



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 252898

Present:

- versus -

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

WILLIAM DISIPULO y SURIBEN,
Accused-Appellant.

Promulgated:

AUG 31 2022

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DECISION

J. LOPEZ, J.:

This resolves an appeal¹ filed by accused-appellant William Disipulo y Suriben (*Disipulo*) assailing the Decision² dated August 23, 2019 and the Resolution³ dated November 19, 2019 of the Court of Appeals (CA) in CA-G.R. CR HC No. 09551, affirming with modification his conviction for one count of rape by sexual assault and one count of rape by sexual intercourse.

The Antecedents

The accusatory portion of the two consolidated Information⁴ against Disipulo respectively state:

Criminal Case No. 13-299318

¹ Rollo, p. 21.

² Penned by Associate Justice Ronaldo Roberto B. Martin with Associate Justices Fernanda Lampas Peralta and Danton Q. Bueser, concurring, id. at 3-20.

³ CA rollo, 183-184.

⁴ Records, pp. 2-5.

That on or about August 15, 2013, in the [REDACTED] [REDACTED],⁵ the said accused, by means of fraudulent machination, force, threats and intimidation, did then and there willfully, unlawfully and feloniously commit acts of sexual abuse upon the person of AAA252898,⁶ by then and there bringing her to the HALINA Hotel under the pretext of doing a VTR, kissing her, forcing her to suck his penis, kissing her breasts toward her neck, forcing her to hold his penis, kissing her on her breasts, masturbating while kissing her breasts, ejaculating and releasing his sperm upon her face, forcibly taking photographs of her, again kissing her on her breasts and inserting his finger into her vagina, forcing her to suck his penis while taking photographs of her, again forcing her to hold his penis and thereafter releasing his sperm upon her breasts, all against the will and without the consent of said AAA252898.

CONTRARY TO LAW.⁷

Criminal Case No. 13-299319

That on or about August 15, 2013, in the [REDACTED] [REDACTED] the said accused, by means of fraudulent machination, force, threats and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of AAA252898 by then and there bringing her to the HALINA Hotel under the pretext of doing a VTR, kissing her, inserting his penis into her vagina, kissing her breasts toward her neck, forcing her to hold his penis, suddenly pulling her to his top, and again inserting his penis into her vagina, against the will and without the consent of said AAA252898.

CONTRARY TO LAW.⁸

The evidence for the prosecution established that at around 9:00 p.m. on August 12, 2013, Disipulo went to [REDACTED], a restaurant owned by BBB252898, mother of AAA252898, to purchase load for his cellphone. [REDACTED] was located at the first floor of BBB252898's house. The helper of the store was discussing with BBB252898, AAA252898, and AAA252898's sister, CCC252898, how to go to the Department of Foreign Affairs (DFA). Disipulo approached them, introduced himself as "Struck," and gave directions on how to go to the DFA. He noticed AAA252898 and said, "*ang ganda naman ng anak mo pwede siyang maging modelo at TV*

⁵ Geographical location is blotted out pursuant to Supreme Court Amended Circular No. 83-2015 dated September 5, 2017 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.

⁶ 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 No. 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; Republic Act No. 9262, An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC., known as the "Rule on Violence against Women and their Children, effective November 15, 2002." (*People v. Dumadag*, 667 Phil.664, 669 [2011]).

⁷ Records, p. 2.

⁸ Id. at 4.

commercial model o kaya ay maging artista.”⁹ He then asked for AAA252898’s age. When she told him that she was 18, he allegedly uttered, “*sayang, ang hinahanap ko 17 pababa x x x pwede ka pa naman dayain.*”¹⁰ He mentioned his talents and the fees they were receiving, showing them videos on his cellphone of them practicing modeling. He also said that he knew one Tita Vecky, a purported talent manager of a popular actress.¹¹ He asked if AAA252898 had a swimwear and whether she could put it on so he can take pictures to send to talent agents.¹² He assured AAA252898 and BBB252898 that he had no bad intention because he was gay. When AAA252898 had already changed, he commented that she had dark underarms. He advised her to make her skin even-looking and recommended a massage to contour her bust. He also demonstrated some exercises to enlarge her bust while touching and lifting AAA252898’s breasts. He again assured them that since he was gay, there was no malice in what he was doing.¹³ AAA252898 eventually acceded to the request of Disipulo to massage her breasts upwards and her buttocks inside a room at the second floor of their house. CCC252898 accompanied her sister and Disipulo.¹⁴

Thereafter, on August 13, 2013, Disipulo returned to [REDACTED] at around 7:00 p.m. and ate there. He went to the second floor to massage AAA252898 again. He also taught AAA252898 what to tell Tita Vecky, including lying about her age.¹⁵

On August 14, 2013, AAA252898 and CCC252898 talked with Disipulo through Skype about famous celebrities and models.¹⁶ He asked AAA252898 to meet him at LRT [REDACTED] Station the following day at around 9:00 a.m. to prepare for an audition and to do a video tape recording (VTR).¹⁷

The next day, at around 9:00 a.m., AAA252898 met Disipulo at LRT [REDACTED] station and he told her that they will be going to Halina Hotel with several other artists. AAA252898 agreed because he assured her that he was gay and that there was no malice involved. They first ate at a *carinderia* before proceeding to Halina Hotel.¹⁸ Once inside the room, he undressed himself and took a shower. AAA252898 averred that he suddenly grabbed her, pushed her, and kissed her on the lips. AAA252898 claimed that she resisted and asked, “*akala ko ba magpapractice lang at hihilutin mo lang ako.*” However, Disipulo threatened to hurt her.¹⁹ When he pushed her to the

⁹ TSN, October 11, 2013, pp. 8-10.

¹⁰ TSN, December 10, 2013, p. 43

¹¹ Id. at 43-46.

¹² Id. at 47-48.

¹³ TSN, October 11, 2013, pp. 13-18.

¹⁴ Id. at 18-23.

¹⁵ Id. at 24.

¹⁶ Id. at 27.

¹⁷ Records, p. 9.

¹⁸ TSN, January 21, 2014, pp. 27-30.

¹⁹ Id. at 31-35.

bed, she told him that she was having her menstrual period to deter him from molesting her. Instead, he pulled off her pants and underwear and inserted his penis into her vagina. He touched and kissed her breasts and told her to just enjoy what he was doing to her. When he was about to finish, he pulled away from her and ejaculated on her face, telling her that the sperm would make her face smoother.²⁰

After that, AAA252898 locked herself inside the restroom and washed herself. Disipulo kept knocking and was finally able to open the door with a key. When she was about to put her clothes on, he pulled off her underwear, pushed her back to the bed, and inserted his fingers into her vagina.²¹ He also made her insert his penis into her mouth and took a video of it.²² Once more, he made her insert his penis into her mouth until he ejaculated and took a video of it.²³ Then, she went to the restroom to wash herself, but he continued to take her video while she did, and then threatened to release the same if she told anyone about what happened.²⁴ After they both dressed, she went to school. However, she was not able to finish her class as she was disoriented and traumatized.²⁵ She went home but could not eat or sleep. She then told her mother her harrowing ordeal.²⁶

On August 16, 2013, AAA252898, CCC252898, and the latter's boyfriend went to the police station to report the incident. Since they did not know the whereabouts or the address of Disipulo, the police advised them to wait for his text message and pretend as if they have not reported the incident yet.²⁷ From the police station, they proceeded to Robinsons Place Ermita at around 5:00 p.m. where they received a text message from him. Using AAA252898's cellphone, CCC252898 invited him to their house and he agreed.²⁸ Upon arriving at their house, BBB252898 and their helper flagged down a police mobile passing by and sought the assistance of SPO1 Manuel Castro, and PO1 George Sumacaton in arresting him. He was brought to the hospital for medical examination and later turned over to the police station.²⁹

AAA252898 claimed that after Disipulo was arrested, she received several text messages from an unknown number with the following messages: "*ingat ka sa biyaha mu po*" "*gud am sarap video u. Booking? Sarap u bj*" "*scandal iyottube.com/ Chk u l8r*" and "*nkita u na video? Sarap talaga.*"³⁰

²⁰ Id. at 39-41.

²¹ Id. at 44-45.

²² Id. at 45.

²³ Id. at 46.

²⁴ Id. at 42-48.

²⁵ Id. at 50.

²⁶ Id. at 49-52.

²⁷ Id. at 53.

²⁸ Id. at 55-56.

²⁹ TSN, September 10, 2013, pp. 8-13; Records, p. 12.

³⁰ Records, pp. 76-77; TSN, February 11, 2014, pp. 3-5.

Dr. Florida Taladtd confirmed that as the obstetrician on duty at the Obstetrics and Emergency Room of the Philippine General Hospital, she medically examined AAA252898 on August 17, 2013. She gave the following assessment:

ASSESSMENT: Disclosure of sexual abuse; non-specific gynecologic findings but does not rule out sexual assault; Please correlate with victim's and witness' testimony³¹

For his part, Disipulo denied the charges against him. He maintained that what transpired between him and AAA252898 was consensual as the latter asked him to teach her how to be more sexually attractive and how to please her boyfriend.³² He also insisted that he was gay and was not into women.³³ Disipulo claimed that AAA252898 filed a case against him because she was scared that he would release the video he purportedly took during the incident and because he did not accede to the demand of her boyfriend, and her sister's boyfriend to compensate her ₱250,000.00.³⁴

On June 3, 2017, the Regional Trial Court (RTC), Branch 25 of Manila rendered its Decision,³⁵ the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the prosecution has sufficiently established the [guilt] of the accused beyond reasonable doubt, accused WILLIAM DISIPULO y SURIBEN, @ "Kuya William", @ "Struck" is found GUILTY of two (2) counts of the crime of Rape as charged, and ordered:

1. In Criminal Case No. 13-299218 for the crime of Rape under Article 266-A, paragraph 2 of Republic Act No. 8353, (sexual [assault]), accused is hereby sentenced to suffer an imprisonment ranging from four (4) years and two (2) months of *prision correccional* as minimum to Ten (10) years of *prision mayor* as maximum.
2. In Criminal Case No. 13-299219 for the crime of Rape under Article 266-A, paragraph 1 of Republic Act No. 8353, (sexual intercourse), accused is hereby sentenced to suffer an imprisonment of *Reclusion Perpetua*.
3. For the Rape by sexual assault, accused is hereby ordered to pay complainant [AAA252898] the amount of [₱]30,000.00 as civil indemnity, [₱]30,000.00 as moral damages and [₱]30,000.00 as exemplary damages.
4. For the Rape by Sexual Intercourse, accused is hereby ordered to pay complainant [AAA252898], the amount of [₱]50,000.00 as civil indemnity, [₱]50,000.00 as moral damages and [₱]30,000.00 as

³¹ Records, p. 13.

³² TSN, February 1, 2016, p. 12.

³³ TSN, September 2, 2015, p. 29.

³⁴ TSN, February 1, 2016, p. 57.

³⁵ Penned by Presiding Judge Marlina M. Manuel; records, pp. 374-396.

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exemplary damages.

5. No cost.

SO ORDERED.³⁶

In convicting Disipulo, the RTC held that the prosecution was able to prove beyond reasonable doubt the elements of the crimes of rape by sexual assault, and rape by sexual intercourse.³⁷ The RTC ruled that by means of fraudulent machination and deceit, he made AAA252898 and her family believe that he was a gay talent manager and had several talents doing commercials and tv shows.³⁸ The RTC did not believe the claim of Disipulo that their sexual encounter was consensual and that it was AAA252898 herself who brought him to Halina Hotel and even gave him a discount card.³⁹ Instead, the RTC believed in the clear, categorical, and straightforward testimonies of the prosecution witnesses. The RTC found that AAA252898 went voluntarily to Halina Hotel with Disipulo under the impression that he will shoot her VTR there similar to what he did with his other talents, and prepare her for audition.⁴⁰ However, upon entering the hotel room, he forcibly pushed her on the bed and went on top of her and inserted his penis. He put his semen on her face allegedly to smoothen her face. She was not able to resist due to fear and his built. After this, AAA252898 went to the bathroom but he took her back to the bed, inserted his fingers into her vagina, and made her insert his penis into her mouth. While doing this, he took her video through his cellphone for about 30 minutes. After he finished his bestial acts, he continued to take her video while washing herself in the bathroom and threatened to expose her videos if she reports what happened.⁴¹

In his Appellant's Brief,⁴² Disipulo maintained that the RTC failed to prove his guilt beyond reasonable doubt.⁴³ He argued that the RTC erred in convicting him of rape by means of fraudulent machination and through force, threat, or intimidation based on the same alleged act as these modes could not co-exist.⁴⁴ Lastly, he insisted that the RTC should have allowed the presentation of photos and videos of the incident to prove that his sexual encounter with AAA252898 was consensual.⁴⁵

On August 23, 2019, the CA rendered its Decision,⁴⁶ the dispositive portion of which reads:

³⁶ Id. at 396.
³⁷ Id. at 395.
³⁸ Id. at 393.
³⁹ Id. at 394.
⁴⁰ Id. at 393, 395.
⁴¹ Id. at 393-394.
⁴² CA *rollo*, pp. 25-58.
⁴³ Id. at 34-50.
⁴⁴ Id. at 50-51.
⁴⁵ Id. at 53-58.
⁴⁶ *Rollo*, pp. 3-20.

WHEREFORE, premises considered, the instant Appeal is DENIED and the 3 June 2017 Decision of the Regional Trial Court of Manila, Branch 25 in Criminal Case Nos. 13-299318-19 is AFFIRMED with MODIFICATION in that appellant is also ordered to pay the victim interest of 6% per *annum* on the civil indemnity and moral and exemplary damages reckoned from the finality of this Decision until full payment.

SO ORDERED.⁴⁷

In affirming the conviction of Disipulo, the CA was convinced that the prosecution sufficiently established the elements of rape punished under paragraphs 1 and 2, Article 266-A (1)(a) of the RPC.⁴⁸ The CA held that the absence of external signs of physical injuries does not negate rape.⁴⁹ The CA likewise found that the purported inconsistencies between AAA252898's testimony and her *Malaya at Kusang Loob na Salaysay (Salaysay)* are immaterial and gave more credence to her testimony during trial.⁵⁰ The CA added that the claim of the defense that AAA252898 was an individual of loose morals, even if it were true, did not mean that rape did not occur.⁵¹ The CA also held that the RTC correctly disallowed the presentation of the video coverage of the rape incident as it was not admissible in evidence pursuant to Republic Act (R.A.) No. 9995, otherwise known as the Anti-Photo and Video Voyeurism Act of 2009.⁵²

Lastly, the CA imposed legal interest at the rate of 6% on the monetary award from the date of finality of judgment until fully paid.⁵³

On November 19, 2019, the CA rendered a Resolution⁵⁴ denying the motion for reconsideration Disipulo filed for lack of merit.⁵⁵

Aggrieved, Disipulo filed a Notice of Appeal.⁵⁶ The parties were instructed to file their respective supplemental briefs.⁵⁷ However, Disipulo opted not to file his supplemental brief as he believes that he already exhaustively argued all matters pertinent to his defense.⁵⁸ For its part, the Office of the Solicitor General manifested that it will no longer file a supplemental brief.⁵⁹

⁴⁷ Id. at 20.
⁴⁸ Id. at 13-14.
⁴⁹ Id. at 15-16.
⁵⁰ Id. at 16-17.
⁵¹ Id. at 17.
⁵² Id. at 18-19.
⁵³ Id.
⁵⁴ CA rollo, pp. 183-184.
⁵⁵ Id. at 184.
⁵⁶ Rollo, p. 21.
⁵⁷ Id. at 27-28.
⁵⁸ Id. at 40.
⁵⁹ Id. at 31-32.

Issue

The issue in this case is whether accused-appellant is guilty of one count of rape by sexual intercourse under paragraph 1, Article 266-A and one count of rape by sexual assault under paragraph 2, Article 266-A of the RPC.

Our Ruling

The appeal is bereft of merit.

Article 266-A of the RPC, as amended by R.A. No. 8353, otherwise known as The Anti-Rape Law of 1997, provides:

ARTICLE 266-A. *Rape. When and How Committed.* — *Rape is committed*

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- 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 prosecution carries the burden of proving the elements of the crime of rape through sexual intercourse under paragraph 1, Article 266-A of the RPC, as amended, which include the following: (1) the accused had carnal knowledge of the victim; and (2) said act was accompanied (a) with the use of force, threat, or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.⁶⁰

Meanwhile, the elements of the crime of rape through sexual assault under paragraph 2, Article 266-A of the RPC, as amended by R.A. No. 8353,

⁶⁰ Section 2 of R. A. No. 8353 (1997).

that must be established beyond reasonable doubt are as follows: (1) the offender commits an act of sexual assault (a) by inserting his penis into another person's mouth or anal orifice, or (b) by inserting any instrument or object into the genital or anal orifice of another person; (2) the act of sexual assault is accomplished (a) by using force and intimidation; (b) when the woman is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority; or (d) when the woman is under 12 years of age or demented.⁶¹

In the present case, all the enumerated elements of the offenses charged against accused-appellant were proven beyond reasonable doubt. AAA252898 was able to narrate in detail her traumatic experience in the hands of accused-appellant who ravished and sexually molested her.

Accused-appellant does not deny that he had carnal knowledge of AAA252898. What is in dispute now is whether it was accompanied with the use of force, threat, or intimidation, and committed by fraudulent machination. Accused-appellant maintains that AAA252898 freely and voluntarily went to Halina Hotel with him to have sex with him.⁶² Further, accused-appellant seeks to convince this Court that force, threat, or intimidation, and fraudulent machination are mutually exclusive modes of committing rape through sexual intercourse and that they cannot co-exist.⁶³

Accused-appellant is mistaken. The existence of one of the four circumstances mentioned in paragraph 1, Article 266-A of the RPC, as amended, taken with the presence of the other elements of the offense, is sufficient to justify a conviction. Thus, when force, threat, or intimidation is employed by the offender, it is not necessary that the victim was deprived of reason or unconscious,⁶⁴ or that the offense was committed with fraudulent machination.

Here, the straightforward, consistent, and reliable testimony of AAA252898 belies accused-appellant's claim. As aptly determined by the RTC and CA, through deceit, accused-appellant induced AAA252898 and her family to believe that he is a gay talent manager assisting several talents in doing commercials and modelling stints to gain their trust. It is clear that AAA252898 voluntarily went to Halina Hotel with accused-appellant because she was under the impression that he will shoot her VTR and train her, similar to what he claimed to do for his other talents.⁶⁵ However, he abused her trust and took advantage of her gullibility to molest her.⁶⁶ Upon entering the hotel room, he forcibly pushed her on the bed and went on top

⁶¹ Id.

⁶² TSN, February 1, 2016, p. 12.

⁶³ CA *rollo*, pp. 50-51.

⁶⁴ See Guerrero, Antonio L., *Fundamentals of Criminal Law Review* (10th ed) (2008), p. 765.

⁶⁵ TSN, February 11, 2014, pp. 9-10, 13, 20, 22-25.

⁶⁶ Records, pp. 393, 395.

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of her and inserted his penis. He put his semen on her face allegedly to smoothen it. She was not able to resist due to fear and his built. After this, AAA252898 went to the bathroom to wash but he took her back to the bed, inserted his fingers into her vagina, and made her insert his penis into her mouth. While doing this, he took her video through his cellphone for about 30 minutes. After he finished his bestial acts, he continued to take her video while she was washing herself in the bathroom and threatened to expose her videos if she reported what happened.⁶⁷

This Court declared in *People v. Layoso*⁶⁸ that:

x x x. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.⁶⁹

In the present case, AAA252898's perceived lack of resistance should not be taken against her. Though she may have initially gone with accused-appellant voluntarily to Halina Hotel, this does not give rise to the conclusion that she consented to their sexual encounter. The initial deceit employed by accused-appellant through taking advantage of her gullibility was eventually accompanied with force, threat, and intimidation when he coerced her to submit to his lustful desire. AAA252898's failure to shout and resist accused-appellant's attack cannot be construed as willful submission. No consent can be drawn from her passiveness or inaction to justify the abuse she suffered in his hands, as revealed in the following exchange:

ACP POSO After he removed his pants, how did you react?
WITNESS He was taking a bath and I asked him, "ano po yan", then he suddenly grabbed me, pushed me and kissed me.

ACP POSO What part of your body was kissed by the accused?
WITNESS Lips ko po.

ACP POSO What did you do next after he kissed your lips?
WITNESS "**Nanlaban po ako,**" I asked him, "**akala ko ba magpapractice lang at hihilutin mo lang ako.**"

ACP POSO By the way, what was his reply?
WITNESS "**Tinakot niya ako**". **That he will hurt me if I will resist.**⁷⁰

x x x

⁶⁷ Id. at 393-394.

⁶⁸ 443 Phil. 827 (2003).

⁶⁹ Id. at 839.

⁷⁰ TSN, January 21, 2014, pp. 34-35.

