

FIRST DIVISION

G.R. No. 244609 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,  
*versus XXX,\* accused-appellant.*

Promulgated:

SEP 08 2020



X-----

CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* that the proper nomenclature of the crime for which the accused-appellant should be convicted is Rape under Article 266-A(1) in relation to 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.

In this case, the Court of Appeals (CA) ruled that the prosecution was able to establish the accused-appellant's criminal liability under Section 5(b), Article III of RA 7610.<sup>1</sup> It further held that at the time the accused-appellant had sexual intercourse with the victim on May 8, 2012, AAA was only a 13-year old minor. As such, the CA ruled that AAA is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse"<sup>2</sup> (EPSOSA). Thus, accused-appellant's act may be qualified as a violation of Section 5(b) of RA 7610.<sup>3</sup> However, the CA upheld the penalty of *reclusion perpetua* under Article 266-B of RA 8353 pursuant to the case of *People v. Ejercito*<sup>4</sup> wherein the Court held that the provisions of RA 8353 should prevail over Section 5(b) of RA 7610.<sup>5</sup>

While the CA correctly ruled that the impossible penalty against the accused-appellant is *reclusion perpetua* under Article 266-B(1) of RA 8353,

---

\* The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.

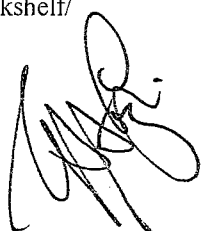
<sup>1</sup> *Rollo*, p. 14.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> G.R. No. 229861, July 2, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64370>>.

<sup>5</sup> *Rollo*, p. 15.



I agree with the *ponencia* that the accused-appellant should be convicted of the crime of Rape under **Article 266-A(1) in relation to Article 266-B of the RPC, as amended by RA 8353**, and not Rape in relation to Section 5(b), Article III of RA 7610 as the element of EPSOSA was not duly proven by the prosecution.

I reiterate and maintain my position in *People v. Tulagan*<sup>6</sup> that RA 7610 and the RPC, as amended by RA 8353, “have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors.”<sup>7</sup> Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is EPSOSA.

In other words, for an act to be considered under the purview of Section 5(b), RA 7610, “the following essential elements need to be proved: (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) the child whether male or female, is below 18 years of age.”<sup>8</sup> Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA – *a separate and distinct element* – must first be both alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

Specifically, in order for Section 5(b) to apply as compared to Article 336 of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate, or group — indulges in sexual intercourse or lascivious conduct.<sup>9</sup>

In this case, the Information only alleged that the victim was a 13-year old minor, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, I agree with the *ponencia* that the accused-appellant should be convicted of Rape under Article 266-A(1) in relation to Article 266-B of the RPC, not Section 5(b), Article III of RA 7610.

Accordingly, the penalty that ought to be imposed is *reclusion perpetua* and the accused-appellant should pay the victim ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱75,000.00 as civil

<sup>6</sup> J. Caguioa, Concurring and Dissenting Opinion in G.R. No. 227363, March 12, 2019.

<sup>7</sup> Id. at 33; emphasis and underscoring omitted.

<sup>8</sup> Id. at 21, citing *People v. Abello*, 601 Phil 373, 392 (2009).

<sup>9</sup> Id. at 23.

indemnity. The interest of 6% *per annum* should be imposed on all the awards for damages from the date of finality of the Decision until fully paid.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice