



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-appellee,

G.R. No. 249414

Present:

- versus -

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

BENNY DALAGUET,
 Accused-appellant.

Promulgated:

JUL 27 2022 [Signature]

X-----X

DECISION

LOPEZ, J., J.

Before us is an appeal seeking the reversal of the Decision¹ dated June 25, 2019 rendered by the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 02332. The CA affirmed with modification the Decision² dated July 13, 2016 of the Regional Trial Court (RTC), Branch 45 of Bais City, finding accused-appellant Benny Dalaguet (*Dalaguet*) guilty of two (2) counts of lascivious conduct under Section 5(b) of the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

¹ Penned by Associate Justice Gabriel T. Ingles with Associate Justices Edward B. Contreras and Dorothy Montejo-Gonzaga, concurring; *rollo*, pp. 5-31.

² Rendered by Judge Candelario Guillermo V. Gonzalez; CA *rollo*, pp. 59-66.

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Facts

In two separate Informations both dated March 29, 2010, Dalaguet was charged with violations of Section 5(b), of Republic Act (R.A.) No. 7610, which reads:

Criminal Case No. F-10-49-MJ

That sometime in December 2009, in the Municipality of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd designs and intent to cause to gratify his sexual desire or abuse, humiliate, degrade complainant, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with [AAA],³ a minor, fifteen (15) years old, without her consent and against her will, to the damage and prejudice of said victim.⁴

Criminal Case No. F-10-50-MJ

That on or about March 2010, in the Municipality of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, coercion, and intimidation and with lewd designs and intent to cause to gratify his sexual desire or abuse, humiliate, degrade complainant, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with [AAA], a minor, fifteen (15) years old, without her consent and against her will, to the damage of said victim.

CONTRARY TO LAW.⁵

Upon arraignment on September 22, 2010, Dalaguet pleaded not guilty⁶ to the offenses charged.

On December 15, 2010, pre-trial was conducted, and the parties mutually stipulated the following facts:

³ 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 R.A. No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; R.A. No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; Section 40 of A.M. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

⁴ Records (Criminal Case No. F-10-49-MJ), p. 1.

⁵ *Id.* (Criminal Case No. F-10-50-MJ), p. 1.

⁶ CA rollo, p. 59.

1. The identity of the parties and that the private complainant is a minor;
2. That they are neighbors considering the house of the accused is five meters away from the house of the private complainant;
3. That on March 9, 2010 at about 6:00 o'clock in the morning, the accused went inside the house of the private complainant.⁷

Considering that AAA's birth certificate was admitted by the defense, the testimony of the local civil registrar was dispensed with. Said birth certificate indicates that AAA was 15 years old at the time of the incidents.

Later both parties agreed to a joint trial.

The prosecution presented the following witnesses: (1) AAA, the private complainant; (2) EEE, the grandfather of AAA; and (3) Marretta Rubio (*Rubio*).

As culled from the CA Decision, the facts show that on August 2, 2011, AAA, who was by then 16 years old, took the witness stand and testified that she knew Dalaguet because he was their family's neighbor. She calls Dalaguet by his name and that whenever she went to the field to pasture their cow and carabao, Dalaguet would follow her.⁸

Sometime in December 2009, while AAA was pasturing the cow, Dalaguet followed her, and they met at the field.⁹ Subsequently, Dalaguet carried her and brought her to a hut.¹⁰ Therein, Dalaguet undressed AAA while she was already lying down. AAA was unsuccessful in struggling to get away from Dalaguet's clutches because the latter held her tightly. AAA also tried shouting for help, but to no avail, because there were no people nearby. AAA claimed that Dalaguet was able to insert his penis at the outside portion of her vagina, but was not able to penetrate. According to AAA, she decided not to report the incident to anyone, even to her parents, because Dalaguet told her that her statement would be unbelievable. Dalaguet further told AAA that her parents would just maltreat her.¹¹

In a separate incident on March 9, 2010, Dalaguet managed to sexually molest AAA again, this time at their house. AAA did not shout anymore

⁷ *Id.* at 60.

⁸ *Rollo*, p. 7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 8.

because Dalaguet warned her to stop, or else a lot of people would hear her. AAA testified before the RTC that she did not consent to Dalaguet's sexual advances. According to AAA, the incident on March 9, 2010 happened when her parents were away, and she was left at home with her sister CCC, who was then 9 years old. On said day, Dalaguet told CCC to leave the house, to which CCC obliged because she would be attending school that day. After CCC left the house, Dalaguet held AAA's hand, made her lie down, and undressed her, while he also undressed. At that point, AAA's grandfather, EEE, caught Dalaguet sexually molesting AAA. When caught, EEE maltreated AAA out of anger. AAA also heard Dalaguet uttering a threat to kill EEE and was about to do so, if not for the timely arrival and intervention of their neighbor, FFF.¹²

AAA maintained that Dalaguet had sexual intercourse with her on December 2009 and March 2010. She recalled that Dalaguet did a push and pull movement, but insisted that his penis did not penetrate her vagina. AAA was also brought to the Municipal Health Office of ██████████ for medical examination.¹³

As regards AAA's medical certificate issued by Dr. Panalip Deme Andaya (*Dr. Andaya*), its due execution was admitted, thus, the testimony of Dr. Andaya was dispensed with.¹⁴ Dr. Andaya's medical certificate showed that on March 10, 2010, she physically examined AAA and found that there were healed lacerations at 1:00 and 5:00 o'clock portion of AAA's genitalia.¹⁵

EEE likewise took the witness stand to corroborate AAA's testimony. According to EEE, Dalaguet was known to him because they were residents of the same *barangay*. EEE personally identified Dalaguet, who was inside the court room. He also knows AAA because she is her granddaughter.¹⁶

According to EEE, on March 9, 2010, he went to the house of his son, who is the father of AAA. Upon opening the kitchen door of the said house, he saw Dalaguet sexually molesting AAA. After being caught, Dalaguet ran away.¹⁷

Rubio was likewise presented as a witness to prove that she received an Order from the RTC to conduct a study report on AAA's family. According to her, she made the study in the unit office and gathered information through

¹² *Id.*

¹³ *Id.* at 9.

¹⁴ TSN, November 15, 2011.

¹⁵ *Rollo*, p. 9.

¹⁶ *Id.*

¹⁷ *Id.* at 8.

an interview with a barangay official in [REDACTED]. She also interviewed AAA's mother (BBB), but she was not able to talk to AAA.¹⁸

Dalaguet, the lone witness for the defense, interposed denial and claimed that the arrest on his person was illegal because the grounds for the crime he was charged with at the time of the arrest were not present.¹⁹

According to Dalaguet, he went to AAA's house on March 9, 2010 to get his cellphone from AAA, who refused to return it. While Dalaguet was trying to get his cellphone, he could nearly hug AAA because she kept transferring the cellphone from one hand to another and would sometimes hide it behind her back. Eventually, Dalaguet was able to retrieve the cellphone from AAA.²⁰

Dalaguet admitted that when he was at AAA's house, the latter was alone. However, he denied seeing EEE in that instance.²¹

In the afternoon of March 9, 2010, the police officers arrested Dalaguet at his house.²²

Dalaguet further denied the incident that allegedly occurred sometime in December 2009 for having no knowledge of the same.²³

On cross-examination, Dalaguet admitted that AAA has a younger sister CCC, who also lives in the same house owned by their parents, and that AAA's grandfather, EEE, is living about five meters away. According to Dalaguet, EEE only arrived at the house of AAA when he was no longer there, and that EEE only heard AAA shouting when he was already at work. Dalaguet further stated that AAA's family owns a native house or "*payag payag*" where they would usually pasture the livestock.²⁴

On clarificatory questioning by the RTC, Dalaguet declared that as far as his whereabouts on December 2009 when the alleged incident occurred, he could not have sexually molested AAA because he stayed in his house the entire time.²⁵

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 9.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 9-10.

²⁵ *Id.* at 10.

On July 13, 2016, the RTC issued a Decision, convicting Dalaguet with two (2) counts of rape, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the accused Benny Dalaguet is hereby found guilty beyond reasonable doubt (the victim being a minor as admitted by the defense and proven by her Birth Certificate) for two (2) counts of Rape and he is hereby sentenced to a penalty of *Reclusion Perpetua* or a period of twenty (20) years and one (1) day to forty (40) years for each count of Rape. Accused is also ordered to pay the victim, [AAA], the amount of One Hundred Thousand Pesos [P]100,000.00 for actual damages and another One Hundred Thousand Pesos [P]100,000.00 for moral damages.²⁶

For the first incident of rape on December 2009, the RTC found that AAA usually pastures the family cow and carabao at the place where the family has a “*payag-payag*,” which was admitted by Dalaguet.²⁷ Thus, the RTC did not sustain Dalaguet’s bare allegation of denial that he could not have raped AAA.²⁸ Dalaguet did not even present any member of his family who could have testified that he was in their house when the rape incident happened.²⁹ The RTC also ruled that a bare allegation of denial is a negative and self-serving defense, which cannot be given greater evidentiary value over convincing, straightforward, and probable testimony on affirmative matters.³⁰

For the second incident of rape on May 9, 2010, aside from AAA’s testimony, the RTC gave weight and credence to the testimony of AAA’s grandfather, EEE, who witnessed Dalaguet sexually molesting AAA.³¹

The RTC likewise gave weighty consideration to the medical findings of Dr. Andaya, who testified that she physically examined AAA on May 10, 2010 and found lacerations in AAA’s hymen, which was “the wrench that held the evidence together.”³²

Aggrieved, Dalaguet appealed to the CA.

On June 25, 2019, the CA issued the assailed Decision, which affirmed with modification Dalaguet’s conviction, the dispositive portion of which reads:

WHEREFORE, the appeal is hereby DENIED. The Decision dated July 13, 2016 of the Regional Trial Court (RTC), [REDACTED], Branch 45 in Criminal Case Nos. F-10-49-MJ and F-10-50-MJ is AFFIRMED WITH

²⁶ CA rollo, p. 66.

²⁷ *Id.* at 63.

²⁸ *Id.* at 63-64.

²⁹ *Id.* at 64.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 65.

5

MODIFICATION. Accused-appellant Benny Dalaguet is hereby found GUILTY beyond reasonable doubt of two (2) counts of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prisi[ó]n mayor* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum, for each count of violation. Accused-appellant is ORDERED to pay private complainant AAA the amounts of [P]50,000.00 as civil indemnity, [P]50,000.00 as moral damages, and [P]50,000.00 as exemplary damages, for each count of violation, with legal interest of six percent (6%) *per annum* from the date of finality of this judgment until full payment.

SO ORDERED.³³

The CA found Dalaguet guilty beyond reasonable doubt for two counts of lascivious conduct under Section 5(b) of Republic Act (R.A.) No. 7610 holding that the CA held that the prosecution failed to prove beyond reasonable doubt, all the elements of rape through sexual intercourse under Article 266-A (1a) of the Revised Penal Code (RPC), to wit: a) the man had carnal knowledge of a woman; and (b) he accomplished this act through force, threat or intimidation.

Although AAA's categorical and positive testimony established that Dalaguet is her perpetrator and that he committed sexual acts through threat, or intimidation, the CA noted that sexual intercourse was not proved beyond reasonable doubt. The CA found that there was failure on the part of the prosecution to prove penetration of Dalaguet's penis into AAA's vagina. AAA was even consistent in categorically stating, all throughout her testimony, that Dalaguet was not able to penetrate her vagina.³⁴

The CA nonetheless convicted Dalaguet of the crime of lascivious conduct under Section 5(b) of R.A. No. 7610.

Firstly, AAA testified that Dalaguet committed lascivious conduct against her, when on at least two occasions, Dalaguet made her lie down and undressed her, while he also undressed himself.³⁵ AAA categorically stated that Dalaguet had "sexual intercourse" with her against her will, although it was unclear whether there was penile penetration.

Secondly, AAA who was then 15 years old when the offense was committed, was coerced to engage in lascivious conduct.³⁶ As can be gleaned from AAA's testimony, when Dalaguet committed immodest acts against her, she struggled to get away and shouted, but was told not to shout because

³³ *Rollo*, p. 30.

³⁴ *Id.* at 13.

³⁵ *Id.* at 23.

³⁶ *Id.* at 25.

people would hear her. Dalaguet also told her that if she tells her parents about the incident, they would not believe her.³⁷ According to the CA, these circumstances can be equated with influence and coercion.

Thirdly, the CA reiterated that it was previously established that at the time of the commission of the lascivious act, AAA was only 15 years old.³⁸

On July 29, 2019, Dalaguet filed his Notice of Appeal³⁹ before the CA.

When the case was brought before this Court, the parties made their Manifestations⁴⁰ that they would adopt their Appellant's and Appellee's Briefs, respectively, in lieu of their Supplemental Briefs.

Issue

Whether the CA erred in convicting accused-appellant of lascivious conduct under Section 5(b), Article III of R.A. No. 7610, despite the failure of the prosecution to prove his guilt beyond reasonable doubt

Our Ruling

The appeal is unmeritorious.

After a careful review of the records, we find that the prosecution has proven beyond reasonable doubt that accused-appellant committed two (2) counts of lascivious conduct under Section 5(b) of R.A. No. 7610.

AAA's testimony must be given due weight and credence

As a rule, the crimes of rape and acts of lasciviousness may be proven by the sole and uncorroborated testimony of the offended party, provided that her testimony is clear, positive, and probable.⁴¹

Jurisprudence has provided the following guidelines in assessing the credibility of witnesses:

³⁷ *Id.*

³⁸ *Id.* at 26.

³⁹ *Id.* at 32-34.

⁴⁰ *Id.* at 46-48, and 41-43.

