RPC), accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and to pay AAA the amount of P100,000 as civil indemnity, P100,000 as moral damages, and P100,000 as exemplary damages.

For rape through sexual assault under Art. 266-A, paragraph 2 of the Revised Penal Code (RPC), accused-appellant is sentenced to an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and to pay AAA the amount of P30,000 as civil indemnity, P30,000 as moral damages, and P30,000 as exemplary damages.

Accused-appellant is likewise ordered to pay interest on all damages at the legal rate of 6% per annum from the date of finality of this decision until full payment.

SO ORDERED.<sup>18</sup>

Hence, the present appeal. Per the Court’s Resolution<sup>19</sup> dated August 7, 2017, both parties manifested that they would no longer file a supplemental brief before the Court.

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<sup>15</sup> *Rollo*, p. 7

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2-15.

<sup>18</sup> *Id.* at 14-15.

<sup>19</sup> *Id.* at 33-34.

In his appellate brief before the CA, accused-appellant raised the following assignment of errors:

## I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF RAPE THROUGH SEXUAL ASSAULT, DESPITE THE UNRELIABILITY OF THE PROSECUTION WITNESSES' TESTIMONIES.

## II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THAT THE PHYSICAL EVIDENCE PROVES OTHERWISE.<sup>20</sup>

*The Court's Ruling*

The appeal lacks merit.

At the outset, the Court notes that the CA convicted accused-appellant for two counts of Rape, while only one Information was filed against him. Duplicity of offenses charged contravenes Section 13, Rule 110 of the Rules of Court (Rules) which states that “[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.”

From a reading of the Information<sup>21</sup> dated June 15, 2010, the Court agrees with the CA that accused-appellant was charged with two offenses—the act of having carnal knowledge of AAA constitutes one offense, while the act of inserting his finger into AAA’s private part constitutes another. Section 3(f),<sup>22</sup> Rule 117 of the Rules allows the

<sup>20</sup> CA rollo, p. 22.

<sup>21</sup> Records, pp. 1-2.

<sup>22</sup> Section 3, Rule 117 of the Rules of Court provides:

SEC. 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law.

x x x x

accused to move for the quashal of the information based on the ground of duplicity of the offenses charged. However, under Section 9,<sup>23</sup> Rule 117 of the Rules, accused-appellant is deemed to have waived any objection based on this ground due to his failure to assert it before he pleaded to the Information. Thus, the CA was correct in holding that accused-appellant can be convicted for the two offenses.

Article 266-A of the RPC, as amended by Republic Act No. (RA) 8353,<sup>24</sup> known as The Anti-Rape Law of 1997, provides:

ART. 266-A. *Rape, When And How Committed.* — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority;
- 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.

The Court upholds the CA's finding that accused-appellant is guilty of the two offenses charged in the Information. Thus, accused-appellant's conviction for Rape through carnal knowledge under paragraph 1(a), Article 266-A [in relation to Article 266-B]<sup>25</sup> of the RPC

<sup>23</sup> Section 9, Rule 117 of the Revised Rules of Criminal Procedure provides:

SEC. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

<sup>24</sup> Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, and For Other Purposes," approved on September 30, 1997.

<sup>25</sup> Article 266-B of the Revised Penal Code pertinently provides:

is affirmed. With respect to the finding of Rape through sexual assault under paragraph 2 of Article 266-A, however, there is a need to modify the nomenclature of the crime, its corresponding penalty, and the award of damages. This is in light of the fact that AAA was only 15 years old at the time of the incident.

In the landmark case of *People v. Tulagan (Tulagan)*,<sup>26</sup> the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, “the nomenclature of the crime should be ‘Lascivious Conduct under Section 5(b) of RA 7610’ with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the RPC.” The crime shall be called “Sexual Assault under paragraph 2, Article 266-A of the RPC” with the imposable penalty of *prision mayor* only when the victim of the sexual assault is 18 years old or above and not demented.<sup>27</sup>

Section 5(b), Article III of RA 7610,<sup>28</sup> otherwise known as the “Special Protection of Children against Abuse, Exploitation and Discrimination Act,” 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.

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

X X X X

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. *When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.*

X X X X

<sup>26</sup> G.R. No. 227363, March 12, 2019.

<sup>27</sup> *Id.*

<sup>28</sup> Entitled “An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and For Other Purposes,” approved on June 17, 1992.



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 of 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 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[.]

The following account reveals that accused-appellant is guilty both of Rape through carnal knowledge under paragraph 1(a), Article 266-A of the RPC and of Lascivious Conduct under Section 5(b), Article III of RA 7610:

Q Miss Witness, during the last time, you said that your father told you to enter the room because he wanted you to massage him, is that correct?

A Yes, sir.

Q And then, when you entered, you saw him sitting down and then he stood up and made you lie on the bed, is that correct?

A Yes, sir.

Q And you said that he started massaging your breast and after which, he placed his hand under your short pants and *took hold of your vagina*?

A Yes, sir.

Q And after he placed his hand under your shorts and took hold of your vagina, what did he do next?

A He placed his hand on top of my vagina, sir.

Q After which, what did he do next?

A He inserted his finger into my vagina, sir.

Q *Do you know how many fingers did he insert in your vagina?*

A *Only one, sir.*

Q *And when his finger was inserted into your vagina, what did he do next?*

A *He inserted it in a push and pull motion.*

Q *How long did he do that?*

A *Three (3) minutes, sir.*

Q *After three (3) minutes, what did he do next?*

A *He made me hold his penis, sir.*

Q *How did he make you do that?*

A *He pulled my hand and placed it in his penis, sir.*

COURT:

Q *Which hand?*

A *My right hand, sir.*

Q *May I interrupt, regarding the insertion...so he made his right hand in that act of inserting then which part of the hand? which finger did he use?*

A *Forefinger, sir.*

PROS. ERESE:

Q *How long did he make you hold his penis?*

A *Five (5) minutes, sir.*

Q *By the way, Miss Witness, when he made you hold his penis, did he say anything?*

A *Yes, sir.*

