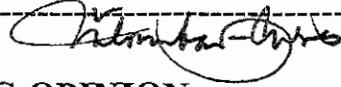


EN BANC

G.R. No. 248049 – PEOPLE OF THE PHILIPPINES, *petitioner*, v. AAA,*
respondent.

Promulgated: October 4, 2022

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SEPARATE CONCURRING OPINION

SINGH, J.:

I express my full concurrence to the *ponencia*, as it now provides clarity and guidance to the members of the bench and the bar in the prosecution of, and in the appreciation of the evidence in, rape cases.

The (1) adoption of the esteemed *ponente* of the recommendations I have made during the deliberations notwithstanding, particularly, the addition of an illustration of what the female genitalia looks like when a woman is standing up or lying prone, to supplement the illustrations included in the *ponencia*; and (2) the fine-tuning of my original recommendation, *i.e.*, that, in cases of minor victims, the genital contact threshold for a finding of consummated rape through penile penetration is deemed already met once the entirety of the prosecution evidence establishes - “that there was repeated touching of the accused’s erect penis on the minor victim’s vagina,”¹ into “a clear physical indication of the inevitability of the minimum contact threshold as clarified here, if it were not for the physical immaturity and underdevelopment of the minor victim’s vagina,”² as suggested by Associate Justice Rodil V. Zalameda during deliberations, I nevertheless respectfully submit this Separate Concurring Opinion to draw attention to certain discussions in the *ponencia* which I believe merit further elucidation.

The clarification sought to be made in the *ponencia* was captured in this statement:

xxx, for as long as the prosecutorial evidence is able to establish that the penis of the accused penetrated the vulval cleft or the cleft of the labia majora (*i.e.*, the cleft of the fleshy outer lip of the victim’s vagina), however slight the introduction may be, the commission of rape already crossed the threshold of the attempted stage and into its consummation.³ (emphasis not mine)

* Pursuant to Amended Administrative Circular No. 83-2015, dated September 5, 2017, which requires the preparation of a first copy of Decisions/Resolutions/Orders where the real or genuine name/s or identities and personal circumstances of the victim/s are used.

¹ Draft Decision (6 September 2022 Agenda version), p. 31.

² Draft Decision (4 October 2022 Agenda version), p. 32.

³ Id. at 29-30.



Two things are highlighted in the above statement: (a) the primacy of the presumption of innocence in criminal cases such that, the evidence of the prosecution should be able to establish the guilt of the accused beyond reasonable doubt; and (b) the varying degrees of penetration differentiates consummated rape from attempted rape and acts of lasciviousness.

The presumption of innocence and the evidentiary presumptions in sexual abuse cases

The *ponencia* articulated it best: there must be a balance that must be struck between the fundamental freedoms of the accused and the victim.

Article III, Section 14 of the 1987 Philippine Constitution provides:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx

The presumption of innocence is a “basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution’s evidence and not on the weakness of the defense.”⁴

In *People v. De Guzman*,⁵ the Court explained:

The constitutional presumption of innocence is not an empty platitude meant only to embellish the Bill of Rights. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People of the Philippines and all the resources at their command.⁶

Needless to say, the failure to rebut the presumption of innocence in criminal cases by proof beyond reasonable doubt of the guilt of the accused results in an acquittal.

⁴ *Polangcos v. People of the Philippines*, 919 SCRA 324, 339 (2019), citing *People v. Maraorao*, 688 Phil. 458, 465 (2012).

⁵ 272 Phil. 432-438 (1991).

⁶ *Id.*



Crimes that are sexual in nature, such as rape, are particularly hard to prosecute, owing to the, more often than not, privacy that attends their commission. And unless a witness other than the victim herself testifies to the fact of the sexual assault, the strength of the prosecution's case relies heavily on the testimony of the victim to establish the guilt of the accused beyond reasonable doubt. Of course, this is not to say that the crime of rape can only happen in isolation as in fact, the Court, in numerous cases, has held that lust, as in rape, is no respecter of time and place.⁷ Thus, convictions have been decreed in rapes that have occurred even in the most unlikely places such as in park, along a roadside, within school premises, or even in an occupied room;⁸ inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.⁹

Jurisprudence has laid down the guidelines in deciding sexual abuse cases:

The guidelines are: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove the accusation; (2) in the nature of things, only two persons are usually involved in the crime of rape; hence, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the Prosecution must stand or fall on its own merits, and cannot draw strength from the weakness of the evidence for the Defense.¹⁰

As has been repeatedly pronounced by the Court, the credibility of the complainant is the single most important issue in prosecution of rape cases.¹¹

So too, in this jurisdiction, several presumptions in favor of the victims of sexual assault cases have been jurisprudentially settled.