⁴¹ *People of the Philippines v. Eugene Seguisabal*, G.R. No. 240424, March 18, 2021; *Edwin Cabila v. People of the Philippines*, 563 Phil. 1020, 1028 (2007).

First, the credibility of witnesses is best addressed by the trial court, considering that it is in a unique position to directly observe the demeanor of a witness on the stand. The trial judge's evaluation of the testimonies of the witnesses is given the highest respect, on appeal. *Second*, where there is no substantial reason to justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's finding; in particular, when no significant facts and circumstances, affecting the outcome of the case are shown to have been disregarded. *Third*, the rule is more strictly applied if the CA concurred with the RTC.⁴²

In this case, accused-appellant faults the CA for giving weight and credence to AAA's testimony.

First, accused-appellant avers that AAA neither resisted nor orally protested against the alleged rape.⁴³ According to him, if ever there was threat or intimidation, the same was not persuasive and forceful to dispel the likelihood of a consensual sexual intercourse.⁴⁴

Second, accused-appellant argues that AAA's failure to immediately disclose the alleged rape to her parents proves that the sexual intercourse between her and AAA were voluntary.⁴⁵

Third, accused-appellant attempts to discredit AAA's credibility because of the alleged discrepancy between the medical certificate and AAA's testimony.⁴⁶ According to accused-appellant, he cannot be found guilty of raping AAA based on the medical certificate,⁴⁷ which indicated healed vaginal lacerations, while AAA clearly testified that the accused-appellant was not able to penetrate his penis into her vagina.⁴⁸ In addition, accused-appellant stressed that had he raped AAA on March 9, 2010, then there should have been fresh lacerations indicated in the findings of Dr. Andaya, which she issued the day after the incident or on March 10, 2010.⁴⁹

This Court finds the inconsistencies as trivial and cannot serve as bases of acquittal, as these neither hinge on any of the essential elements of the crime of rape⁵⁰ nor lascivious conduct under Section 5(b) of R.A. No. 7610.

⁴² *Id.*
⁴³ *CA rollo*, p. 48.
⁴⁴ *Id.* at 49-50.
⁴⁵ *Id.* at 51.
⁴⁶ *Id.*
⁴⁷ *Id.* at 52.
⁴⁸ *Id.*
⁴⁹ *Id.*
⁵⁰ *Id.*

The failure to resist and to shout for help during the rape incident were discussed in *People v. Lolos*,⁵¹ to wit:

The fact that the accused never threatened or forced AAA on that particular night and that she was still able to go out of the house and buy something from a store cannot exculpate him. **Even if she did not resist him or even gave her consent, his having carnal knowledge of her is still considered rape considering that she was only eight (8) years old at that time. It must be remembered that the accused is an uncle of the victim and has moral ascendancy over her.** Her behavior can be explained by the fear she had of the accused, who had repeatedly beaten her for various reasons. His moral ascendancy over her, combined with memories of previous beatings, was more than enough to intimidate her and render her helpless and submissive while she was being brutalized.⁵²

In the same case, this Court ruled:

The behavior and reaction of every person cannot be predicated with accuracy. **It is an accepted maxim 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 experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone.** Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.⁵³

This Court has repeatedly declared that the failure to shout or offer tenacious resistance does not make voluntary the rape survivor's submission to the perpetrator's lust.⁵⁴ In addition, physical resistance is not an element of rape.⁵⁵ More often than not, a rape survivor is driven by fear, rather than reason.

On the first incident, AAA narrated that while accused-appellant carried her so he could bring her to a nipa hut, AAA struggled and shouted,⁵⁶ which clearly showed that accused-appellant employed force and intimidation against AAA in facilitating the crime.

⁵¹ 641 Phil. 624 (2010).

⁵² *Id.* at 633-634.

⁵³ *Id.* (Emphasis supplied.)

⁵⁴ *People v. Napoles*, 814 Phil 865, 870 (2017).

⁵⁵ *Id.*

⁵⁶ TSN, August 2, 2011, p. 8.

On the second incident, AAA testified that she did not consent to the sexual acts done by the accused-appellant.⁵⁷ When AAA was left alone with accused-appellant at her house, she no longer shouted because accused-appellant warned her to stop; otherwise, people would hear her.⁵⁸ During the first and second incidents, AAA was only 15 years old when accused-appellant sexually molested her. Jurisprudence provides that intimidation in the crime of rape must be viewed in light of the rape survivor's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule.⁵⁹ Thus, considering the circumstances surrounding the second incident of sexual molestation where AAA was of tender age, and it was at the very least, the second time that she had to endure the pain and trauma of being sexually molested by accused-appellant, this Court finds that accused-appellant employed sufficient intimidation to cause AAA to fearfully submit to accused-appellant's lust.

Further, the fact that AAA did not immediately disclose to her parents her sexual molestation in the hands of accused-appellant does not establish that she consented to accused-appellant's sexual advances. This Court stresses that there is no standard form of behavior of a victim of sexual molestation before, during and after the incident; more so for a minor such as AAA who was only 15 years old when accused-appellant sexually molested her.

As regards the alleged discrepancy between the medical certificate and AAA's testimony, suffice it to say that the same will not affect AAA's credibility as a witness. The inconsistency is insufficient to acquit accused-appellant. It has been repeatedly held that a medical certificate is by no means controlling.⁶⁰ A rape survivor's medical examination or the presentation of the medical certificate is not indispensable to prove the commission of rape, as the testimony of the rape survivor alone, if credible, is sufficient to convict the accused of the crime.⁶¹ The medical examination of the rape survivor and the medical certificate are merely corroborative in character.⁶²

The same principle applies for violations of Section 5 (b) of R.A. No. 7610, which also springs from advancing sexual desire.

After examining the factual circumstances surrounding the instant case, we affirm the ruling of the CA.

⁵⁷ *Id.* at 10.

⁵⁸ *Id.*

⁵⁹ *People v. XXX and YYY*, G.R. No. 215345, June 23, 2021 (Resolution).

⁶⁰ *People v. Manaligod*, 831 Phil. 204, 213 (2018).

⁶¹ *Id.*

⁶² *Id.*

Accused-appellant cannot be found guilty of two counts of rape through sexual intercourse

Article 266-A of the RPC defines how rape through sexual intercourse is committed:

Article 266-A. Rape: *When And How Committed*. - Rape is committed:

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; and
 - 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.

To warrant a conviction of rape through sexual intercourse under Article 266-A (1a), the prosecution must prove the following elements beyond reasonable doubt: (a) the man had carnal knowledge of a woman; and (b) he accomplished this act through force, threat or intimidation.⁶³

In this case, accused-appellant's identity as AAA's perpetrator was established and confirmed when the identities of the parties were stipulated during pretrial.⁶⁴ AAA's categorical, positive, and straightforward testimony proved that on two occasions, accused-appellant committed sexual acts against her through force and intimidation. However, such testimony failed to prove that she and accused-appellant had sexual intercourse. For this reason, accused-appellant cannot be convicted with two counts of rape in its consummated stage.

Carnal knowledge of a female is an essential element of rape through sexual intercourse. Jurisprudence has settled that even the slightest penetration of the victim's genitals – *i.e.*, the "*touching*" by the penis of the vagina's *labia* – already satisfies the element of carnal knowledge.⁶⁵ Carnal knowledge has been defined as the act of a man having sexual bodily connections with a woman; sexual intercourse.⁶⁶ Carnal knowledge requires the penetration of the female sexual organ by the male's sexual organ.⁶⁷ In cases of rape through sexual intercourse, the crime is deemed consummated

⁶³ *People v. Lolos*, *supra* note 51, at 632.

⁶⁴ CA rollo, p. 89.

⁶⁵ *People of the Philippines v. Ramon Bay-Od*, G.R. No. 238176, January 14, 2019, 890 SCRA 377, 388.

⁶⁶ *Id.*

⁶⁷ *Id.*

even when the man's penis merely enters the *labia* or lips of the female organ.⁶⁸

In *People v. Campuhan*,⁶⁹ this Court defined the extent of "touching" by the penis in the crime of rape:

[T]ouching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, *mons pubis*, *labia majora*, *labia minora*, the hymen, the clitoris, the vaginal orifice, *etc.* The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. Jurisprudence dictates that the *labia majora* must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, **a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness.**⁷⁰

Here, AAA has been consistent in categorically stating that accused-appellant was not able to penetrate his penis into her vagina. On direct examination, AAA testified:

Pros. Ybañez:

Q Mr. (sic) witness, do you know of a certain Benny Dalaguet?

A Yes.

Q Why do you know him?

⁶⁸ *People v. Quiñanola*, 366 Phil. 390, 410 (1999).

⁶⁹ 385 Phil. 912 (2000).

⁷⁰ *Id.* at 920-922. (Citations omitted and emphasis supplied; italics in the original.)

- A Because he is our neighbor.
- Q Aside from his name Benny Dalaguet, do you call him another name? What do you call him?
- A I just call him by his name.
- Q Can your recall of having executed an affidavit in relation to this case?
- A Yes.
- Q Showing to you an affidavit previously marked as Exhibit "B". Kindly examine this whether this is the same affidavit that you are referring to?
- A Yes, this is my affidavit.
- Q There is a signature over the printed name [AAA], whose signature is that?
- A This is my signature.
- Q Do you affirm and confirm the contents of the said affidavit as true and correct based upon your personal knowledge?
- A Yes.
- Q In your affidavit there is a statement that on December 2009 while pasturing your cow and carabao to the farm of a certain Tatay [REDACTED] he invited you to go with him, am I correct?
- A No, what happened was that whenever I'll be there in the field pasturing my cow and carabao he was just following me.
- Q So sometime on December 2009, was he able to follow you?
- A Yes.
- Q And were you able to meet with this Benny?
- A Yes.

Court:

- Q You mean you had an argument in the farm or somewhere?
- A No.

Pros. Ybañez:

- Q After you met him, what happened then if any?
- A **He molested me.**
- Q When you say "he molested me[,]" can you please tell us how did it happen?
- A **He raped me.**
- Q At what particular place in [REDACTED] did this Benny Dalaguet rape you?
- A In the hut.
- Q When you met this Benny Dalaguet while pasturing your cow you were brought to a hut?

A Yes.

Q After arriving at the hut, what did he do to you?
A **He undressed me.**

Q After undressing you, what happened if any?

Atty. Lajot:

We would like to manifest, your Honor, that the witness has a hard time in answering the question, your Honor.

A **He had sex with me.**

Q When you say "he had sex with you[,] " can you please tell us how did the accused have sex with you?

A **He had sexual intercourse with me.**

Court:

Q Did he make you lie down?

A Yes.

Q When he was undressing you[,] you were still standing up?

A No.

Q You were already lying down?

A Yes.

Q Did you try to struggle to get away?

A **Yes, I struggled.**

Q And were you able to get away?

A No.

Q Why?

A **Because he held me tightly.**

Q Did you shout?

A **Yes, I shouted but there were no people near the hut.**

Q You mean you had no neighbors that could hear you shout?

A No.

Q When he brought you to the nipa hut, did he force you to go with him to the nipa hut and how?

A No.

Q How did he bring you to the nipa hut when you said you did not voluntarily go with him? Did he carry you or did he drag you by holding your hands or body?

A No.

Q So how were you brought to the nipa hut?

A Because when I pastured the carabao he just followed me.

Q But when you were pasturing your carabao you were outside the nipa hut?

A Yes.

Q So when you arrived you were still outside the nipa hut?

A Yes.

Q That's why you were brought to the nipa hut?

A No.

Q Where did he bring you?

Atty. Lajot:

There was a previous answer, [Y]our Honor, that every time she will pasture the cow[,] Benny Dalaguet will follow and bring her to a nipa hut.

Court:

Yeah, I'm just trying to clarify this because it seems she was not brought to the nipa hut.

A *(No answer).*

Q Did he bring you to the nipa hut or not?

A Yes, he brought me.

Q You voluntarily went with him to the nipa hut?

A No.

Q Did he drag you by the hands or by the body or did he carry you bodily?

A He carried me.

Q So when he was carrying you[,] you struggled?

A Yes.

Q And you shouted?

A Yes.

Court:

Proceed.

Pros. Ybañez:

Q When you say Benny Dalaguet had sexual intercourse with you[,] you mean to say he inserted his penis into your vagina?

A Only outside.

Q So his penis did not penetrate into your vagina?

A No.

Q And after that, what happened? After you said that Benny Dalaguet had sexual intercourse with you?

A On March 8.

Q What I mean Madam witness on that incident of December 2009 when you were at the nipa hut?

A March.

Atty. Lajot:

Already answered on March 8.

Pros. Ybañez:

Q Madam witness, that incident on December 2009, that you said Benny Dalaguet had sexual intercourse with you, did you report the said incident to your father or mother or anybody else?

A No.

Q Why did you not tell anybody?

A **Because he said to me that if I will tell (sic) my parents about it my parents [would] not believe me. They will just [maltreat] me.**

Q Why are you saying that your parents will not believe you?

A Because he said that my parents have not seen (sic) during the act.

Court:

Q But did you not allege that your grandfather caught you in the act with [the] accused[,] in the act of sexual intercourse?

A Yes.

Q **At that time you were not anymore shouting?**

A No.

Q **Why?**

A **Because he said, "Do not shout because many might hear.**

Q So to avoid other people from hearing your shout you did not shout anymore?

A Yes.

Q **In other words, you are telling the court that you are consenting to the sexual advances of Benny Dalaguet?**

A No.

Court:

Proceed.

Pros. Ybañez

Q That incident you said that your Lolo was able to see in the act of sexual intercourse with the accused[,] that incident was on March 9, 2010, am I correct?

Atty. Lajot:

Already answered your Honor. The second incident happened on March 8.

