



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

SECOND DIVISION

**ELMER PADUA y GARIN A.K.A.  
“EMING,”**

Petitioner,

-versus-

**PEOPLE OF THE PHILIPPINES,**  
Respondent.\*

**G.R. No. 268564**

Present:

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

Promulgated:

**JUN 10 2024**

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**DECISION**

**LOPEZ, J., J.:**

This Court resolves the Petition for Review on *Certiorari*<sup>1</sup> filed by Elmer Padua y Garin a.k.a. “Eming” (Elmer) seeking to reverse the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals (CA), which affirmed with modification the Judgment<sup>4</sup> of the Regional Trial Court (RTC), finding Elmer guilty of rape by sexual assault.

\* In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 7610, the names of the private offended parties, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

<sup>1</sup> *Rollo*, pp. 11–31.

<sup>2</sup> *Id.* at 32–45. The November 24, 2022 Decision in CA-G.R. CR No. 45269 was penned by Associate Justice Maria Elisa Sempio-Diy and concurred in by Associate Justices Angelene Mary W. Quimpo-Sale and Roberto P. Quiroz of the Special Seventeenth Division of the Court of Appeals, Manila.

<sup>3</sup> *Id.* at 49–51. The July 3, 2023 Resolution in CA-G.R. CR No. 45269 was penned by Associate Justice Maria Elisa Sempio-Diy and concurred in by Associate Justices Angelene Mary W. Quimpo-Sale and Roberto P. Quiroz of the Former Special Seventeenth Division of the Court of Appeals, Manila.

<sup>4</sup> *Records*, pp. 163–168. The June 28, 2020 Judgment in Criminal Case No. U-19730 was penned by Presiding Judge Joven M. Maramba of [REDACTED], Regional Trial Court, [REDACTED].

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**Facts**

The Information<sup>5</sup> charging Elmer with rape through sexual assault reads:

That sometime on June 4, 2014 in the morning, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, and taking advantage of the minority of [AAA], 3 years old, did then and there willfully, unlawfully and feloniously commit an act of sexual assault upon said [AAA] by removing her leggings and panty and then touch and insert his finger into her vagina against her will and consent, to her damage and prejudice.

CONTRARY to Article 266-A, par. 2 of the Revised Penal Code.<sup>6</sup>

On arraignment, Elmer pleaded not guilty to the charge.<sup>7</sup>

During pretrial, the prosecution and the defense stipulated on the following matters: (1) the identity of Elmer; (2) that Elmer and the victim, AAA, were neighbors in [REDACTED]; and (3) at the time of the incident, AAA, having been born on July 12, 2010, was only 3 years old.<sup>8</sup>

After pretrial was terminated, trial on the merits ensued.<sup>9</sup>

The prosecution presented AAA and her mother, BBB, to establish that AAA was born on July 12, 2010, as evidenced by her Certificate of Live Birth and thus, 3 years old at the time of the incident.<sup>10</sup> On June 4, 2014, at 9:45 a.m., AAA, together with BBB, CCC, and CCC's 3-year-old daughter, DDD, were walking home from school. When they reached CCC and DDD's residence, AAA asked permission from BBB to stay over at their house so she could play with DDD. Acceding to her daughter's request, BBB left AAA and went home by herself.<sup>11</sup>

AAA recalled that she went out of the house after she and DDD were done playing. It was outside the house where Elmer told her, "*halika*" (*come here*), so she would go with him. AAA followed Elmer to his house, which was located seven meters away from DDD's residence. Upon reaching his house, Elmer took off AAA's leggings and panties. After that, he inserted his

<sup>5</sup> Records, pp. 2-3.

<sup>6</sup> Records, p. 1.

<sup>7</sup> *Id.* at 22.

<sup>8</sup> *Id.* at 29.

<sup>9</sup> *Id.* at 163.

<sup>10</sup> *Id.* at 11, 164.

<sup>11</sup> Records, p. 164.

finger in her vagina. AAA screamed in pain, prompting Elmer to cover her mouth. Later, AAA heard her mother yelling her name. Hearing BBB looking for her daughter, Elmer then put back AAA's leggings. Then, she ran to her mother but did not tell her what Elmer did to her. It was only after two days when she told BBB about the incident.<sup>12</sup>

BBB narrated that when she reached her house, she noticed children running along the road but realized that her daughter was not among them. She then went to CCC's house to check if AAA was still there. CCC told her that she sent AAA home, as she and DDD were going to town. CCC's answer prompted BBB to call out AAA's name because she was nowhere in sight. After calling her a few more times, AAA suddenly emerged from the house of Elmer. AAA ran towards her mother, crying. BBB asked her what happened. AAA simply answered "*wala*" (*nothing*). However, when she changed AAA's clothes, she noticed that her leggings were crumpled. BBB removed her leggings and saw that AAA was not wearing her underwear anymore. Upon BBB's prodding, AAA told her mother, "*Nilabusan ako ni Eming*" (*Eming took off my clothes*). She also told her mother that Eming inserted his fingers into her vagina. Furious, BBB went to CCC's house, and brought AAA and CCC to the barangay hall to report the incident. The barangay chairperson immediately asked for police assistance.<sup>13</sup>

While at the [REDACTED] Police Station, AAA executed a Sworn Statement<sup>14</sup> from the questions propounded by Senior Police Officer I Celeste C. Cereno (SPO1 Cereno) in the vernacular dialect and translated into English. She was assisted by BBB, who also executed an Affidavit Complaint<sup>15</sup> regarding the incident. At around 2:00 pm of the same day, Senior Police Officer 4 Roberto Bambalan (SPO4 Bambalan) and Police Officer II Freddie Centino (PO2 Centino), both members of the Philippine National Police (PNP) assigned at [REDACTED], Pangasinan, arrested Elmer after being identified by AAA.<sup>16</sup>

The following day, AAA was brought to Region I Medical Center in [REDACTED], Pangasinan to undergo medical examination. Dr. Roa Joy De Guzman (Dr. De Guzman) examined AAA and issued a medico-legal certificate, containing the following findings:<sup>17</sup>

#### ANO-GENITAL EXAMINATIONS

External Genitalia: no signs of injury at the time of examination  
Urethra and Periurethral Area: no signs of injury at the time of examination

<sup>12</sup> *Id.* at 164; TSN, [AAA], February 5, 2018, pp. 3–7.

<sup>13</sup> *Id.* at 164; Exhibit "B", records, p. 7; TSN, [BBB], February 8, 2017, pp. 4–6.

<sup>14</sup> Exhibit "A", records, p. 6.

<sup>15</sup> Exhibit "B", records, p. 7.

<sup>16</sup> Records, p. 164.

<sup>17</sup> *Id.* at 165.

Perihymenal Areal Fossa Navicularis: no signs of injury at the time of examination  
 Hymen: + of erythematous and laceration at 3:00 o'clock position  
 Perineum: no sign of injury at the time of examination  
 Discharge: no discharge

IMPRESSSIONS: Medical legal evaluation showed signs of sexual abuse.<sup>18</sup>

The prosecution and defense stipulated on the existence and the due execution of the Certificate of Live Birth<sup>19</sup> of AAA,<sup>20</sup> the Joint Affidavit of Arrest<sup>21</sup> executed by SPO4 Bambalan and PO2 Centino,<sup>22</sup> and the Medico-Legal Report<sup>23</sup> of Dr. De Guzman.<sup>24</sup> As such, the prosecution decided to dispense with the testimonies of SPO4 Bambalan,<sup>25</sup> PO2 Centino,<sup>26</sup> SPO1 Cereno,<sup>27</sup> Dr. De Guzman,<sup>28</sup> and the record custodian of AAA's birth certificate.<sup>29</sup>

For the defense, Elmer and his mother, Carmelita Garin (Carmelita), were presented as witnesses.