In *People v. Gahi*,¹² for instance, the Court held:

It is likewise jurisprudentially settled that when a woman says she has been raped, she says in effect all that is necessary to show that she has been raped and her testimony alone is sufficient if it satisfies the exacting standard of credibility needed to convict the accused. Thus, in this jurisdiction, the fate of the accused in a rape case, ultimately and oftentimes, hinges on the credibility of the victim's testimony.¹³

⁷ *People v. CCC*, 843 Phil. 473, 485 (2018).

⁸ *People v. Cabillan*, 334 Phil. 912, 919-920 (1997).

⁹ *People v. Gabayron*, 343 Phil. 593, 608-609 (1997). See also *People v. Managaytay*, 364 Phil. 800-810 (1999).

¹⁰ *People v. Sangcajo, Jr.*, 839 Phil. 1073, 1080 (2018).

¹¹ *People v. Rapiz*, G.R. No. 240662, 16 September 2020.

¹² 727 Phil. 642-665 (2014).

¹³ *Id.* at 657-658.



As the crime of sexual assault may be perpetrated regardless of age, some of these presumptions are applicable to minor victims as well.

Thus, in *People v. Alicante*,¹⁴ the Court noted:

As we have so held in the past, a young girl would not publicly disclose a humiliating and shameful experience of being sexually abused by her father if such were not the truth, especially so in this case where there has been no showing of bad blood between father and daughter prior to the charges of rape.¹⁵

Similarly, in *People v. Campaner*,¹⁶ the Court affirmed the conviction of the accused, taking into consideration the factual circumstances of the case that involved a minor victim:

As we have said time and again, no woman, especially one who is of tender age such as complainant, would concoct a story of defloration against a virtual stepfather, allow an examination of her private parts and subject herself to risk ridicule and the humiliation, rigors, trouble, and inconvenience of a public trial unless in fact she was raped and her only motive in bringing the cases is to see to it that justice is done.¹⁷

The foregoing circumstances bear heavily on the accused's defense as the alleged perpetrator is now forced to contend with these presumptions in defending his innocence. Instead of the traditional burden on the prosecution to overcome the constitutional presumption of innocence with proof beyond reasonable doubt, an accused in a sexual abuse case has to face these presumptions, which, for good or bad, have had the practical effect of shifting the burden of evidence to the accused in these cases. In addition, the accused must also be able to negate the credibility of the witnesses, more often, the victim, who have been afforded such benefit.

Thus, *People v. Amarela*¹⁸ was a welcome development, as it veered away from the so-called Maria Clara doctrine that has, for many years, aided the Court in resolving rape cases. While not completely abandoning the Maria Clara doctrine, *Amarela* contextualized the same to level the playing field between the accused and the victim, so to speak:

This opinion borders on the fallacy of *non sequitor*. And while the factual setting back then would have been appropriate to say it is

¹⁴ 388 Phil. 233, 249 (2000).

¹⁵ Id.

¹⁶ 391 Phil. 324, 388 (2000).

¹⁷ Id.

¹⁸ 823 Phil. 1188-1214 (2018).



natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the *Maria Clara* stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.

In this way, we can evaluate the testimony of a private complainant of rape without gender bias or cultural misconception. It is important to weed out these unnecessary notions because an accused may be convicted solely on the testimony of the victim, provided of course, that the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Thus, in order for us to affirm a conviction for rape, we must believe beyond reasonable doubt the version of events narrated by the victim.¹⁹

Of course, it should be stressed, lest I be misunderstood, the presumption of innocence, guaranteed under the Constitution no less, enjoys primacy than the presumptions afforded victims of sexual assault cases. To echo *De Guzman*, the inexorable mandate of the presumption of innocence in favor of the accused is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt and, needless to say, that mandate shall be enforced.²⁰

As can be gleaned from the *ponencia*, the accused's right to be presumed innocent until proven guilty can only be overturned when his guilt is proven beyond all reasonable doubt. The balance that the *ponente* aims for is thus kept intact with the proposed guidelines.

*The varying degrees of penetration
differentiates consummated rape from
attempted rape and acts of
lasciviousness*

Currently worded, the offenses of rape, under Article 266-A, as amended by Republic Act (R.A.) No. 11648²¹ and acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) read:

¹⁹ Id. at 1199-1200.

²⁰ Supra note 5.

²¹ 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" (2022).



