Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROEL PENDOY y POSADAS,
Petitioner,

- *versus* -

HON. COURT OF APPEALS (18th DIVISION) - CEBU CITY; THE HON. DIONISIO CALIBO, JR., Presiding Judge of Branch 50, Regional Trial Court of Loay, Bohol; and THE PEOPLE OF THE PHILIPPINES,
Respondents

G.R. No. 228223

Present:

PERALTA, *J.*, *Chairperson*,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, *JJ.*

Promulgated:

June 10, 2019

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DECISION

PERALTA, *J.*:

Petitioner Roel Pendoy y Posadas (*Pendoy*) seeks to reverse and set aside the June 24, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB CR No. 02486 finding him guilty beyond reasonable doubt of the crimes of simple rape and rape by sexual assault committed against AAA[2] via a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin said appellate court from enforcing the assailed judgment.

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi concurring; *rollo*, pp. 137-164.

[2] Per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

The Facts

Pendoy was indicted for the crime of Rape in an Information[3] dated April 7, 2006, filed before the Regional Trial Court, [redacted], Bohol (*RTC*) on May 9, 2006 and docketed therein as Criminal Case No. 1089. The accusatory portion of the said Information states:

> That on or about the 24th day of January 2006, in the Municipality of [redacted], Province of [redacted], Philippines, acting as a Family Court, the above-named accused, with lewd design and with the use of force or intimidation, did then and there willfully, unlawfully and feloniously made one AAA, a sixteen (16)-year-old minor (born on December 11, 1989), lie down on the kitchen floor and remove her panty and insert his finger into her vagina and, thereafter, place himself on top of her and insert his erect penis into her vagina, thereby succeeding in having carnal knowledge with the said victim without her consent and against her will; to the damage and prejudice of the said offended party.
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> Acts committed contrary to the provisions of Article 266-A(1) of the Revised Penal Code, as amended.

Upon arraignment, Pendoy pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Evidence for the prosecution tends to show that AAA was the househelp of petitioner Pendoy, his wife and three children. On January 24, 2006 at about 6 o'clock in the evening, AAA was washing clothes near the kitchen inside the house of the Pendoys, wearing a black shirt and green maong shorts. The area was lighted with a yellow bulb. When AAA turned her back, she saw petitioner turn off the light. Petitioner then pulled her down, forced her and made her lie on the floor. He lowered her underwear and her shorts. He also removed her shirt and unhooked her brassiere. AAA pleaded for petitioner to desist from what he was doing by saying, "*Don't Kuya.*" Petitioner did not heed her plea and instead kissed her on the cheeks, her lips, neck, and her breast. Pendoy inserted his finger into her vagina. Thereafter, he mounted her and inserted his penis into her vagina.

AAA was crying throughout this ordeal and she was not able to move as petitioner was holding her hands down. She was afraid of petitioner since prior to this incident, she heard from a neighbor that petitioner had killed someone in the past. Petitioner withdrew his penis from AAA's vagina and something came out from his penis. Petitioner went out of the house after committing the dastardly act.

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[3] Records, pp. 20-21.

Later, AAA's textmate called her up and inquired from her why she was crying. She eventually told him what petitioner had done to her. She asked her textmate to call her sister and report to her what had happened. Her sister, who was residing in [redacted], then informed their cousin, a certain Wewart Buslon, who was the one who contacted the police in [redacted].

The police arrived at the house of the Pendoys and brought AAA to the police station of [redacted] where she executed an affidavit. She was then 16 years old as she was born on December 11, 1989. On the following day, AAA was examined by Dr. Nonaluz Pizarras (*Dr. Pizarras*) of the Governor Celestino Gallares Memorial Hospital. Dr. Pizarras found that there was a trauma or injury on the genitalia of AAA which may have been caused by probable sexual abuse.

Pendoy vehemently denied the charge against him and claimed that he was not in his house at the time the alleged crime was committed. The evidence for the defense shows that on January 24, 2006 at 8 o'clock in the morning, Pendoy, a tour guide, left his house and went to Panglao Island Nature Resort (*PINR*), in Panglao Island, Bohol to fetch the guests of his employer, the Baclayon Travel and Tours. He took the guests to some scenic spots in Bohol. While touring the guests, Pendoy met his tour guide colleague, Norlyn Palban, who reminded him of the meeting of their tour guide association at the house of Janice Talip in Lindaville Subdivision, Tagbilaran City around 7 o'clock in the evening of that day.

When the tour was over, Pendoy brought the guests back to PINR at almost 6 o'clock in the evening. After a brief talk with the guests and sharing his tip with the driver, Pendoy proceeded to Lindaville Subdivision for the meeting of the tour guide association. However, as he wanted to have the chain of his motorcycle fixed and the tire aligned, Pendoy decided to stop by at the house of a certain Pablito Maestrado. It took Pablito about 20 to 30 minutes to finish the repair job. He arrived at Lindaville Subdivision at past 7:00 in the evening. He left the meeting at 8:30 in the evening and proceeded to the house of his half-brother, Fernando Tero, at La Paz, Cortes, Bohol to join his wife and children there. He arrived at his half-brother's house at around 9 o'clock in evening and left at 10:30 in the evening with his wife, on board his motorcycle, while their children boarded the van of their neighbor.

They arrived at their house in San Isidro, Baclayon, Bohol at around 11 o'clock in the evening. Pendoy found it odd that AAA suddenly asked him the exact location of their house shortly after their arrival. He also noticed that AAA's bag was already packed up and placed under a table. Few minutes later, policemen arrived at his house together with AAA's uncle. Pendoy confronted AAA and asked her what the problem was, but AAA merely told him that she only wanted to go home. Confused about what was happening,

he asked the policemen why they had to fetch AAA, and they answered that AAA was reportedly raped by him at 6 o'clock in the evening of that day. This came as a surprise to him because he was not in his house the whole day. The police also told him that maybe AAA just wanted to go home.

The RTC Ruling

In its December 11, 2014 Decision,[4] the RTC convicted Pendoy of the crime of Qualified Seduction, the dispositive portion of which reads:

> Wherefore, premises considered, the court hereby finds accused guilty beyond reasonable doubt of qualified seduction. Accordingly, the accused is hereby sentenced to an indeterminate penalty of six months of *Arresto Mayor* to four years and two months of *Prision Correccional Medium*. He is further ordered to indemnify the victim the amount of P20,000 in moral damages and P20,000 in exemplary damages.
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> SO ORDERED.[5]

The RTC ratiocinated that while it is morally convinced that the penis of Pendoy at least touched the pudenda of AAA, there is, however, no showing that accused employed force, violence or intimidation in the commission of the sexual molestation and, hence, Pendoy cannot be held criminally liable for rape. The RTC, however, ruled that Pendoy is guilty of qualified seduction committed against AAA, who was then sixteen years old and under his custody at the time of the perpetration of the said crime.

Not in conformity, Pendoy appealed the December 11, 2014 RTC Decision before the CA.

In his Appellant's Brief, Pendoy argued that his conviction of the crime of qualified seduction was erroneous because the recital of facts in the Information does not constitute said crime. He claimed that he is entitled to an acquittal inasmuch as his conviction violated his constitutional right to due process, particularly his right to be informed of the nature and cause of the accusation against him.

The OSG, in the Appellee's Brief, concurred with Pendoy's observation and conceded that the RTC wrongly convicted him of qualified seduction. It, however, submitted that Pendoy should be held criminally liable for rape and for rape by sexual assault contending that the elements of these two crimes were sufficiently alleged in the Information and were duly proven during trial. According to the OSG, although these two offenses were charged in the same

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4 Penned by Judge Dionisio R. Calibo, Jr.; *rollo*, pp. 34-57.

5 *Id.* at 57. (Citation omitted)

criminal information that would have merited its quashal, the defect was never objected to by Pendoy before trial and, thus, he can be convicted of both offenses which were adequately alleged in the Information and established by the prosecution evidence.