Pros. Ybañez:

There was no mentioned (sic) about March 8, [Y]our Honor.

Court:

There was no mentioned (sic) about second or not. It was several times.

Q The last time that you had sexual intercourse with this Benny Dalaguet whether it's force[d] or not and it was at that time you were caught by your grandfather on March 9, 2010?

A Yes.

Pros. Ybañez

Q And before you have sexual intercourse with this Benny Dalaguet your companion at the house was your sister [CCC], am I correct?

A Yes.

Q And the accused arrived around 7:00 o'clock in the morning?

A Yes.

Q By the way, how old is [CCC] at that time?

A Nine (9) years old.

Q And what did he tell [CCC], if any, when this Benny arrived?

A He said to my sister, "You should go out[.]"

Q And where was your father then at that time on March 9, 2010?

A They went to [REDACTED]

Q What municipality is [REDACTED] located?

A Part of [REDACTED]

Q And what about your mother, where was she then?

A She was together with my father at that time.

Q So the person left in your house is you and your sister [CCC]?

A Yes.

Q Did [CCC] go out from your house when she was requested by Benny the accused in this case to go out the house?

A Yes, because she was attending to (sic) school at that time.

Court:

Q How about you, you do not go to school at that time?

A No.

x x x x

8

Pros. Ybañez:

Q After this [CCC] left your house, what happened then if any?
A **He held my hand.**

Q After he held your hand, what happened?
A **He made me lie down and he undressed me.**

Q **And what about Benny, did he also undress?**
A **Yes.**

Q And after that while you were both undressed, what did he do to you?
A We were caught in the act.

Atty. Lajot:

We pray [Y]our Honor, that we put the word[s,] "Nasakpan nami[.]"

Pros. Ybañez:

Q By the way, who caught you?
A My grandfather.

Q **When you say you were caught you mean to say you were caught having sexual intercourse with Benny?**
A **Yes.**

Q **When you say you have sex with Benny, was Benny able to penetrate his penis into your vagina?**
A **No.**

Q After you were caught what happened?
A (No Answer.)

Court:

Q **This is now clear that even if you said you had sexual intercourse you are still maintaining that this accused Benny was not able to penetrate his penis into your vagina?**
A **Yes.**

Q **How can you have sexual intercourse meaning in [B]isaya "Iyot: if he was not able to penetrate his penis into your vagina?"**
A **He just made it outside his penis.**

Q The meaning of gipagawas ang iyaha that means he was inside yours and then he pull it out?
A (No answer.)

Q **In these two (2) occasion in December 2009 and on March 9, 2010 when you said you had sexual intercourse with Benny you still maintain that he was not able to put his penis inside your vagina even if you call it sexual intercourse? Even if you said he did it just outside your vagina? This is very important.**

7

A Yes.

Pros. Ybañez:

A Miss [W]itness, am I correct to say that when you say you have sexual intercourse . . . (interrupted)

Court:

Anyway, on March 9, she was also examined by the doctor and the doctor did not observe any fresh laceration. There maybe healed laceration, but it could happen to anybody. So that's clear.

Pros. Ybañez:

Q You mean to say Madam witness that you have sexual intercourse with Benny and this Benny was just making a push and pull movements?

Court: What push and pull? How could it be a push and pull when the penis is not inside the vagina? That is not push and pull. You cannot push and pull without getting the penis inside the vagina. You might be doing a thrusting motion but not push and pull. Because several times we asked this witness whether they were doing the act. Whether they call it sexual intercourse; whether the penis of the accused entered I do not know if his penis is small. She could not anymore feel whether it[']s inside. It's very clear there was no fresh laceration also.

Pros. Ybañez:

Let me finish this witness, [Y]our Honor.

Q So what happened next after your Lolo caught you in the act?

A My grandfather [maltreated] me and he was very mad at me.

Court:

Q Why did your Lolo [maltreat] you if you have not committed something wrong?

A Because he said, that's not good.

Q Meaning consenting to a (sic) sexual advances of a person who is older than you?

A Yes.

Q Even if the penis of that old man did not enter your vagina?

A Yes.

Pros. Ybañez:

Q What did your Lolo do to Benny if there was any?

A I heard that he will kill my grandfather.

Q Did Benny kill your grandfather?

A He was about to kill him of (sic) nobody had succumb to help.

Q Who was able to help?

A [FFF].

Q Who is that [FFF]?

A Our neighbor.

Court:

Q So after your Lolo caught you in this sexual encounter with the accused he brought you to the hospital or medical examination at the Municipal Health Office?

A Yes.

Q And were you examined by the doctor?

A No.

Q You mean your private parts [were] not examined by the doctor?

A Because there was no doctor in our place when the incident happened.

Q Were you eventually examined by the doctor?

A Yes.

Q Where?

A In [REDACTED]

Q And there you were examined including your private parts?

A Yes.⁷¹ (Emphasis supplied)

It can be gleaned from AAA's testimony that on both incidents, accused-appellant's overt acts of lying on top of AAA while they were both naked, and as accused-appellant did push and pull movements without his penis penetrating AAA's vagina would show that the element of sexual intercourse in the crime of rape has not been established. AAA's testimony reveals that there is doubt as to how far accused-appellant's penis had been outside AAA's external genitalia.⁷² Thus, there is equal doubt as to whether accused-appellant's penis had touched the external pudenda or any part of the vaginal wall.⁷³

Accused-appellant is guilty of two counts of lascivious conduct under Section 5(b) of R.A. No. 7610

This Court finds that accused-appellant is guilty of two (2) counts of lascivious conduct under Section 5 (b), Article III of R.A. No. 7610.

⁷¹ TSN, August 2, 2011, pp. 3-17.

⁷² *People v. Dela Peña*, 303 Phil. 595, 604 (1994).

⁷³ *Id.*

In *CICL XXX v. People*,⁷⁴ this Court held:

[T]he prosecution has proven the lascivious conduct of petitioner: “Clearly, CICL XXX’s acts of kissing AAA on her lips and neck, mashing her breasts, removing her upper garments and panties, are morally inappropriate and indecent designed to abuse the latter.”

x x x x

[C]onsidering that petitioner committed acts of lasciviousness on complainant AAA, who was 15 years of age at the time of the commission of the crime, the nomenclature of the crime should be Lascivious Conduct under Section 5 (b) of R.A. No. 7610.⁷⁵

In the same manner, accused-appellant must be convicted of two counts of lascivious conduct under Section 5(b), Article III of R.A. No. 7610. This conviction is pursuant to the variance doctrine under Sections 4 and 5, Rule 120⁷⁶ of the Rules of Court. The same offenses were proved during trial and are necessarily included in lascivious conduct under Section 2(h)⁷⁷ of the rules and regulations of R.A. No. 7610, which under settled jurisprudence, is necessarily included in the crime of rape.⁷⁸

It has been held that R.A. No. 7610 is applicable when the victims of abuse, exploitation, or discrimination are children or those “persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.”⁷⁹ Since AAA was only 15 years old when the two incidents of lascivious acts were committed against her, the application of Section 5(b) of R.A. No. 7610 is proper. The provision reads:

⁷⁴ 819 Phil. 467 (2017).