WITNESS He took off my pants and my underwear then he inserted his penis inside me. **I wasn't able to resist because he is a big man. "Hindi na po ako nakapanlaban."**⁷¹ (Emphasis supplied)

x x x

The fear that accused-appellant's threats embedded in the mind of AAA252898 is evident in the following exchange:

x x x x

ACP POSO After he took that video, what happened next?

WITNESS He told me not to tell anyone because he has my video.

ACP POSO Okay, he has your video. And what else did he tell you?

WITNESS **That once I tell somebody, he will scatter my video.**⁷²
(Emphasis supplied)

x x x

The quoted exchange reveals that intimidation and threat were clearly present when accused-appellant molested AAA252898.

It is settled that hymenal injury has never been an element of rape, for an individual might still be raped without such resulting injury.⁷³ Here, the absence of any hymenal injury is not incompatible with AAA252898's accusation of sexual abuse against accused-appellant. After all, this Court highlighted in *People v. Orilla*⁷⁴ that:

The absence of fresh lacerations in Remilyn's hymen does not prove that appellant did not rape her. **A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape.** In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case. **The credible disclosure of a minor that the accused raped her is the most important proof of the sexual abuse.**⁷⁵ (Emphasis supplied, citations omitted)

The conduct of AAA252898 immediately after the harrowing incident on August 15, 2013 also supports her claim that what transpired between her and accused-appellant was against her will. Though she managed to go to her school after the incident, she narrated that she was not able to finish her

⁷¹ Id. at 39.

⁷² TSN, January 21, 2014, p. 48.

⁷³ *People v. Taguilid*, 685 Phil. 571, 580 (2012).

⁷⁴ 467 Phil. 253 (2004).

⁷⁵ Id. at 274.

class as she was traumatized and distressed.⁷⁶ When AAA252898 returned home, she could not eat and sleep so she told her mother about what happened.⁷⁷

Even if it were true that AAA252898 was liberated and open-minded,⁷⁸ accused-appellant's defense still cannot prosper. It does not disprove the commission of rape and such qualities do not give accused-appellant authority to commit sexual acts against AAA252898's will.

Accused-appellant's claim that he is gay and is no longer into girls⁷⁹ likewise deserves scant consideration. Even if he identifies himself as gay, his sexual orientation does not make it physically impossible to commit the acts complained against him. Noticeably, in his direct examination, he even admitted that he is still attracted to women.⁸⁰

It is also worthy to point out that the attempt of the defense to discredit the testimony of AAA252898 by portraying her as an individual of loose morals is irrelevant and does not deserve any consideration. Her alleged promiscuity and purported previous sexual relations, even if true, do not mean that rape was not committed on August 15, 2013. Section 6 of R.A. No. 8505, also known as the Rape Victim Assistance and Protection Act of 1998, states:

SECTION 6. *Rape shield.* – In prosecutions for rape, evidence of complainant's past sexual conduct, opinion thereof or his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.

To this Court's mind, the positive and categorical testimony of AAA252898 is consistent with the other pieces of evidence the prosecution presented to prove the abuse she suffered in the hands of accused-appellant. When a rape victim's testimony is straightforward and candid, unshaken by rigid cross-examination and unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit.

The purported inconsistencies between the *Salaysay* and the testimony of AAA252898 in open court that the defense highlighted during her cross-examination are not substantial enough to impair the veracity of the prosecution's evidence against accused-appellant. Her failure to mention in her *Salaysay* that accused-appellant claimed to be gay;⁸¹ that he pushed

⁷⁶ TSN, January 21, 2014, pp. 50-51.

⁷⁷ *Id.* at 52.

⁷⁸ TSN, September 2, 2015, pp. 22, 24-26.

⁷⁹ *Id.* at 29.

⁸⁰ TSN, February 1, 2016, p. 12; TSN, September 6, 2016, p. 9.

⁸¹ TSN, February 11, 2014, p. 9.

her;⁸² that he kissed her breasts a number of times;⁸³ and that he had carnal knowledge of her⁸⁴ do not diminish the credibility of her testimony. As correctly ruled by the CA, the noted discrepancies are not material to the successful prosecution of the case. More importantly, in *Kummer v. People*,⁸⁵ it was held that:

[A]ffidavits are usually abbreviated and inaccurate. Oftentimes, an affidavit is incomplete, resulting in its seeming contradiction with the declarant's testimony in court. Generally, the affiant is asked standard questions, coupled with ready suggestions intended to elicit answers, that later turn out not to be wholly descriptive of the series of events as the affiant knows them. Worse, the process of affidavit-taking may sometimes amount to putting words into the affiant's mouth, thus allowing the whole statement to be taken out of context.

The court is not unmindful of these on-the-ground realities. In fact, we have ruled that the discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since *ex parte* affidavits are generally incomplete. **As between the joint affidavit and the testimony given in open court, the latter prevails because affidavits taken ex-parte are generally considered to be inferior to the testimony given in court.**⁸⁶ (Emphasis supplied)

Hence, between the *Salaysay* of AAA252898 and her testimony, this Court accords greater weight to the latter.

Penalties

It has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.⁸⁷ “The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.”⁸⁸ Guided by the foregoing principle, this Court resolves the proper penalty to be imposed upon accused-appellant.

Here, it is worthy to note that the CA committed an error in convicting accused-appellant of only one count of rape by sexual assault in Criminal Case No. 13-299318. As a rule, a complaint or information must charge only one offense. Nevertheless, this rule has an exception — when the law

⁸² Id. at 27.

⁸³ Id. at 31-32.