The CA Ruling

On June 24, 2016, the CA rendered its assailed Decision setting aside the December 11, 2014 Decision of the RTC and convicted Pendoy of simple rape and rape by sexual assault, the *fallo* of which reads:

> WHEREFORE, the appeal is DENIED for reasons aforestated, the Decision of the Regional Trial Court, [redacted], in Criminal Case No. 1089, is hereby SET ASIDE. Roel Pendoy y Posadas is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*; and rape by sexual assault and is sentenced to suffer the penalty of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum. Accordingly, Roel Pendoy y Posadas is ordered to pay [AAA] civil indemnity of Fifty Thousand Pesos (P50,000.00) and moral damages of Fifty Thousand Pesos (P50,000.00) for the crime of simple rape and another civil indemnity of Thirty Thousand Pesos (P30,000.00) and moral damages of Thirty Thousand Pesos (P30,000.00) for the crime of rape by sexual assault, with six percent (6%) interest from finality of judgment until fully satisfied.
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> In view of the foregoing, We,
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> (1) Order the bonding company concerned to surrender Roel Pendoy y Posadas to the Regional Trial Court, [redacted], for the implementation of this decision, within ten (10) days from notice, and to report to this court the fact thereof, within ten (10) days from notice of such fact; and
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> (2) In case of non-compliance by the bonding company, DIRECT the Regional Trial Court, [redacted],
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> (i) to cancel the bond posted for the provisional liberty of Roel Pendoy y Posadas and to require the bonding company to explain its failure to surrender Roel Pendoy y Posadas;
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> (ii) to order the arrest of Roel Pendoy y Posadas for the immediate implementation of this decision; and
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> (iii) to report to this court the action taken hereon, within ten (10) days from notice.
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> SO ORDERED.[6]

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6 *Rollo*, pp. 163-164.

Citing *People v. Patosa*,[7] the CA held that since Pendoy is definitely charged with rape, he cannot be convicted of qualified seduction because the charge of rape does not include qualified seduction. After reviewing and examining the records of Criminal Case No. 1089, the CA declared that all the elements of simple rape and rape by sexual assault were duly alleged in the Information and were satisfactorily established by the prosecution through the testimony of AAA. The appellate court rejected Pendoy's twin defenses of denial and alibi holding that the same were not substantiated by clear and competent evidence, and not at all persuasive when pitted against the positive and convincing identification by AAA.

Pendoy filed a motion for reconsideration, but the same was denied by the CA in its October 27, 2016 Resolution.[8]

The Issue

Unfazed, Pendoy filed the present petition and raises the following sole issue:

> The assailed Decision dated 24 June 2016 as well as the assailed Resolution dated 27 October 2016 both issued by first public respondent Honorable Court of Appeals were, with all due deference to all concerned, both issued with grave abuse of discretion amounting to lack or excess of jurisdiction because the conclusions of law drawn therefrom vis-à-vis the facts clearly established therein are gravely erroneous, x x x.[9]

Essentially, petitioner claims that the prosecution evidence failed to overcome his constitutional presumption of innocence. He maintains that the prosecution failed to establish that force, threat or intimidation was exerted upon AAA in the alleged commission of the sexual congress with the latter, and this is also in consonance with the findings of the RTC. Pendoy argues that the CA erred in giving credence to the testimony of AAA which he alleged to have been riddled with inconsistencies and improbabilities tending to cast serious doubt on the veracity of her charge. Petitioner points out that AAA's actuations were inconsistent to that of one who had just been raped as AAA was seen happy, jovial and kept on sending text messages right after the alleged incident of felonious coitus.

Pendoy submits that even assuming that he had sexual intercourse with AAA, a reading of the latter's narration of the events leading to the alleged

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7 437 Phil. 63, 75 (2002).
8 *Rollo*, pp. 186-190.
9 *Id.* at 6. (Citation omitted)

rape would reveal that the coitus was committed with her acquiescence because: (1) she did not offer even a small amount of resistance to the sexual advances; and (2) she did not shout for help or try to escape from the perpetrator despite the opportunity to do so. Lastly, he asserts that his alibi assumes importance in view of the alleged weakness of the evidence for the prosecution.

In its Comment, respondent People of the Philippines, through the OSG, asserts that the appeal of the December 11, 2014 Decision of the RTC threw the entire records of Criminal Case No. 1089 open for review. Respondent maintains that Pendoy can be properly convicted of as many offenses as were charged and proven. According to the respondent, the April 7, 2006 Information contains the averments that Pendoy had committed acts punishable under paragraphs 1 and 2, Article 266-A of the Revised Penal Code (*RPC*). It claims that the elements for both rape and sexual assault were adequately proven through the credible, consistent and forthright testimony of AAA, which was corroborated by the medico-legal report issued by Dr. Pizarras. Respondent prays that the June 24, 2016 Decision of the CA be affirmed *in toto*.