Rape	Acts of Lasciviousness
<p>Article 266-A. <i>Rape, When and How Committed.</i> – Rape is committed –</p> <p>1. By a person who shall have carnal knowledge of another person under any of the following circumstances:</p> <p>a. Through force, threat or intimidation; b. When the offended party is deprived of reason or is otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; 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: <i>Provided</i>, 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: <i>Provided, further</i>, That if the victim is under thirteen (13) years of age, this exception shall not apply.</p> <p>As used in this Act, non-abusive shall mean the absence of undue influence, intimidation, fraudulent machinations, coercion, threat, physical, sexual, psychological, or mental injury or maltreatment, either with intention or through neglect, during the conduct of sexual activities with the child victim. On the other hand, non-exploitative shall mean there is no actual or attempted act or acts of unfairly taking advantage of the child's position of vulnerability, differential power, or trust during the conduct of sexual activities.</p> <p>2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into</p>	<p>Article 336. <i>Acts of lasciviousness.</i> – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by <i>prision correccional</i>.</p>

another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.	
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On the one hand, the elements of rape under Article 266-A of the RPC are: (1) The act is committed by a man; (2) That said man had carnal knowledge of a woman; and (3) That such act was accomplished through force, threat or intimidation.²²

On the other, the elements of the crime of acts of lasciviousness are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner.²³

Pertinent to the crime of acts of lasciviousness against minors is the definition given to "lascivious conduct" by the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases of R.A. No. 7610,²⁴ which reads:

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;

To the mind of the undersigned, the utility of the *ponencia's* discussion on the threshold that should be breached to qualify the crime into rape is easily discernible. Thus, while rape is characterized by the carnal knowledge of a woman under the circumstances enumerated in Article 266-A of the RPC, the crime of acts of lasciviousness contemplates an act that does not breach the physical threshold for the crime of rape.

The Court elucidates in *Lutap v. People*:²⁵

²² *People v. Dechoso y Divina*, G.R. No. 248530, 3 March 2021.

²³ *Lutap v. People*, 825 Phil. 10, 26-27 (2018).

²⁴ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes (1992).

²⁵ 825 Phil. 10-30 (2018).



Instead, petitioner's lewd act of fondling AAA's sexual organ consummates the felony of acts of lasciviousness. The slightest penetration into one's sexual organ distinguishes an act of lasciviousness from the crime of rape. *People v. Bonaagua* discussed this distinction:

It must be emphasized, however, that like in the crime of rape whereby the slightest penetration of the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime, in like manner, if the tongue, in an act of cunnilingus, touches the outer lip of the vagina, the act should also be considered as already consummating the crime of rape through sexual assault, not the crime of acts of lasciviousness. Notwithstanding, in the present case, such logical interpretation could not be applied. **It must be pointed out that the victim testified that Ireno only touched her private part and licked it, but did not insert his finger in her vagina. This testimony of the victim, however, is open to various interpretation, since it cannot be identified what specific part of the vagina was defiled by Ireno. Thus, in conformity with the principle that the guilt of an accused must be proven beyond reasonable doubt, the statement cannot be the basis for convicting Ireno with the crime of rape through sexual assault.**²⁶ (citations omitted; emphasis maintained; underscoring supplied)

Not to diminish the crime of acts of lasciviousness as the lesser offense of the two, and even if the Court were to include attempted rape, which contemplates a situation where there was no penetration of the sex organ of the intended victim because not all acts of execution were performed,²⁷ the undeniable fact remains: these offenses are unspeakable acts committed by one person against another, without regard to the victim's age, gender, and status. However, the distinction between the two crimes is necessary because of the anatomical context within which crimes of a sexual nature are meant to be understood. I, therefore, agree with the clarification of the *ponencia* that considered the points raised by Chief Justice Alexander G. Gesmundo and Associate Justice Mario V. Lopez:

Further to the instant clarification, in the converse, the Court also clarifies that when there is no touching of the penis to the vulval cleft of the labia majora of the victim in a case of rape through penile penetration, there can be no finding of consummated rape but only attempted rape or acts of lasciviousness, as the case may be, with the distinctions determinable

²⁶ Id. at 25-26.

²⁷ *People v. Orita*, 262 Phil. 963, 977 (1990). See also Article 6, paragraph 3, Revised Penal Code.

based on various indications that may reveal either the absence or presence of “intent to lie” on the part of the accused, which include the presence of an erect penis.²⁸ (emphasis supplied)

To end, the real value of this *ponencia*, in specifying the threshold by which the crime of rape may be measured, is its inevitability. We all fervently hope that sexual abuse cases will abate, but experience has shown a contrary trend. As we continue to advocate measures to see such mitigation in sexual abuse occurrences, our courts will continue to adjudicate these cases as a matter of course.

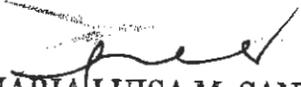
This is not the only aspect of this *ponencia*'s inevitability, however. It is equally inescapable that rape is committed in a physical, biological way, as the law for now defines it, whether we like it or not. It is for this plain reason that these clarificatory guidelines are now being promulgated, not to diminish or dilute the violation and assault, the trauma and suffering, but rather to ensure and guarantee that it is properly prosecuted and redressed in the ways our present laws allow us.

In view of the foregoing, I respectfully signify my concurrence to the *ponencia*.



MARIA FILOMENA D. SINGH

CERTIFIED TRUE COPY



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