⁸⁴ Id. at 32-33.

⁸⁵ 717 Phil. 670 (2013).

⁸⁶ Id. at 679.

⁸⁷ *Tacolod v. People*, G.R. No. 250671, October 7, 2020, citing *People v. Dahil*, 750 Phil. 212, 225 (2015).

⁸⁸ *People v. Comboy*, 782 Phil. 187, 196 (2016).

prescribes a single punishment for various offenses.⁸⁹ An objection must be timely interposed before trial through a motion to quash when there is duplicity of offenses charged in a single information and the failure to do so constitutes a waiver.⁹⁰ Section 3, Rule 120 of the Rules of Court states:

SECTION 3. *Judgment for two or more offenses.* — When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, **the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.** (Emphasis supplied, italics in the original)

The provision was explained in *People v. XXX*⁹¹ as follows:

The prohibition of filing an information with multiple offenses is predicated in the protection of the constitutional right of the accused to be properly informed of the nature and cause of the accusation. If two or more offenses are alleged in the information, the remedy of the accused is to file a motion to quash as provided in Section 3(f), Rule 117 of the 2000 Rules on Criminal Procedure. The failure to object to the information before the arraignment would result in a waiver to challenge the procedural infirmity. As in this case, the accused-appellant failed to file a motion to quash the Information. Thus, the CA correctly convicted him for Statutory Rape and Rape by sexual assault.

Further, the accused-appellant could also file a motion for bill of particulars, if he felt that the allegations in the information are vague, to enable him to properly plead for trial. Unfortunately, the accused-appellant did not avail of these procedural remedies. On the contrary, he actively participated in the trial. Hence, he is estopped to challenge the defective information.⁹²

In *People v. VVV*,⁹³ the accused therein was charged in an Information for having carnal knowledge of his own daughter, who was then “15 years of age, by then and there inserting his finger in her private parts against her will and consent.”⁹⁴ After trial, the RTC found the accused guilty of sexual assault under paragraph 2 of Article 266-A of the RPC. On appeal, the CA observed that the accused therein was charged with two offenses, rape by sexual intercourse and rape by sexual assault. While the Information lacked the conjunctive “and,” the CA found that the prosecution was able to prove the guilt of the accused for the two charges of rape. When the case reached this Court, the findings of the CA were affirmed insofar as the court found that the accused was guilty of two offenses. As the victim was 15 years old at the time of the incident, the accused therein was convicted of rape through

⁸⁹ Section 13, Rule 110 of the Rules of Court.

⁹⁰ *People v. Tabio*, 568 Phil. 144, 150 (2008); *People v. Chingh*, 661 Phil. 208, 220 (2011).

⁹¹ G.R. No. 240750, June 21, 2021.

⁹² Id.

⁹³ G.R. No. 230222, June 22, 2020.

⁹⁴ Id.

sexual intercourse and lascivious conduct under Section 5(b) of R.A. No. 7610.

In the same manner, as in the foregoing case, the Information filed herein against accused-appellant consists of several acts of sexual assault. In Criminal Case No. 13-299318, there are three acts alleged in the Information constituting rape by sexual assault. Accused-appellant made the victim insert his penis into her mouth in two instances and this act falls under the first form of sexual assault — “by inserting his penis into another person’s mouth or anal orifice.” He also inserted his finger into her vagina which falls under the second form of sexual assault — “by inserting any instrument or object into the genital or anal orifice of another person.”

To recall, in the case of *People v. Tulagan*,⁹⁵ this Court differentiated rape through sexual intercourse from rape through sexual assault as follows:

x x x. Committed by “inserting penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person” against the victim’s will, “sexual assault” has also been called “gender-free rape” or “object rape.” However, the term “rape by sexual assault” is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married.⁹⁶ (Citation omitted)

Indeed, there is a criminal law principle recognizing that the accused may only be convicted of one count of rape through sexual intercourse when the penile penetrations occurred during one continuing act of rape and the accused was motivated by a single criminal intent. Among the cases wherein this Court applied this principle are *People v. Aaron*,⁹⁷ *People v. Pinic*,⁹⁸ and *People v. Obrique*.⁹⁹ Noticeably, all these cases involve rape through sexual intercourse where the act repeated several times is penile penetration of the vagina. In contrast, in the present case, different acts constituting “sexual assault” under Article 266-A (2) of the RPC, as amended, were successively performed by accused-appellant. Considering the differences between the two felonies, the continuing crime principle that is primarily applied to rape through sexual intercourse cases involving multiple penile penetration cannot be squarely applied to the Information docketed as Criminal Case

⁹⁵ G.R. No. 227363, March 12, 2019.

⁹⁶ Id.

⁹⁷ 438 Phil. 296 (2002).

⁹⁸ 666 Phil. 619 (2011).

⁹⁹ 465 Phil. 221 (2004).

No. 13-299318 charging accused-appellant with rape through sexual assault. The peculiar circumstances attendant in the case at bar must be taken into consideration in order to arrive at a just and equitable decision.

It must be clarified that in ruling that the accused must be convicted of only one count of rape in *People v. Aaron*,¹⁰⁰ this Court found that the three penile “penetrations occurred during one continuing act of rape in which the appellant was obviously motivated by a single criminal intent” and that he merely intended “to change positions.”¹⁰¹ The same conclusion cannot be drawn in the present case. The circumstances obtained in the case at bar are significantly different from *Aaron* and the latter does not involve the continuing act of penile penetration.