The Court's Ruling

We sustain the conviction of Pendoy. The appeal is devoid of merit.

Preliminarily, the Court finds that Pendoy's resort to the special civil action for *Certiorari* under Rule 65, in his quest to reverse and set aside the assailed June 24, 2016 Decision and the October 27, 2016 Resolution of the CA, is erroneous. Pendoy filed the instant petition designating it in both the caption and the body as one for "*certiorari*" contending that the questioned decision and resolution of the CA were issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Well settled is the rule that *certiorari* will lie only when "there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law."[10] The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party.[11] The availability of the right of appeal precludes recourse to the special civil action for *certiorari*. In the case at bench, appeal was not only available to Pendoy but also a speedy and adequate remedy. Also, Pendoy failed to show circumstances that would warrant a deviation from the general rule as to make available to him a petition for *certiorari* in lieu of making an appeal.

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10 *Bernardo v. Court of Appeals*, 341 Phil. 413, 425 (1997).

11 *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 631 (2006).

Further, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[12] Here, it is obvious that the arguments raised by Pendoy delved into the wisdom or legal soundness of the June 24, 2016 Decision of the CA which disposed on the merits his appeal in CA-G.R. CEB CR. No. 02486, and not on the jurisdiction of the appellate court to render said decision. Thus, the same is beyond the province of a petition for *certiorari*. The appropriate remedy available to Pendoy then was to appeal before this Court the assailed decision and resolution of the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court and not to file a petition for *certiorari* under Rule 65. Viewed in this light, the instant petition should be dismissed outright.

Even if the Court is willing to overlook this procedural defect, the present petition would just the same fail.

The crux of petitioner's plea for exoneration mirrors on the alleged absence of any of the circumstances enumerated in paragraph 1 of Article 266-A of the RPC, particularly that there was no force, threat or intimidation in the commission of the alleged felonious sexual act. Pendoy's contentions fail to muster legal and rational merit.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.[13]

We meticulously examined the records of this case in view of the disparity in the findings of the RTC and the CA. Try as we might, however, this Court failed to identify any error committed by the CA in declaring that Pendoy had carnal knowledge of AAA against her will. Despite his vigorous protestations, the Court sees no cogent reason to disturb the conclusion of the CA that the prosecution was able to prove beyond reasonable doubt that Pendoy raped AAA on that fateful night of January 24, 2006.

The CA's reliance on AAA's testimony is apt, considering that it was clear and categorical, and buttressed by the testimony of the medico-legal officer. Notwithstanding her youth and innocence, AAA was able to convey the details of her traumatic experience in the hands of Pendoy in a simple yet

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12 *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 396 (2008).

13 *People v. Publico*, 664 Phil. 168, 180 (2011).

convincing and consistent manner. Without hesitation, AAA pointed an accusing finger against Pendoy as the person who ravished and sexually molested her. She credibly recounted how petitioner forced her to have sex with him despite her refusal; that while she was washing clothes, Pendoy suddenly appeared from her back, turned off the light, and forcibly pulled her down and made her lie on the floor; that he pulled her short pants and panty down to her knees; that she begged him to stop what he was doing, but he simply ignored her plea; that Pendoy kissed her cheeks, neck and breasts; that she was not able to resist petitioner's sexual advances because he held her hands; that still unsatisfied, petitioner licked her vagina and inserted his finger into it; and that thereafter, he mounted on her and inserted his penis into her vagina.

Thus, We are convinced that Pendoy had employed force to subjugate AAA's will. It bears stressing that force need not be irresistible or of such character that it could not be repelled; all that is necessary is that the force used by the accused is sufficient to consummate his evil purpose, or that it was successfully used.[14] AAA pleaded to Pendoy to desist from what he was doing on her but no amount of begging subdued him. In *People v. Quintos*,[15] it was held that "sexual congress with a person who expressed her resistance by words or deeds constitutes force; it is rape." In addition, it appears that AAA later submitted to Pendoy's lust out of fear of him because she earlier learned from a neighbor that he had killed someone in the past. She just cried silently. Indeed, the prosecution had amply proved the absence of AAA's consent to the sexual congress.

We note that AAA categorically stated several times (during her direct examination and cross-examination, and even upon clarificatory questioning of the trial court) that Pendoy forced his penis into her sexual organ despite her protests. Her statements pertaining to the identity of Pendoy as her violator and the perverse acts he visited upon her were straightforward, definite and clear. She remained steadfast and never wavered on her claim that Pendoy raped her, as she repeatedly (three times) recalled the harrowing ordeal. Her simple narration evinces her sincerity and truthfulness.

In addition, AAA's testimony was corroborated by the medical findings of Dr. Pizarras who testified that when she conducted a physical examination on the victim, she noted that the latter sustained a trauma or injury in the genitalia which can be readily observed even without the use of any medical instrument. According to Dr. Pizarras, the trauma and the redness in the fourchette of AAA may have been caused by probable sexual abuse. It has been said that "when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established."[16] This

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14 *People v. Restoles*, 393 Phil. 413, 422 (2000).
15 746 Phil. 809, 828 (2014).
16 *People v. Tormis*, 595 Phil. 589, 603 (2008).

testimony of Dr. Pizarras strengthens even more the claim of rape by AAA against Pendoy.

Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was actuated by any dubious reason or impelled by improper motive to testify falsely against Pendoy or implicate him in such a serious offense. Also, the fact that AAA resolved to face the ordeal and related in public what she suffered evinces that she did so to obtain justice and to vindicate the outrageous wrong done to her person, honor and dignity. AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit.

Still, Pendoy wants Us to undo his conviction. In his attempt at exculpation, he contends that AAA's testimony was neither credible nor consistent with human nature as she could have easily shouted during the alleged rape incident or resist the alleged sexual advances by kicking him, but she did not do so. Pendoy tries to interject reasonable doubt by arguing that even assuming that he and AAA had sexual intercourse, the same was consensual. His arguments are specious.

Failure of the victim to shout for help does not negate rape.[17] Failure to cry for help or attempt to escape during the rape is not fatal to the charge. It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving resistance.[18] After all, resistance is not an element of rape, neither is it necessary to convict an accused. In any event, the workings of the human mind placed under emotional stress are unpredictable such that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[19]

Anent petitioner's theory that the sexual intercourse was consensual, suffice it to state that the same is not substantiated by any evidence and thus, it deserves scant consideration. Nowhere in records does it show that AAA had an extramarital affair with Pendoy nor was there any proof that she was attracted to him enough to consent and willingly give in to the bestial desires of the latter. AAA's failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to the culprit's desires.[20] It cannot be considered as an implied consent to the sexual act.

AAA's conduct after the sexual molestation, as if nothing happened, is not enough to discredit her. Victims of a crime as heinous as rape, cannot be

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17 *People v. Barcelona*, 382 Phil. 46, 54 (2000).
18 *People v. Dusohan*, 297 Phil. 1020, 1024 (1993).
19 *People v. Silvano*, 368 Phil. 676, 704 (1999).
20 *People v. Talaboc*, 326 Phil. 451, 461 (1996).

expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim,[21] as AAA. Seemingly, AAA tried to cope with the traumatic experience that befell her by opting not to dwell on it and act as if it never occurred. Naivete is not equivalent to consensual sex and cannot erase the rape committed by Pendoy against AAA.

Petitioner's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the perpetrator. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.[22]

The defense of alibi is, likewise, unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[23] Pendoy miserably failed to discharge this burden. Apart from Pendoy's allegation, no competent and independent evidence was proffered to corroborate his claimed whereabouts at around 6 o'clock in the evening of January 24, 2006 and more importantly, that it was physically impossible for him to be at his house at the time the crime of rape was committed. We find that the testimonies of the defense witnesses are inadequate to validate the averments of the petitioner. Given the positive identification by AAA of Pendoy as the culprit, and the failure to establish physical impossibility of said petitioner to be at the scene of the crime at the time of its commission, his defenses of denial and alibi must fail.

Having ascertained the guilt of Pendoy for the crime of Rape beyond reasonable doubt, the Court shall now proceed to determine whether it is correct to likewise convict him of rape by sexual assault.

The Court observes that albeit the April 7, 2006 Information designated the offense charged as one of Rape under Article 266-A(1)(a) of the RPC, a perusal of the allegations therein would clearly show that Pendoy was actually charged with two offenses. Petitioner was charged with having carnal knowledge of AAA, employing force or intimidation, under paragraph 1(a) of Article 266-A. The Information also charged Pendoy with committing sexual assault by inserting his finger into the private part of AAA under the second paragraph of Article 266-A. It is undisputed that at the time of the commission of the sexual abuse, AAA was sixteen (16) years old as duly proved by her Certificate of Live Birth.

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21 *People v. Biala,* 773 Phil. 464, 482 (2015).
22 *People v. Canares,* 599 Phil. 60, 76 (2009).
23 *People v. Abella,* 624 Phil. 18, 36 (2010).

The Information, read as a whole, has sufficiently informed Pendoy that he is being charged with these two offenses. It is true that Section 13, Rule 110 of the Revised Rules on Criminal Procedure requires that "a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Failure to comply with this rule is a ground for quashing the duplicitous complaint or information and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived.[24] In this connection, Section 3, Rule 120, as well as settled jurisprudence, states that "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 the appellant of as many 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."

In the case at bench, the evidence bears out that what was proven by the People beyond reasonable doubt in Criminal Case No. 1089 was the felonious coitus committed by Pendoy against AAA on January 24, 2006. Likewise borne by records is the insertion of petitioner's finger into AAA's vagina. AAA testified that before Pendoy mounted on her and inserted his penis into her private part, he first inserted his finger into her genital. Inasmuch as Pendoy failed to object and file a motion to quash anchored on the ground that more than one offense is charged in April 7, 2006 Information before he pleads to the same, the effect is that he is deemed to have waived such defect and he can be convicted of the crimes of rape and rape as an act of sexual assault. Jurisprudence[25] elucidates that an offender may be convicted for both rape and rape as an act of sexual assault for one incident provided that these crimes were properly alleged in the information and proven during trial.

In the recent case *People v. Salvador Tulagan*,[26] the Court prescribes the following guidelines in the proper designation or nomenclature of acts constituting sexual assault and the imposable penalty depending on the age of the victim, thus:

> Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to "crime against persons" akin to rape, as well as the ruling in Dimakuta and Caoili, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because 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

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24 *People v. CCC*, G.R. No. 231925, November 19, 2018.
25 *People v. Agoncillo*, G.R. No. 229100, November 20, 2017; *People v. Brioso*, 788 Phil. 292 (2016).
26 G.R. No. 227363, March 12, 2019.

> amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.
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> *Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the provisions of the RPC.* It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. (Italic ours)

In line with the foregoing pronouncement, the June 24, 2016 Decision of the CA should be modified by convicting Pendoy of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, instead of rape by sexual assault. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision mayor* in its medium period to *reclusion temporal* in its minimum period, or anywhere from eight (8) years and one (1) day to fourteen (14) years and eight (8) months, while the maximum term shall be that which could be properly imposed under the law, which is seventeen (17) years and one (1) day to twenty (20) years of *reclusion temporal* maximum. This Court deems it proper to impose on petitioner Pendoy the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal,* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum.

The Court affirms that Pendoy should suffer the penalty of *reclusion perpetua* for Rape in accordance with paragraph 1(a) of Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

Coming now to the pecuniary liabilities, the Court finds that the award of civil indemnity and moral damages for the crime of Rape should be increased to ₱75,000.00 each in line with the ruling in *People v. Jugueta*.[27] In addition, the Court awards the victim AAA with exemplary damages of ₱75,000.00 as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[28] For the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, the Court, likewise, finds it apt to the award exemplary damages in addition to civil indemnity and moral damages, the amount of which should all be fixed at ₱50,000.00 each in line with existing jurisprudence.[29] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[30]

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27 783 Phil. 806 (2016).

28 *People v. Layco, Sr.*, 605 Phil. 877, 882 (2009).

29 *People v. Tulagan, supra* note 26.

30 *People v. Romobio,* G.R. No. 227705, October 11, 2017.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated June 24, 2016 in CA-G.R. CEB CR No. 02486 is hereby **AFFIRMED** with **MODIFICATIONS**.

1) Petitioner Roel Pendoy y Posadas is found **GUILTY** beyond reasonable doubt of Rape and is sentenced to suffer the penalty of *Reclusion Perpetua*. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 by way of exemplary damages.

2) Petitioner Roel Pendoy y Posadas is found **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal,* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.

Petitioner is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages and exemplary damages.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 16 2019