Elmer testified that on June 4, 2014, he was alone in the field watering plants from 7:00 to 10:00 a.m. He lived together with other relatives, with his niece, CCC, in a compound with six houses. AAA lived 30 meters away from him. When he returned home from the field, he saw AAA playing with his niece, DDD, in front of the latter's house. From the time he arrived home at around 10:00 a.m. to 12:00 p.m., Elmer had been cooking rice and vegetable viands. His mother, Carmelita, was with him at that time. After, Elmer took a rest for about an hour. At around 1:00 p.m., police officers who were not armed with a warrant, arrived at his house to arrest him for unknown reasons. During this time, Carmelita already left with CCC to go to the market.<sup>30</sup>

On her part, Carmelita corroborated her son's testimony. She testified that she was selling vegetables at [REDACTED] Public Market early in the morning of June 4, 2014. As part of her daily routine, she went home to clean the house and wash clothes. At 12:00 noon, she went back to the market to sell vegetables. Due to Carmelita's "unhealthy" condition at the age of 73, it was likewise agreed upon by the prosecution and the defense to stipulate as

<sup>18</sup> Exhibit "G," *id.* at 12.

<sup>19</sup> Exhibit "F," *id.* at 11.

<sup>20</sup> *Id.* at 103.

<sup>21</sup> Exhibit "D," *id.* at 9.

<sup>22</sup> *Id.* at 112.

<sup>23</sup> Exhibit "G," *id.* at 12.

<sup>24</sup> *Id.* at 126.

<sup>25</sup> *Id.* at 112.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 123.

<sup>28</sup> *Id.* at 126.

<sup>29</sup> *Id.* at 103.

<sup>30</sup> TSN, Elmer Padua y Garin, June 10, 2019, pp. 3-8; Records, pp. 165, 167.

part of her direct examination that she was with Elmer in the morning of June 4, 2014 until 12:00 noon, and that when Carmelita was about to leave the house, she saw AAA near the barangay road, crying and coming from the house of CCC, together with other children.<sup>31</sup>

On June 28, 2020, the RTC rendered a Judgment<sup>32</sup> that disposed of the case as follows:

WHEREFORE, premises considered[,] the court finds accused Elmer Padua y Garin guilty beyond reasonable doubt of Rape by Sexual Assault under Art. 266-A par. 2 of the Revised Penal Code and imposes upon him the indeterminate penalty of Twelve (12) years, Ten (10) months and Twenty-One (21) days of *reclusion temporal* as minimum[,] to Fifteen (15) years, Six (6) months and Twenty (20) days of *reclusion temporal*, as maximum. Accused is further ordered to pay AAA or her successors-in-interest civil indemnity in the amount of Php. 30,000.00, and moral damages in the amount of [PHP] 30,000.00 both of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.<sup>33</sup>

The RTC gave credence to the straightforward testimony of AAA, who positively identified Elmer as the one who removed her leggings and panty, and inserted his finger inside her vagina. It also noted that AAA was sobbing while enduring the agony of being asked questions that brought her back to the memory of the dreadful experience. Despite only being 7 years of age at the time she took the witness stand, she was coherent and firm in her statements that point to the criminal liability of Elmer. Relatively, her version was also buttressed by the Medico-Legal Report, which found physical evidence of erythematous and hymenal laceration in her vagina.<sup>34</sup>

Further, the RTC held that it was not impossible for Elmer to commit the offense charged against him as he admitted being in the same vicinity as AAA at the time of the incident. Hence, between the consistent and categorical identification of AAA and the bare denial of Elmer, the former should prevail.<sup>35</sup> Based on the foregoing, the RTC convicted Elmer of rape by sexual assault under Article 266-A, paragraph 2 of the Revised Penal Code and imposed upon him the more severe penalty provided under Republic Act No. 7610.<sup>36</sup>

<sup>31</sup> TSN, Carmelita Garin, October 28, 2018, pp. 3–5.

<sup>32</sup> Records, pp. 163–168.

<sup>33</sup> *Id.* at 168.

<sup>34</sup> *Id.* at 165–166.

<sup>35</sup> *Id.* at 167.

<sup>36</sup> *Id.* at 168.