In *People v. Agoncillo*,¹⁰² this Court acknowledged that it is possible to convict an offender for both rape by sexual assault and statutory rape committed in the same incident provided that these crimes are properly alleged in the informations.¹⁰³ In the information docketed as Criminal Case No. U-13565 in *Agoncillo*, accused-appellant was only convicted of statutory rape although sexual assault was proven because there was no separate allegation therein or separate information regarding the insertion of fingers into the vagina of the victim.¹⁰⁴ In the recent case of *People v. XXX*,¹⁰⁵ this Court affirmed the conviction of the accused for statutory rape and rape by sexual assault committed on the same occasion and based on a single information.¹⁰⁶

In the present case, the various distinct acts of sexual assault successively performed, though considered modes of committing sexual assault punished in paragraph (2), Article 266-A of the RPC, as amended, were all sufficiently alleged in a single information.

Moreover, it is worthy to note that in *People v. Lucena*,¹⁰⁷ this Court convicted accused-appellant of three counts of rape by sexual intercourse due to the fact that three penetrations occurred successively at an interval of approximately five minutes. In *Lucena*, this Court found that the accused was not motivated by a single criminal impulse.¹⁰⁸ Admittedly, *Lucena* is not on all fours with the present case primarily due to the fact that the former involves rape by sexual intercourse while the latter case involves both rape through sexual intercourse and through sexual assault. Nonetheless, the

¹⁰⁰ *Supra* note 97.

¹⁰¹ *Id.* 314.

¹⁰² 820 Phil. 1194 (2017).

¹⁰³ *Id.* at 1210, citing *People v. Chingh*, 661 Phil. 208, 220 (2011); See also *People v. Atizo*, G.R. No. 237978 (Resolution), December 10, 2018.

¹⁰⁴ *People v. Agoncillo*, *supra* note 102, at 1210.

¹⁰⁵ G.R. No. 240750, June 21, 2021

¹⁰⁶ *Id.*

¹⁰⁷ 728 Phil. 147, February 26, 2014.

¹⁰⁸ *Id.* at 159.

rationale of this Court in *Lucena* remains relevant in resolving the present case.

In the present case, the various acts of sexual assault identified by this Court may be considered distinct acts although proceeding from a similar criminal impulse. Though it cannot be determined from the records the exact duration between the successive commission of the acts constituting sexual assault alleged in the Information and mentioned by the victim in her testimony, it cannot be denied that separate acts were committed. This is revealed in the testimony of the victim quoted below:

ACP POSO And after you said “inihiga niya ulit ako” what did he do next?

WITNESS **He played with my vagina.**

ACP POSO Vagina. How did he play with your vagina?

WITNESS With his fingers.

ACP POSO With his fingers. After he played with your vagina, what happened next?

WITNESS After playing with my vagina, he let me suck his penis.

ACP POSO Did you suck his penis?

WITNESS Yes sir.

ACP POSO Why did you do that?

WITNESS I was already afraid.

ACP POSO Okay. After he let you suck his penis, what happened next?

WITNESS He took a camera.

ACP POSO What did he do with that camera?

WITNESS **While I was sucking his penis, he was taking a video.**

ACP POSO Video. And what kind of videocam or camera was he using at that time?

WITNESS Cellphone po.

ACP POSO Cellphone. For how long did he videod (sic) you?

WITNESS I think 30 minutes.

ACP POSO 30 minutes. After that, what happened next?

WITNESS **He asked me to suck his penis again and he did it for 10 times** and I was pleading for him to stop.¹⁰⁹ (Emphasis supplied)

Based from the testimony of AAA252898, the acts were committed successively, each with a separate criminal intent. While the acts all constitute sexual assault, accused-appellant has distinct and separate motivations for the bestial and wrongful acts he committed. These acts may

¹⁰⁹ TSN, January 21, 2014, pp. 44-46.

be compartmentalized into two parts: *first*, the insertion of his finger into the vagina of AAA252898; and *second*, *fellatio* or the act of forcing his penis into AAA252898's mouth.

Accused-appellant's criminal intent to sexually assault AAA252898 gave rise to a consummated felony the moment he inserted his finger into her vagina. After he had attained sexual gratification from this act, he proceeded to commit another act of rape through sexual assault, *fellatio*. When accused-appellant forced AAA252898 to insert his penis into her mouth and took effort in recording it, his criminal intent was to sexually assault the victim through *fellatio* and record the same. When accused-appellant made the victim insert his penis into her mouth for a second time, the criminal act and intent arose from the same criminal impulse and should be considered as a continuing crime of his first act of *fellatio*. There is a common motivation and a continuing criminal impulse when he made her repeat the act so he could get a clearer shot.¹¹⁰ This is supported by the *Salaysay* of the victim wherein she narrated that:

Pilit ko inaawat pero pilit niya itong pinapasubo sa akin habang kinukuhaan niya ako ng video. Pero sinabi ko muli na tama na pero pinaulit muli niya kasi Malabo daw yung video kahit ten times lang daw, kaya pinagawa niya na para matapos na daw po.¹¹¹

To stress, the peculiar circumstances present in this case warrant the conviction of accused-appellant for two separate offenses of rape by sexual assault. Both acts are punished under the same provision and have resulted to grievous bodily and mental harm on AAA252898. Nonetheless, the incidents of *fellatio* cannot be considered a continuation of the first act of sexual assault. A different sense of sexual gratification was attained and the damage to the victim was made even worse when he filmed her while she was forced to insert his penis into her mouth. Failing to appreciate accused-appellant's act of inserting his fingers into the vagina of AAA252898 and the *fellatio* sequentially committed — one of the other — would diminish the gravity of the harrowing ordeal AAA252898 suffered in the hands of accused-appellant.