⁷⁵ *Id.* at 477-478.

⁷⁶ **Section 4.** *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. (4a)

Section 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter. (5a)

⁷⁷ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (R.A. No. 7610), IRR of R.A. No. 7610, 1993.

SECTION 2. *Definition of Terms.* — As used in these Rules, unless the context requires otherwise —

x x x x

h) “Lascivious conduct” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

⁷⁸ *Supra* note 74, at 477.

⁷⁹ *Orsos v. People*, 820 Phil. 1015, 1025 (2017).

Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;

The elements of lascivious conduct under Section 5(b), Article III of R.A. No. 7610 are: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or subjected to sexual abuse; (3) The child, whether male or female, is below 18 years of age.⁸⁰

The prosecution has established beyond reasonable doubt the elements of lascivious conduct. For the first element of lascivious conduct, the case of *People v. Dominguez, Jr.*⁸¹ (*Dominguez*) is instructive:

In Criminal Case Nos. 02-548 and 02-552, there is a similar dearth of evidence that accused-appellant was able to commence penetration of his penis into AAA's vagina. What the evidence on record established was that during these two occasions, accused-appellant was only able to undress himself and his daughter before the arrival of BBB and CCC.

x x x x

We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption.

⁸⁰ *Supra* note 74, at 478-479.

⁸¹ 650 Phil. 492 (2010).

As the [CA held], it has been established beyond reasonable doubt in Criminal Case Nos. 02-548 and 02-552 that accused-appellant committed the crime of acts of lasciviousness.⁸²

In this case, lascivious conduct was sufficiently established. AAA testified that in December 2009 and March 2010, accused-appellant made her lie down, and undressed her while he also undressed himself. AAA also stated that accused-appellant had “sexual intercourse” with her against her will, although it is unclear whether there was penile penetration. This Court reiterates AAA’s testimony on the first incident of sexual molestation against her in December 2009 by Benny Dalaguet at a nipa hut:

Q In your affidavit there is a statement that on December 2009 while pasturing your cow and carabao to the farm of a certain Tatay Benny he invited you to go with him, am I correct?

A No, what happened was that whenever I’ll be there in the field pasturing my cow and carabao he was just following me.

x x x x

Q At what particular place in Barangay [REDACTED] did this Benny Dalaguet rape you?

A In the hut.

Q When you met this Benny Dalaguet while pasturing your cow you were brought to a hut?

A Yes.

Q After arriving at the hut, what did he do to you?

A **He undressed me.**

Q After undressing you, what happened if any?

Atty. Lajot:

We would like to manifest, your Honor, that the witness has a hard time in answering the question, your Honor.

A **He had sex with me.**

Q When you say “he had sex with you[,]” can you please tell us how did the accused have sex with you?

A **He had sexual intercourse with me.**

x x x x

Pros. Ybañez:

Q **When you say Benny Dalaguet had sexual intercourse with you[,] you mean to say he inserted his penis into your vagina?**

⁸²

Id. at 515, 517-518.

A **Only outside.**

Q **So his penis did not penetrate into your vagina?**

A **No.**⁸³

On the second incident of sexual molestation in March 2010, AAA testified:

Q The last time that you had sexual intercourse with the accused whether it's force[d] or not and it was at that time you were caught by your grandfather on March 9, 2010?

A Yes.

x x x x

Pros. Ybañez:

Q After this [CCC] left your house, what happened then if any?

A **He held my hand.**

Q After he held your hand, what happened?

A **He made me lie down and he undressed me.**

Q **And what about Benny, did he also undress?**

A **Yes.**

Q And after that while you were both undressed, what did he do to you?

A We were caught in the act.

Atty. Lajot:

We pray [Y]our Honor, that we put the word[s,] "Nasakpan nami[.]"

Pros. Ybañez:

Q By the way, who caught you?

A My grandfather.

Q **When you say you were caught you mean to say you were caught having sexual intercourse with Benny?**

A **Yes.**

Q **When you say you have sex with Benny, was Benny able to penetrate his penis into your vagina?**

A **No.**

Q After you were caught what happened?

A (No Answer.)

Court:

⁸³ TSN, August 2, 2011, pp. 4-8. (Emphasis supplied.)

Q This is now clear that even if you said you had sexual intercourse you are still maintaining that this accused Benny was not able to penetrate his penis into your vagina?

A Yes.

Q How can you have sexual intercourse meaning in [B]isaya “Iyot: if he was not able to penetrate his penis into your vagina?

A He just made it outside his penis.

Q The meaning of gipagawas ang iyaha that means he was inside yours and then he pull it out?

A (No answer.)

Q In these two (2) occasion in December 2009 and on March 9, 2010 when you said you had sexual intercourse with Benny you still maintain that he was not able to put his penis inside your vagina even if you call it sexual intercourse? Even if you said he did it just outside your vagina? This is very important.

A Yes.⁸⁴

Similar to the case of *Dominguez*,⁸⁵ it was only established that both the victim and accused-appellant were undressed, in both the first and second incidents of sexual molestation. For this reason, there is doubt as to the intention of accused-appellant to rape AAA. Based on AAA's testimony it is unclear whether there was penetration. Rather, her testimony clearly established that accused-appellant's objective is to pursue his lewd designs against AAA, which constitutes the crime of lascivious conduct under Section 5(b) of R.A. No. 7610.

The prosecution has established beyond reasonable doubt the elements of lascivious conduct. For the first element of lascivious conduct, the case of *Dominguez*⁸⁶ is instructive:

In Criminal Case Nos. 02-548 and 02-552, there is a similar dearth of evidence that accused-appellant was able to commence penetration of his penis into AAA's vagina. What the evidence on record established was that during these two occasions, accused-appellant was only able to undress himself and his daughter before the arrival of BBB and CCC.

X X X X

We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual

⁸⁴ *Id.* at 10-14. (Emphasis supplied.)

⁸⁵ *Supra* note 81.

⁸⁶ *Id.*

intercourse, *i.e.*, penetration of the penis into the vagina, before the interruption.

As the [CA held], it has been established beyond reasonable doubt in Criminal Case Nos. 02-548 and 02-552 that accused-appellant committed the crime of acts of lasciviousness.⁸⁷

In this case, lascivious conduct was sufficiently established. AAA testified that in December 2009 and March 2010, accused-appellant made her lie down, and undressed her while he also undressed himself. AAA also stated that accused-appellant had “sexual intercourse” with her against her will, although it is unclear whether there was penile penetration. This created a doubt as to the commission of the crime of rape, but not for lascivious conduct.

For the second element, a child is deemed exploited in prostitution, or subjected to other sexual abuse when the child indulges in sexual intercourse, or lascivious conduct either: (a) for money, profit, or any other consideration; or (b) **under the coercion, or influence of any adult, syndicate or group.** In *Quimvel v. People*,⁸⁸ it was held that lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation, which subdues the free exercise of the offended party’s free will.⁸⁹ Influence is defined as the improper use of power or trust in any way that deprives a person of free will and substitutes another’s objective,⁹⁰ while coercion is the improper use of power to compel another to submit to the wishes of one who wields it.⁹¹

In this case, AAA was only 15 years old when she was sexually abused in December 2009 and March 2010. Considering her age, she was vulnerable and would have been easily intimidated by a perpetrator who is a full-blown adult. For the first incident of sexual abuse, AAA testified that she struggled, but could not get away from accused-appellant because the latter held her tightly, and that she shouted for help, but to no avail.⁹² On the second time accused-appellant sexually abused her, the former told AAA that should she tell her parents of her ordeal, her parents will not believe her and would just “maltreat” her.⁹³ These circumstances constitute influence and coercion.

The third element of lascivious conduct under Section 5(b), Article III of R.A. No. 7610 was also established when AAA’s Birth Certificate was admitted as evidence. It proved that at the time of the commission of the lascivious act, AAA was only 15 years old.

⁸⁷ *Id.* at 515, 517-518.

⁸⁸ 808 Phil. 889 (2017).

⁸⁹ *Id.* at 919.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² TSN, August 2, 2011, p.6.

⁹³ *Id.*

3

Thus, all the essential elements of lascivious conduct under Section 5(b), Article III of R.A. No. 7610 have been proven beyond reasonable doubt.

Applicability of R.A. No. 11648

On March 22, 2022, R.A. No. 11648,⁹⁴ which increased the age for determining the commission of statutory rape and other sexual acts, from 12 years old to 16 years old.⁹⁵ R.A. No. 11648 also amended the applicable laws and penalty for the crimes of acts of lasciviousness, lascivious conduct, and rape by carnal knowledge or sexual assault.

To determine whether the new law is applicable to the case at bar, We consider whether the imposable penalty under R.A. No. 11648 is more favorable to the accused-appellant.

The penalty prescribed by law for lascivious conduct under Section 5(b), Article III of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. Although R.A. No. 7610 is a special law, the penalty provided under R.A. No. 7610 is taken from the range of penalties under the RPC. Thus, the rules in the RPC for graduating penalties by degrees or determining the proper period should be applied.⁹⁶ Where the special law adopted penalties from the RPC, the Indeterminate Sentence Law will apply, just as it would in felonies.⁹⁷ Applying Section 1 of the Indeterminate Sentence Law,⁹⁸ and there being no aggravating or mitigating circumstances

⁹⁴ An Act Providing for Stronger Protection Against Rape and Sexual Exploitation and Abuse, Increasing the Age for Determining the Commission of Statutory Rape, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code," Republic Act No. 8353, also Known as "The Anti-Rape Law of 1997," and Republic Act No. 7610, as Amended, Otherwise Known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act", Republic Act No. 11648 (2022).

⁹⁵ *Id.* §1.

Section 1. Article 266-A (1)(d) of Act No. 3815, otherwise known as "The Revised Penal Code" as amended by Republic Act No. 8353 otherwise known as "The Anti-Rape Law of 1998," is hereby further amended to read as follows:

"Article 266-A. *Rape: When and How Committed.* – Rape is Committed:

"1) By a person who shall have carnal knowledge of another person under any of the following circumstances:

x x x x

"d) When the offended party is under sixteen (16) years of age or is demented, even though none of the circumstances mentioned above be present: *Provided*, That there shall be no criminal liability on the part of a person having carnal knowledge of another person under sixteen (16) years of age when the age difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non-abusive and non-exploitative: *Provided further*, That if the victim is under thirteen (13) years of age, this exception shall not apply.

x x x x

⁹⁶ *Melvin Encinares y Ballon v. People of the Philippines*, G.R. No. 252267, January 11, 2021.

⁹⁷ *Id.*

⁹⁸ An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; to Create a Board of Indeterminate Sentence and to Provide Funds Therefor; and for Other Purposes [The Indeterminate Sentence Law]. Act No. 4203, as amended by Act No. 4225 of 1965, § 1 (1933).

9

attendant in the crimes which the accused-appellant is found guilty of, the maximum term shall be taken from the medium period of the impossible penalty while the minimum term of imprisonment shall be taken from within the range of the penalty next lower in degree, which is *prisión mayor in its medium period, as minimum, to reclusion temporal, as its maximum period of imprisonment.*

Meanwhile, applying Section 1 of the Indeterminate Sentence Law to the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b)⁹⁹ of R.A. No. 7610, as amended by R.A. No. 11648, the prescribed penalty of *reclusion temporal* in its medium period shall have an impossible penalty of *reclusion temporal minimum, as minimum, to reclusion temporal medium, in its medium period, as maximum term of imprisonment.*

This Court points out that R.A. No. 11648 decreased the maximum term of imprisonment, but nonetheless increased the minimum term of the indeterminate penalty.

Under Article 22¹⁰⁰ of the RPC, penal laws shall have a retroactive effect insofar as it is favorable to the accused. In addition to the penalty imposed, We shall examine the effect of R.A. No. 11648 to the elements of the crime of violation of R.A. No. 7610.

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

⁹⁹ Republic Act No. 11648. §3.

SEC. 3. Sections 5(b), 7, 9 and 10(b) of Republic Act No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act are hereby amended to read as follows:

“SEC. 5. *Child Prostitution and Other Sexual Abuse.* Children whether male or female, who for money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims is under sixteen (16) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, otherwise known as “The Revised Penal Code”, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under sixteen (16) years of age shall be *reclusion temporal* in its medium period; and

¹⁰⁰ Article 22. *Retroactive effect of penal laws.* - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Under Section 5¹⁰¹ of the Indeterminate Sentence Law (*Republic Act No. 4103, as amended*), after the accused-appellant has served the minimum indeterminate penalty, he becomes eligible for review of his parole case:

Sec. 5. It shall be the duty of the Board of Indeterminate Sentence to look into the physical, mental and moral record of the prisoners who shall be eligible to parole and to determine the proper time of release of such prisoners. Whenever any prisoner shall have served the minimum penalty imposed on him, and it shall appear to the Board of Indeterminate Sentence, from the reports of the prisoner's work and conduct which may be received in accordance with the rules and regulations prescribed, and from the study and investigation made by the Board itself, that such prisoner is fitted by his training for release, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the law, and that such release will not be incompatible with the welfare of society, said Board of Indeterminate Sentence may, in its discretion, and in accordance with the rules and regulations adopted hereunder, authorize the release of such prisoner on parole, upon such terms and conditions as are herein prescribed and as may be prescribed by the Board. **The said Board of Indeterminate Sentence shall also examine the records and status of prisoners who shall have been convicted of any offense other than those named in Section 2 hereof, and have been sentenced for more than one year by final judgment prior to the date on which this Act shall take effect, and shall make recommendation in all such cases to the Governor-General with regard to the parole of such prisoners as they shall deem qualified for parole as herein provided, after they shall have served a period of imprisonment not less than the minimum period for which they might have been sentenced under this Act for the same offense.**

Notably, the new law increased the minimum term of indeterminate penalty imposed upon the accused-appellant: from *prisión mayor* medium to *reclusion temporal* minimum. The retroactive application of R.A. No. 11648 will thus result into a higher minimum term of the indeterminate penalty. Considering that the new penalty has a higher minimum term, it is more burdensome to the accused-appellant as it will take him a longer period of time to serve the minimum of the indeterminate sentence before he becomes eligible for a review of his parole case.

Further, R.A. No. 11648 raised the age of consent to 16 years old. As a result, acts of lasciviousness committed against a child who is less than 16 years old, becomes statutory acts of lasciviousness. In this situation, R.A. No. 11648 made it easier to establish the guilt of the accused because it eased the burden of the prosecution to prove the lack of consent on the part of the victim.

¹⁰¹ An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; to Create a Board of Indeterminate Sentence and to Provide Funds Therefor; and for Other Purposes [The Indeterminate Sentence Law]. Act No. 4203, as amended by Act No. 4225 of 1965, § 1 (1933). (Emphasis and underscoring supplied.)

④

Thus, to apply R.A. No. 11648 retroactively to this case will not be favorable to the accused-appellant. We therefore apply R.A. No. 7610, prior to its amendment.

The penalties

Applying R.A. No. 7610 prior to its amendment, this Court finds accused-appellant guilty beyond reasonable doubt for two (2) counts of lascivious conduct under Section 5(b), Article III of R.A. No. 7610.

The penalty prescribed by law for lascivious conduct under Section 5(b), Article III of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. Applying Section 1 of the Indeterminate Sentence Law,¹⁰² and there being no aggravating or mitigating circumstances attendant in the crimes which the accused-appellant is found guilty of, the maximum term shall be taken from the medium period of the imposable penalty while the minimum term of imprisonment shall be taken from within the range of the penalty next lower in degree, which is *prisión mayor* in its medium period to *reclusion temporal* in its minimum period. Accused-appellant is sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prisión mayor* in its medium period, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, for violation of Section 5(b) of R.A. No. 7610.

The damages

In addition, the award of civil indemnities, moral, and exemplary damages are proper for the two (2) counts of lascivious conduct under Section 5(b), Article III of R.A. No. 7610. The damages to be awarded for each count of lascivious conduct shall be ₱50,000.00 each for the civil indemnity, moral damages, and exemplary damages, pursuant to *People v. Tulagan*,¹⁰³ with interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.¹⁰⁴

¹⁰² An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by the Courts of the Philippine Islands; to Create a Board of Indeterminate Sentence and to Provide Funds Therefor; and for Other Purposes [The Indeterminate Sentence Law]. Act No. 4203, as amended by Act No. 4225 of 1965, § 1 (1933).

Section I. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

¹⁰³ G.R. No. 227363, March 12, 2019, 896 SCRA 307.

¹⁰⁴ *People of the Philippines v. Danilo B. Tuyor*, G.R. No. 241780, October 12, 2020.

Observations upon determining the applicability of R.A. No. 11648 to the case at bar

The clear intent of R.A. No. 11648 is to provide for stronger protection against rape and sexual exploitation and abuse, by raising the age of consent to 16 years old. However, this Court observes that the penalty for violation of Section 5(b) of R.A. No. 7610, as amended by R.A. No. 11648, which is *reclusion temporal* medium when the victim is less than 16 years old, is lower, compared to the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when the victim is at least 16 years old but less than 18 years old. Further, no amendment was made in R.A. No. 11648 to address the situation where the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,¹⁰⁵ Article XII of R.A. No. 7610, the imposable penalty of which is *reclusion perpetua*. As such, when there are no mitigating or aggravating circumstance attendant in the crime of acts of lasciviousness, the penalty when such crime was committed against a child who is less than 16 years old, is higher than the penalty when the child is at least 16 years old, but less than 18 years old. It is a basic principle that courts may correct clerical errors, or obvious mistakes, omissions, and misprints to reflect the real and apparent intention of the legislature.¹⁰⁶ However, courts cannot correct those that are due to oversight as shown by a review of extraneous circumstances, where the law is clear, and to correct it would change the meaning of the law.¹⁰⁷ The proper remedy to address the discrepancies in the penalties for acts of lasciviousness committed against a child is corrective legislation. The same remedy of corrective legislation is also applicable in fixing the penalties provided for in a crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610, as amended (*reclusion temporal* in its medium period), which prescribes a higher penalty than for the crime of Rape by Sexual Assault, which is only punishable by *prisión mayor*.

ACCORDINGLY, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated June 25, 2019 in CA-G.R. CEB CR HC No. 02332 is **AFFIRMED**. Accused-appellant Benny Dalaguet is **GUILTY** beyond reasonable doubt of two (2) counts of Lascivious Conduct under Section 5(b), Article III of the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (Republic Act No. 7610). He is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prisión mayor*, in its medium period, as minimum, to twenty (20) years of *reclusion temporal*

¹⁰⁵ Section 31. *Common Penal Provisions*. —
x x x x

(c) The penalty provided herein shall be **imposed in its maximum period** when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. (Emphasis supplied)

¹⁰⁶ *People v. Tulagan*, *supra* note 103.

¹⁰⁷ *Id.*

as maximum term of imprisonment for each count of violation. Accused-appellant is **ORDERED** to pay private complainant AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, for each count of violation, with legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

Pursuant to Article 5 of the Revised Penal Code, let a copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice, the President of the Senate, and the Speaker of the House of Representatives.

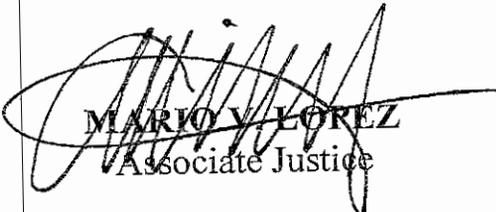
SO ORDERED.


JHOSEP V. LOPEZ
Associate Justice

WE CONCUR:


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


AMY C. LAZARO-JAVIER
Associate Justice

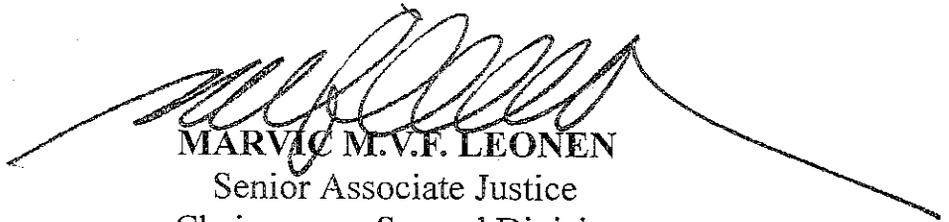

MARIO V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

9

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 Section 13, Article VIII 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