Aggrieved, Elmer appealed the RTC Judgment before the CA.<sup>37</sup> In its Decision, the CA denied his appeal and ruled as follows:

WHEREFORE, premises considered, the instant appeal is DENIED. The Judgment dated June 28, 2020, rendered by Branch 49, Regional Trial Court of [REDACTED] in Criminal Case No. U-19730, is AFFIRMED with MODIFICATION that accused-appellant ZZZ is ordered to pay civil indemnity, moral damages, and exemplary damages in the amount of [PHP]50,000.00 each, and that he is ordered to pay a fine in the amount of [PHP]15,000.00. The amount of damages and civil indemnity shall earn interest at the rate of six percent (6%) per annum reckoned from the date of finality of this Decision until such amounts shall have been fully paid

SO ORDERED.<sup>38</sup>

Finding the presence of the elements of rape through sexual assault, the CA explained that the testimonies of child-victims are given full weight and credit, more so in the instant case, where AAA's testimony was consistent with the medical findings to support a conviction for rape. Regarding Elmer's arguments that AAA presented varying versions of the incident in her Sworn Statement and in her testimony before open court, the RTC noted that the inconsistencies pertained only to extraneous matters which do not affect the material points of the crime charged. It also did not militate against her credibility. Thus, pursuant to *People v. Tulagan*,<sup>39</sup> the CA increased the civil indemnity and moral damages from PHP 30,000.00 to PHP 50,000.00 each, and added exemplary damages in the amount of PHP 50,000.00.<sup>40</sup>

With the denial of his appeal, Elmer filed a Motion for Reconsideration.<sup>41</sup> However, the said Motion was likewise denied by the CA in the assailed Resolution.<sup>42</sup>

The CA rulings prompted Elmer to file the instant Petition for Review on *Certiorari*.<sup>43</sup> In his Petition, Elmer contends that his conviction was due to the unreliable, inconsistent, and incredulous testimonies of the prosecution witnesses. In fact, AAA was not asked searching questions to show that she understood her obligation to tell the truth and the repercussion if she did not. Considering the significant time that had lapsed, AAA, who was only 3 years old during the alleged incident, could not have remembered at the age of seven what happened four years back. Citing *People v. De Jesus*,<sup>44</sup> Elmer raised the theory of infantile amnesia, which is the general inability of people to

<sup>37</sup> CA rollo, p. 16.

<sup>38</sup> *Id.* at 44-45.

<sup>39</sup> *People v. Tulagan*, 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

<sup>40</sup> Rollo, pp. 41-44.

<sup>41</sup> *Id.* at 97-104.

<sup>42</sup> *Id.* at 49-51.

<sup>43</sup> *Id.* at 11-31.

<sup>44</sup> 454 Phil. 781 (2003) [Per J. Austria-Martinez, Second Division].

remember specific events from the early years of their lives. It is therefore doubtful that her statements were borne out of her own recollection of events.<sup>45</sup>

Elmer likewise raised that AAA's Sworn Statement<sup>46</sup> was executed with the assistance of the police on the same day of the incident, while she testified in open court that the incident was only disclosed to her mother and then to the police two days after it happened.<sup>47</sup> Similar to AAA, BBB made varying statements in her Affidavit Complaint,<sup>48</sup> where she recalled seeing CCC and DDD about to board a tricycle which caused her to scream and run after them, while in her testimony, she told the trial court that she went to CCC's house to ask if her daughter was still there.<sup>49</sup> She also contradicted the statement in her Affidavit Complaint that her daughter ran after her from the house of Elmer, but explained before the trial court that she found AAA crying beside the house of CCC. According to Elmer, the inconsistencies showed that AAA was being coached. With serious doubts on the prosecution's witnesses, the CA should have given more weight to Elmer's defense and consequently ruled for his acquittal.<sup>50</sup>

### This Court's Ruling

The Petition is denied for being bereft of merit. Nonetheless, while the findings and conclusions of the CA and the RTC are correct, this Court finds it proper to modify the designation of the offense pursuant to *Tulagan*.<sup>51</sup> Instead of rape by sexual assault, petitioner is found guilty beyond reasonable doubt of the offense of Sexual Assault under Article 266-A(2) of the RPC, in relation to Article III, Section 5(b) of Republic Act No. 7610.

The elements of rape by sexual assault were enumerated in *BBB247234 v. People*<sup>52</sup> as follows:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is *committed* by any of the following means:
  - (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;
- (3) That the act of sexual assault is accomplished under any of the following circumstances:

<sup>45</sup> *Rollo*, pp. 18–20.

<sup>46</sup> Exhibit "A," Records, p. 6.

<sup>47</sup> TSN, [AAA], February 5, 2018, p. 7.

<sup>48</sup> Exhibit "B," Records, p. 7.

<sup>49</sup> TSN, [AAA], February 8, 2017, pp. 4–5.

<sup>50</sup> *Rollo*, pp. 18–25.

<sup>51</sup> 849 Phil. 197 (2019) [J. Peralta, *En Banc*].

<sup>52</sup> G.R. No. 247234, August 22, 2022 [Per J. J. Lopez, Second Division].

- (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.

In *Tulagan*,<sup>53</sup> this Court discussed that prior to the effectivity of Republic Act No. 8353 or The Anti-Rape Law of 1997, acts constituting sexual assault under Article 266-A, paragraph 2 of the RPC, were punished as acts of lasciviousness under Article 336 of the same law. With the development of the crime of sexual assault from a mere “crime against chastity” in the form of acts of lasciviousness to a “crime against persons” akin to rape, sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by Republic Act No. 8353. Therefore, acts constituting sexual assault committed against those under 12 years of age or demented should now be considered “[S]exual [A]ssault under Article 266-A, paragraph 2 of the RPC, in relation to Section 5(b) of Republic Act No. 7610” and no longer Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of Republic Act No. 7610.<sup>54</sup>

All the elements of rape by sexual assault under Article 266-A, paragraph 2 of the RPC had been established by the prosecution. The testimonies of the witnesses, together with the documentary evidence, collectively point to: (1) Elmer as the perpetrator of the sexual assault; (2) which was committed by inserting his finger into the vagina of AAA; and (3) at a time when AAA was under 12 years of age.

During trial, AAA clearly described the harrowing details of the sexual assault committed by Elmer when she was 3 years and 10 months. She positively identified Elmer as the person who inserted his finger inside her vagina after taking off her leggings and underwear:

Q Do you know who is this “Eming”?

A Yes, ma’am.

Q How do you know him?

A Because he called for me.

Q Where were you when he called you?

A I was in the house of Ninang [CCC].

<sup>53</sup> 849 Phil. 197 (2019) [J. Peralta, *En Banc*].

<sup>54</sup> *Id.* at 328–329.



Q When Eming called you, what did he say?  
A He said "*halika*."

Q And what did you say when he said "*halika*"?  
A I did not say anything, ma'am.

Q Did you follow him?  
A Yes, ma'am.

Q Where did you go along with Eming?  
A Inside their house, ma'am.

.....

Q Once inside, what happened next?  
A He held my vagina, ma'am.

.....

Q I am showing to you a picture of a girl, for example this is you, I am showing to you a picture of a man, for example this is the accused, Eming, will you please point what Eming did to you?

INTERPRETER:

Witness pointing to the right hand of a male picture and witness pointing to a vagina of the female picture.

.....

Q Did he insert his finger into your vagina?  
A Yes, ma'am.

Q What did you [feel] when he inserted his finger [in] your vagina?  
A It hurts, [ma'am].

Q Did you shout when you felt hurt?  
A Yes, [ma'am].

Q And what did Eming do when you shouted?  
A He covered my mouth, [ma'am].

Q When he inserted his finger [in] your vagina[,] were you wearing shorts or panty?  
A No, [ma'am].

Q What were you wearing on that day?  
A I was wearing leggings, [ma'am].

Q Were you wearing underwear when you went to the house of Eming?  
A Yes, [ma'am].

Q And what happened next when he covered your mouth?  
A No more, [ma'am].

Q Going back to your earlier testimony Madam Witness, you mean he removed your clothes before he inserted his fingers [in] your vagina?

A No, [ma'am]. He did not remove my clothes.

Q So what clothes did he remove?

A My panty and my leggings, [ma'am].<sup>55</sup>

Case law states that the testimonies of child rape victims are generally entitled to full faith and credence, considering that “when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.”<sup>56</sup> It is also settled that the credibility of a child survivor is augmented when she has no malevolent motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive,<sup>57</sup> as in this case.

AAA’s version of the events was likewise bolstered by the Medico-Legal Report,<sup>58</sup> which found the presence of erythematous and laceration at 3:00 position of her hymen. Indeed, the findings of Dr. De Guzman showed evident signs of trauma, which were consistent with AAA’s allegation of sexual abuse. To be sure, We have previously ruled that “when a rape victim’s testimony on the manner she was defiled is straightforward and candid, and is corroborated by the medical findings of the examining physician[,] [the testimony] is sufficient to support a conviction for rape.”<sup>59</sup>

With the evidence, this Court is unable to give credence to petitioner’s theory of infantile amnesia, which supposedly made AAA unable to remember events at the age of three.<sup>60</sup> In *People v. Magbitang*,<sup>61</sup> this Court clarified that our earlier ruling in *People v. De Jesus*<sup>62</sup> only referred to the childhood amnesia theory as a plausible explanation for the inconsistencies in the declarations of the victim because of her very tender years. As the burden still rests on the party objecting to the competency of the witness to establish the ground of incompetency, the accused must still present proof of the witness’ mental inability to perceive and make known such perceptions, to successfully interject the theory of infantile amnesia.<sup>63</sup> However, in the instant case, Elmer merely relied on his own allegations of inconsistencies in AAA’s testimony without submitting any evidence on her purported intellectual incapacity.

<sup>55</sup> TSN, [AAA], February 5, 2018, pp. 3–6.

<sup>56</sup> *People v. Apattad*, 671 Phil. 95, 118 (2011) [Per J. Velasco, Jr., Third Division].

<sup>57</sup> *People v. Bato*, 382 Phil. 558 (2000) [Per J. Pardo, First Division]

<sup>58</sup> Exhibit “G” Records, p. 12.

<sup>59</sup> *People v. XXX*, 839 Phil. 736 (2020) [Per J. Inting, Second Division].

<sup>60</sup> *Rollo*, pp. 18–20.

<sup>61</sup> G.R. No. 175592 (Notice), August 16, 2016 [*En Banc*].

<sup>62</sup> 454 Phil. 781 (2003) [Per J. Austria-Martinez, Second Division].

<sup>63</sup> See *People v. Magbitang*, G.R. No. 175592 (Notice), August 16, 2016 [*En Banc*].

Meanwhile, the inconsistencies in AAA and BBB's respective sworn statements and testimonies that were enumerated in the Petition deserve scant consideration.

The alleged disparity in the testimonies of AAA and BBB may be attributed to the fact that their sworn statements were made in June 2014, and they did not testify in Court until around three to four years later. On the other hand, courts are to "expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape."<sup>64</sup> We have also observed that "sworn statements are almost always incomplete and inaccurate and do not disclose the complete facts for want of inquiries or suggestions." Hence, as a matter of judicial experience, an affidavit, being taken *ex parte*, is generally considered to be inferior to a testimony given in open court as the latter is subject to the test of cross-examination.<sup>65</sup>

Nonetheless, We agree with the CA that the variance in the date when AAA reported the incident, and in the circumstances and condition upon which BBB found CCC, DDD, and AAA after the incident,<sup>66</sup> relate to extraneous matters that do not affect, much less negate the material points of the crime charged. "Such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal."<sup>67</sup>

In *People v. XXX*,<sup>68</sup> We held that the trial court stood in a much better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying. It bears stressing that trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of the witness while testifying. As such, their evaluation on the credibility of witnesses in rape cases are generally accorded great weight and respect, unless it is shown that the evaluation was reached arbitrarily, or that certain facts or circumstances of weight, substance, or value which, if properly considered, would alter the result of the case, were overlooked, misapprehended, or misappreciated by the court.<sup>69</sup>

Notably, petitioner's defense of denial fails against the evidence of the prosecution. His testimony stating that he had been cooking rice and vegetable viands during the time of the incident<sup>70</sup> was unsubstantiated by any proof. His

<sup>64</sup> *People v. Lagbo*, 780 Phil. 834, 844 (2016) [Per J. Peralta, Third Division].

<sup>65</sup> *See People v. Delos Reyes*, 697 Phil. 531, 550 (2012) [Per J. Mendoza, Third Division].

<sup>66</sup> *Rollo*, pp. 18–25.

<sup>67</sup> *People v. Lagbo*, 780 Phil. 834, 844 (2016) [Per J. Peralta, Third Division].

<sup>68</sup> G.R. No. 243191, June 21, 2021 [Per J. J. Lopez, Third Division].

<sup>69</sup> *Id.*

<sup>70</sup> TSN, Elmer Padua y Garin, June 10, 2019, pp. 3–8; Records, pp. 165, 167.

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plain denial, which is negative self-serving evidence, cannot stand against the positive identification and categorical testimony of a rape victim.<sup>71</sup>

In *Tulagan*,<sup>72</sup> We clarified that in instances where the lascivious conduct committed against a child victim is covered by the definition under Republic Act No. 7610, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, as in this case, the offender shall be held liable for violation of Section 5(b) of Republic Act No. 7610. In turn, a higher penalty is imposed, which is *reclusion temporal* in its medium period. It was likewise clarified that when the victim is below 12 years of age or is demented, the accused shall be prosecuted under Article 266-A, paragraph 2 of the RPC in relation to Section 5(b) of Republic Act No. 7610. This Court held:

*Third*, if the charge against the accused where the victim is 12 years old or below 18 is sexual assault under paragraph 2, Article 266-A of the RPC, then it may happen that the elements thereof are the same as that of lascivious conduct under Section 5(b) of [Republic Act] No. 7610, because the term “lascivious conduct” includes introduction of any object into the genitalia, anus or mouth of any person. In this regard, We held in *Dimakuta* that in instances where a “lascivious conduct” committed against a child is covered by [Republic Act] No. 7610 and the act is likewise covered by sexual assault under paragraph 2, Article 266-A of the RPC [punishable by *prision mayor*], the offender should be held liable for violation of Section 5(b) of [Republic Act] No. 7610 [punishable by *reclusion temporal medium*], consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. But when the offended party is below 12 years of age or is demented, the accused should be prosecuted and penalized under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of [Republic Act] No. 7610, because the crime of sexual assault is considered statutory, whereby the evidence of force or intimidation is immaterial.<sup>73</sup> (Citations omitted)

In the recent ruling of this Court in *People v. ABC260708*,<sup>74</sup> We underscored the fundamental rule in criminal law that “aggravating circumstances cannot be appreciated more than once since it will be prejudicial to the accused.” Hence, “a circumstance [that] is used to qualify the crim[e] could no longer be considered anew as an aggravating circumstance. Also, when one circumstance absorbed another, only the former will be appreciated.”<sup>75</sup> Since Section 5(b) of Republic Act No. 7610 makes minority inherent in the crime of sexual assault committed against a child below 12 years of age, the aggravating circumstance that the victim falls

<sup>71</sup> See *People v. Rabago*, 448 Phil. 539, 551 (2003) [*Per Curiam, En Banc*].

<sup>72</sup> 849 Phil. 197 (2019) [*Per J. Peralta, En Banc*].

<sup>73</sup> *Id.*

<sup>74</sup> See *People v. ABC260708*, G.R. No. 260708, January 23, 2024 [*Per J. M. Lopez, En Banc*].

<sup>75</sup> *Id.*

below 7 years for rape by sexual assault under Article 266-B of the RPC, which would raise the imposable penalty from *prision mayor* to *reclusion temporal* under Republic Act No. 8353, is no longer deemed a qualifying aggravating circumstance. The age of below 7 years neither changes the nature of the crime of rape by sexual assault, nor increases the penalty provided under Section 5(b) of Republic Act No. 7610, i.e., *reclusion temporal* in its medium period. Therefore, We apply Section 5(b) of Republic Act No. 7610 in determining the penalty to be imposed against petitioner.

Applying the Indeterminate Sentence Law, the minimum term of the imposable penalty should be taken from *reclusion temporal* in its minimum period, which has the range of 12 years and one day to 14 years and eight months; while the maximum term of the imposable penalty should be taken from the medium period of the prescribed penalty, which has the range of 15 years, six months, and 20 days, to 16 years, five months, and nine days. Based on the foregoing, the penalty of imprisonment meted out by the CA and the RTC, i.e., 12 years, 10 months, and 21 days of *reclusion temporal*, as minimum, to 15 years, six months, and 20 days of *reclusion temporal*, as maximum, fall within the range prescribed by law.

Similarly, the imposition of the fine in the amount of PHP 15,000.00 against petitioner is upheld for being consistent with Section 31(f) of Republic Act No. 7610 and Our ruling in *Trocio v. People*.<sup>76</sup>

Lastly, the monetary awards of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages, which are all subject to 6% legal interest per annum from finality of judgment until full payment are in accordance with our ruling in *Tulagan*.<sup>77</sup>


**ACCORDINGLY**, this Court resolves to **DENY** the instant Petition. The November 24, 2022 Decision and July 3, 2023 Resolution of the Court of Appeals in CA-G.R. CR No. 45269 are **AFFIRMED** with **MODIFICATION**. Elmer Padua y Garin a.k.a. "Eming" is **GUILTY** beyond reasonable doubt of Sexual Assault under Article 266-A(2) of the Revised Penal Code, in relation to Article III, Section 5 (b) of Republic Act No. 7610. He is **SENTENCED** to suffer the indeterminate penalty of imprisonment of 12 years, 10 months, and 21 days of *reclusion temporal*, as minimum, to 15 years, six months and 20 days of *reclusion temporal*, as maximum and is **FINED** in the amount of PHP 15,000.00. He is also **ORDERED** to **PAY** AAA the amounts of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages. The monetary awards shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until full payment.

<sup>76</sup> G.R. No. 252791, August 23, 2022 [Per J. Inting, Third Division].

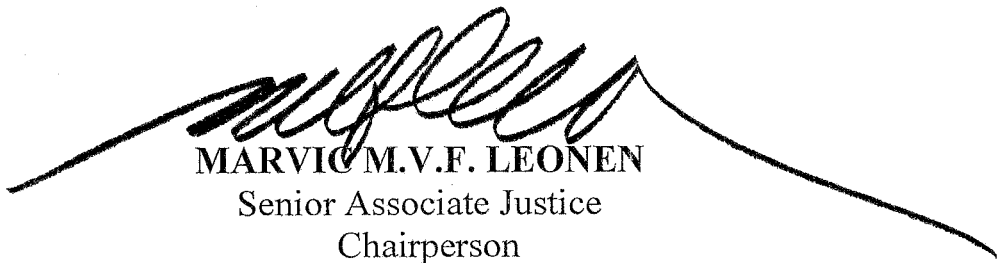
<sup>77</sup> *Id.*

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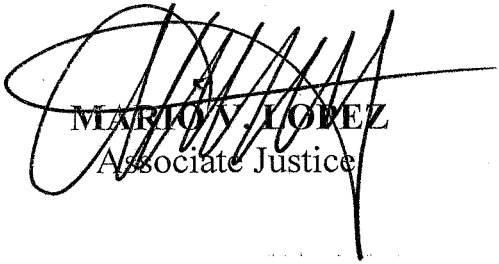
**SO ORDERED.**


  
**JHOSEP V. LOPEZ**  
Associate Justice

**WE CONCUR:**

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

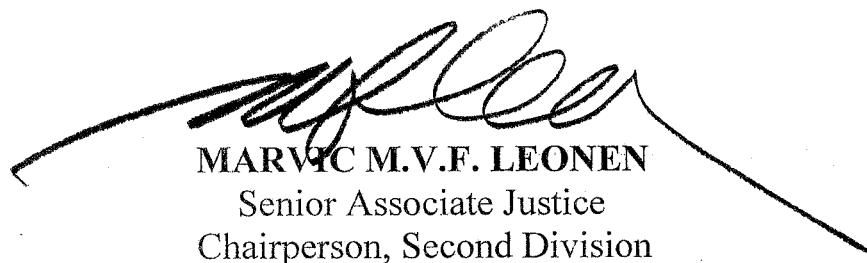
  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**MARION J. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

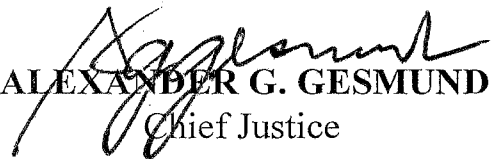
**ATTESTATION**

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