The substantial differences in the modes of committing the acts constituting sexual assault, coupled with the distinct criminal motivations of accused-appellant in the performance of each act, leads this Court to conclude that the insertion of accused-appellant's fingers into AAA252898's vagina did not arise from the same criminal impulse as the two incidents of *fellatio*. As such, two counts of rape by sexual assault should be imposed on accused-appellant.

¹¹⁰ Records, p. 10.

¹¹¹ Id.

With regard to Criminal Case No. 13-299319, though two separate acts constituting rape by sexual intercourse were alleged in the Information, only one act of penile penetration was duly proven during the trial.¹¹² Hence, the CA properly convicted accused-appellant of one count of rape by sexual intercourse.

Pursuant to Article 266-B of the RPC, as amended, the crime of rape through sexual intercourse is punished with *reclusion perpetua*, and in certain circumstances, death. On the other hand, in the absence of any of the circumstances listed in Article 266-B of the RPC, as amended, the crime of rape through sexual assault is punishable only with *prision mayor*.¹¹³ Absent any modifying circumstance, the maximum term of the indeterminate penalty must be within the medium period of the prescribed penalty which

¹¹² TSN, February 11, 2014, p. 33.

¹¹³ ARTICLE 266-B. *Penalty*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

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;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or paramilitary units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

ranges from eight (8) years, and one (1) day to ten (10) years. The minimum term of the indeterminate sentence must be within the penalty next lower in degree than that prescribed or *prision correccional* equivalent to six (6) months, and one (1) day to six (6) years, in any of its period. Four (4) years and two (2) months of *prision correccional* as minimum to ten (10) years of *prision mayor* as maximum is within the range prescribed by law.

With regard to the monetary award granted in favor of AAA252898, it must be pointed out that the modifications discussed in the assailed CA decision and resolution were not reflected in the *fallo* or the dispositive portion. Therefore, this Court deems it prudent to clarify the monetary award to be imposed on accused-appellant.

In Criminal Case No. 13-299318, this Court awards civil indemnity, moral damages, and exemplary damages in the amount of ₱30,000.00 each for each count of rape by sexual assault to conform with the ruling in *People v. Tulagan*.¹¹⁴ Meanwhile, in Criminal Case No. 13-299319, this Court increases the award of civil indemnity, moral damages, and exemplary damages in to ₱75,000.00 each to conform with the ruling in *People v. Jugueta*.¹¹⁵

Lastly, in line with this Court's ruling in *Nacar v. Gallery Frames*,¹¹⁶ the imposition of legal interest at the rate of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until fully paid is sustained.

ACCORDINGLY, the instant appeal is **DENIED**. The Decision dated August 23, 2019 and Resolution dated November 19, 2019 of the Court of Appeals in CA-G.R. CR HC No. 09551 are hereby **MODIFIED**.

In Criminal Case No. 13-299318, accused-appellant William Disipulo y Suriben is **GUILTY** of two (2) counts of rape by sexual assault punished under paragraph 2, Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. For each count, he is meted the indeterminate sentence ranging from four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum, and is ordered to pay AAA252898 the following amounts:

1. ₱30,000.00 as civil indemnity;
2. ₱30,000.00 as moral damages; and
3. ₱30,000.00 as exemplary damages.

¹¹⁴ G.R. No. 227363, March 12, 2019.

¹¹⁵ 783 Phil. 806 (2016).

¹¹⁶ 716 Phil. 267 (2013).

In Criminal Case No. 13-299319, accused-appellant William Disipulo y Suriben is **GUILTY** of one count of rape by sexual intercourse punished under paragraph 1, Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. He is meted the penalty of *reclusion perpetua* and is ordered to pay AAA252898 the following amounts:

1. ₱75,000.00 as civil indemnity;
2. ₱75,000.00 as moral damages; and
3. ₱75,000.00 as exemplary damages.


Further, the entire monetary award adjudged herein shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

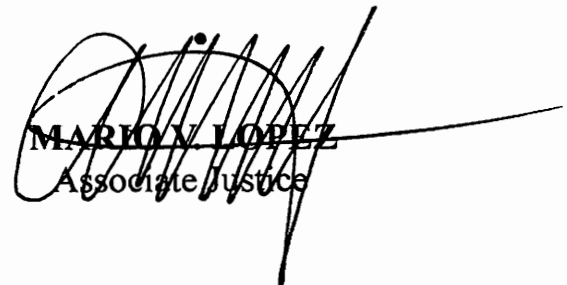
SO ORDERED.


JHOSEPY LOPEZ
 Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
 Senior Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice



MARIO V. LOPEZ
 Associate Justice


ANTONIO T. KHO, JR.
 Associate Justice



ATTESTATION

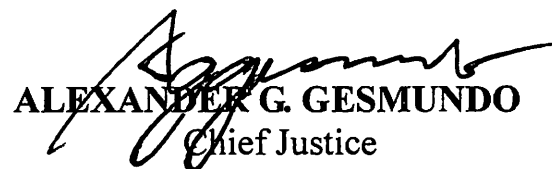
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the 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 opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice