



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

AAA261422, a minor and represented
by YYY261422,
Petitioner,

G.R. No. 261422
[Formerly UDK-17206]

Present:

-versus-

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

XXX261422,
Respondent.

Promulgated:

NOV 13 2023

X ----- X

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 09615-MIN entitled “AAA261422, a minor and represented by YYY261422 v. the Honorable Acting Presiding Judge Alberto P. Quinto of Branch ■■■, Regional Trial Court of ■■■■■ and XXX261422,” viz.:

¹ Rollo, pp. 50–77.

- 1) **Resolution**² dated June 25, 2020, dismissing the petition for *certiorari* filed by petitioner AAA261422 as represented by YYY261422, which questioned the acquittal of respondent XXX261422, for lack of legal standing, having been filed without the conformity of the Office of the Solicitor General (OSG); and
- 2) **Resolution**³ dated December 22, 2020, denying AAA261422's Motion for Reconsideration.

ANTECEDENTS

XXX261422 was charged with two counts of rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353,⁴ and one count of acts of lasciviousness in relation to Republic Act No. 7610⁵ under three separate Informations, *viz.*:⁶

Criminal Case No. 21-3964

That on or about the 2nd week of January 2018 at around 10:00 o'clock in the evening at [REDACTED], [REDACTED], [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force and intimidation and with lewd design, taking advantage of the victim's minority as well as the relationship of the accused with the victim[,] the former being then the common law spouse of the victim's mother, did then and there willfully and unlawfully sexually assault one [AAA261422], a minor being 13 years of age, by forcibly touching the victim's breast, kissing and licking the same and further unzip[ing] her short pants and insert[ing] his finger [i] nto her vagina several times and further hav[ing] carnal knowledge of her against her will to her damage and prejudice.

CONTRARY TO LAW.⁷

Criminal Case No. 21-3965

That at about 3rd week of Januaru [sic] 2018 at around 11:00 o'clock in the evening at [REDACTED], [REDACTED], [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully[,] and feloniously, with lewd designs and with intent to harass commit[ted] acts of lasciviousness upon [AAA261422], a minor being 13 years old, by touching her vagina and caressing, kissing[,] and licking her breast, against her will and consent

² *Id.* at 250–253. Penned by Associate Justice Richard D. Mordeno and concurred in by Associate Justices Edgardo T. Lloren and Loida S. Posadas-Kahulugan of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

³ *Id.* at 265–266.

⁴ Otherwise known as the Anti-Rape Law of 1997.

⁵ Otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

⁶ *CA rollo*, pp. 100–102.

⁷ *Id.* at 100.

which sexual abuse by the accused debases, degrades or demeans her intrinsic worth and dignity.

CONTRARY TO LAW.⁸ (Emphasis in the original)

Criminal Case No. 21-3966

That at about 1:00 o'clock early dawn of December 25, 2017 at [REDACTED], [REDACTED], [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, through force and intimidation and with lewd design, taking advantage of the victim's minority as well as the relationship of the accused with the victim the former being then the common law spouse of the victim's mother, did then and there willfully and unlawfully sexually assault one [AAA261422], a minor being 13 years of age, by forcibly touching the victim's breast, kissing and licking the same and further unzip[ing] her short pants and insert[ing] his finger unto her vagina several times and further hav[ing] carnal knowledge of her against her will to her damage and prejudice.

CONTRARY TO LAW.⁹

XXX261422 pleaded "*not guilty*" to the crimes charged. Trial ensued.¹⁰

The Prosecution's Version

The prosecution presented the following witnesses: (1) AAA261422; (2) YYY261422; and (3) Dr. Ava O. Liwanag (Dr. Liwanag), the health officer of [REDACTED], [REDACTED].

They essentially averred that AAA261422 was born on November 2, 2004 to CCC261422 and DDD261422, as shown in her Certificate of Live Birth.¹¹ AAA261422 lived in a small house with two rooms together with CCC261422 and the latter's live-in partner XXX261422 and AAA261422's siblings.¹²

On December 25, 2017, AAA261422 was asleep in her room when she was awakened. She recognized XXX261422 as the one who was covering her mouth with his hand, which he replaced with a pillow. He unzipped her shorts and inserted his finger into her vagina several times. He also sucked her breasts. After that, he left and went to the kitchen.¹³

In the second week of January 2018, XXX261422 did the same things to her. He sucked her breasts, unzipped her shorts and inserted his finger into

⁸ *Id.* at 101.

⁹ *Id.* at 102.

¹⁰ *Rollo*, p. 54.

¹¹ *Id.* at 80.

¹² *Id.* at 83.

¹³ *Id.* at 82.

her vagina. This time, he used his penis to touch her thigh. In the third week of January 2018, while AAA261422 was asleep at dawn, she woke up when her hand touched something. She then saw XXX261422, who told her not to tell anyone. He again sucked her breasts, unzipped her shorts and inserted his finger into her vagina.¹⁴

AAA261422 testified that the three incidents happened in the room adjacent to the room of CCC261422 and XXX261422 and the door connecting the two rooms was open. She did not shout nor tell CCC261422 what happened to her because there was a time when XXX261422 slapped her brother EEE261422, but CCC261422 still favored XXX261422.¹⁵

On February 27, 2018, AAA261422 told her aunt YYY261422, i.e., the sister of her father, DDD261422, that she was raped two times. At that time, she was staying with YYY261422. AAA261422 further narrated to the latter that her breasts were sucked and she was fingered and that the incidents took place on December 25 at dawn and the second and last week of January. YYY261422 thus brought AAA261422 to the Municipal Social Welfare and Development Office of █████ and the police station to lodge complaints against XXX261422.¹⁶

Dr. Liwanag examined then 13-year-old AAA261422 on February 28, 2018. AAA261422 told her that she was raped. The examination results showed that AAA261422 sustained a hymenal laceration at the 7:00 o'clock position and her hymen was no longer intact. Dr. Liwanag explained that the rupture of the hymen may be caused by sexual intercourse, masturbation, insertion of foreign bodies, vaginal irritation or the passage of large blood clot during menstruation. She also saw an old laceration in AAA261422's hymen.¹⁷

The prosecution offered as evidence the Medico Legal Certificate issued by Dr. Liwanag, AAA261422's Certificate of Live Birth, a USB containing two video footages of AAA261422, and the affidavits of YYY261422 and AAA261422.¹⁸

The Defense's Version

The defense presented the following witnesses: (1) XXX261422; (2) CCC261422; and (3) Ramil Rodriguez (Ramil).

¹⁴ *Id.* at 83.

¹⁵ *Id.*

¹⁶ *Id.* at 82.

¹⁷ *Id.* at 81-82.

¹⁸ *Id.* at 83.

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They essentially testified that XXX261422 and CCC261422 had been living together since 2013. CCC261422 has four children with her first husband DDD261422. XXX261422 supported CCC261422's children, but CCC261422's family did not approve of their relationship and wanted to separate them. XXX261422 admitted slapping EEE261422 and spanking another son of CCC261422. CCC261422 claimed that AAA261422's accusations against XXX261422 were not true and that AAA261422 was only influenced by DDD261422's family, who also wanted to separate them. It was impossible for XXX261422 to have molested AAA261422 because during those times, CCC261422 was also home.¹⁹ Ramil stated that he was in XXX261422's house in the evening of December 24, 2017, which was only 20 meters away from his own home. He left XXX261422's house by 3:00 a.m. the following day.²⁰

Ruling of the Regional Trial Court

By Joint Decision²¹ dated June 18, 2019, the Regional Trial Court, Branch [REDACTED], [REDACTED], [REDACTED], acquitted XXX261422 of the charges against him, *viz.*:

WHEREFORE, based on reasonable doubt, accused [XXX261422] is hereby acquitted in these three (3) cases. He is, however, hereby directed to pay to private complainant [AAA261422] the sum of [o]ne hundred fifty thousand pesos (P150,000.00) for and by way of damages.

SO ORDERED.²²

The trial court acquitted XXX261422 on reasonable doubt, finding that AAA261422 most probably only concocted her story upon the influence and insistence of DDD261422's family, as a ploy to separate CCC261422 and XXX261422, and considering that the latter had hit two of CCC261422's children with DDD261422.²³ More, it noted that the house where the incidents allegedly transpired was small, such that the slightest noise from one of the two rooms would have been heard in the other. Had the rape incidents really occurred, CCC261422 could have easily heard what happened. As such, doubt lies in the prosecution's averments, which the court may not take as gospel truth.²⁴ Nonetheless, the court found XXX261422 civilly liable, applying Article 29 of the Civil Code, and imposed upon him payment of moral damages in the amount of PHP 150,000.00.²⁵

¹⁹ *Id.* at 84.

²⁰ *Id.*

²¹ *Id.* at 81–90. Penned by Acting Presiding Judge Alberto P. Quinto.

²² *Id.* at 89.

²³ *Id.* at 85–86.

²⁴ *Id.* at 86–87.

²⁵ *Id.* at 89.

The trial court denied reconsideration under Joint Order²⁶ dated July 26, 2019, on procedural grounds, i.e., the motion did not bear the conformity of the public prosecutor; it was only instituted by AAA261422; and the notice of hearing was defective.²⁷

AAA261422 thus filed a petition for *certiorari* under Rule 65 before the Court of Appeals.

Ruling of the Court of Appeals

By Resolution²⁸ dated June 25, 2020, the Court of Appeals dismissed the petition, reiterating that a judgment of acquittal is immediately final and executory and the prosecution is precluded from challenging such verdict. An appeal from an acquittal may only prosper through a petition for *certiorari* under Rule 65 and with the conformity of the OSG, which AAA261422 failed to secure. Verily, she lacked the legal standing to assail the Joint Decision of the trial court.

Under Resolution²⁹ dated December 22, 2020, the appellate court denied reconsideration.

The Present Petition

AAA261422 now seeks affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be set aside and a new one rendered, ordering the appellate court to give due course to her petition for *certiorari*.

She insists that the nature of her Rule 65 petition was not an appeal of XXX261422's acquittal, but merely raises questions of jurisdiction, i.e., whether the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed judgment.³⁰ More, the complainant in criminal cases allegedly has a right to bring a petition for *certiorari* and that the OSG's intervention was not necessary, citing *People v. Court of Appeals, et al.*,³¹ and *Dela Rosa v. Court of Appeals*.³² Even granting that the OSG wields the sole authority to represent the People in the appeal of criminal cases, the same rule does not apply to special civil actions like Rule 65 petitions in which the government is not a party.³³ Verily, she maintains

²⁶ *Id.* at 172–174. Penned by Acting Presiding Judge Alberto P. Quinto.

²⁷ *Id.* at 173.

²⁸ *Id.* at 250–253.

²⁹ *Id.* at 265–266.

³⁰ *Id.* at 66.

³¹ 755 Phil. 80 (2015) [Per J. Peralta, Third Division].

³² 323 Phil. 596 (1996) [Per J. Panganiban, Third Division].

³³ *Rollo*, p. 72.

that she has the right to file the petition for *certiorari* before the Court of Appeals.

Under Resolution³⁴ dated June 20, 2022 and Resolution³⁵ dated September 21, 2022, the Court ordered XXX261422 and the OSG, respectively, to file their comments on the Petition.

In his Comment,³⁶ XXX261422 ripostes that AAA261422's petition for *certiorari* before the Court of Appeals necessarily calls for an inquiry on the correctness of the trial court's evaluation of the prosecution's evidence *vis-à-vis* those of the defense, hence, is an appeal from the criminal aspect of the case. In any event, even if the Court gives due course to the said petition, the trial court did not commit any grave abuse of discretion in acquitting him. At most, any mistake on the trial court's part would merely amount to an error of judgment which is not the proper subject of *certiorari*.

The OSG,³⁷ in its Comment,³⁸ joined XXX261422 in his defense, positing that the appellate court correctly dismissed AAA261422's petition for *certiorari* as it was filed without the OSG's conformity, in violation of the guidelines laid down in *Austria v. AAA and BBB*.³⁹ In fact, she did not even furnish the OSG with a copy of the said petition nor did she ever attempt to secure its conformity to the action.

Issue

May the petition for *certiorari* filed by AAA261422, i.e., the complainant, which sought reconsideration of the acquittal of XXX261422 in the criminal cases below, prosper, albeit the OSG's conformity thereto was never sought nor obtained?

Our Ruling

Only the State, through the OSG, has the legal personality to file an appeal relevant to the criminal aspect of the case; the legal personality of the complainant to appeal is limited to the civil aspect only

³⁴ *Id.* at 463–464.

³⁵ *Id.* at 473–474.

³⁶ *Id.* at 476–485.

³⁷ Represented by Assistant Solicitor General James Lee Cundangan and Senior State Solicitor Leney L. Layug-Delfin.

³⁸ *Rollo*, pp. 517–531. OSG's Comment dated October 4, 2023.

³⁹ G.R. No. 205275, June 28, 2022 [Per J. Ma Lopez, *En Banc*].

Settled is the rule that every action must be prosecuted or defended in the name of the real party in interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails thereof.⁴⁰ In criminal actions, the real party in interest is the People of the Philippines.⁴¹ Consequently, it is the People who wields the inherent prerogative to prosecute the offense, which includes the authority to appeal from the accused's acquittal, the dismissal of the case, and other interlocutory orders relating to the criminal aspect of the case.⁴²

Before the trial court, all criminal actions shall be prosecuted under the direction and control of the public prosecutor, who represents the People.⁴³ Once the case ascends to the Court of Appeals or the Supreme Court, however, Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly vests such representative authority to the Solicitor General, *viz.*:

SEC. 35. *Powers and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers...shall have the following specific powers and functions:

- (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings;** represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

This authority, of course, is without prejudice to the interest of the private offended party in the civil aspect of the case.⁴⁴ As regards the complainant's legal standing to appeal the criminal aspect of the case, however, the Court laid down the following guidelines in the recent landmark case of *Austria v. AAA and BBB (Austria)*,⁴⁵ *viz.*:

To guide the bench and the bar, these rules should be observed with respect to the legal standing of private complainants in assailing judgments or orders in criminal proceedings before the SC and the CA, *to wit*:

- (1) The private complainant has the legal personality to appeal the civil liability of the accused or to file a petition for *certiorari* to preserve his or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of

⁴⁰ RULES OF CIVIL PROCEDURE, Rule 3, sec. 2.

⁴¹ *JCLV Realty & Dev't. Corp. v. Mangali*, 880 Phil. 267 (2020) [Per J. Lopez, First Division].

⁴² See *BDO Unibank, Inc. v. Choa*, 856 Phil. 614, 631 (2019) [Per J. Leonen, Third Division].

⁴³ RULES OF CRIMINAL PROCEDURE, Rule 110, sec. 5.

⁴⁴ See *Yokohama Tire Phils., Inc. v. Reyes et al.*, 870 Phil. 292, 305 (2020) [Per C.J. Peralta, First Division].

⁴⁵ *Supra* note 39.

the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e., existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things*). The comment of the OSG must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the reviewing court granting the private complainant's relief may be set aside if rendered without affording the People, through the OSG, the opportunity to file a comment.

(2) The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the OSG's conformity. *

The private complainant must request the OSG's conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the OSG's conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the OSG denied the request for conformity, the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.

(3) The reviewing court shall require the OSG to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.

(4) These guidelines shall be prospective in application.

As it thus stands, the complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the

OSG's conformity.⁴⁶ Here, AAA261422 raised the following issues in her Petition for *Certiorari* before the Court of Appeals:⁴⁷

1. [The trial court] acted with grave abuse of discretion when [it] acquitted [XXX261422] based on the *possibility* that the rape was merely a concocted story;
2. [The trial court] acted with grave abuse of discretion when [it] acquitted [XXX261422] based on the fact that the rape happened in a *small* room;
3. [The trial court] acted with grave abuse of discretion when [it] acquitted [XXX261422] based on the latter's bare defense of *denial*; and
4. [The trial court] acted with grave abuse of discretion when [it] denied [AAA261422's] motion for reconsideration on the ground that the issues raised were already passed upon in the joint decision;

Clearly, what the Petition aims to appeal, based on its contents, is not AAA261422's pecuniary interest civilly speaking, but the substantive merits determinative of XXX261422's criminal liability. Ordinarily, therefore, her admitted failure to obtain the OSG's participation in her appeal of the criminal aspect of the cases *a quo* justifies the appellate court's dismissal of her petition, as instructed by *Austria*. But as aptly stressed during the deliberations by Associate Justice Mario V. Lopez, the esteemed ponente of *Austria*, the guidelines therein apply prospectively and does not therefore cover the present case as the same was resolved only by the appellate court on June 25, 2020 prior to the finality of *Austria* on March 24, 2023. To be sure, private complainant has legal standing to question the criminal aspect of the case considering the divergent decisions prior to *Austria*. She cannot be faulted when she relied on old jurisprudence allowing her to assail the criminal aspect of the case through a petition for *certiorari*.

***The assailed dispositions
having been rendered prior to
Austria should be reviewed
based on rules and
jurisprudence then prevailing***

In *Austria*, the Court painstakingly reviewed past instances when the private complainant's appeal or petition for *certiorari* assailing the criminal aspect of the case was given due course, albeit, without the OSG's participation, *viz.*:

⁴⁶ *Id.*

⁴⁷ *Rollo*, pp. 58-59.



As discussed earlier, the private complainant's interest is limited only to the civil aspect of the case. Only the OSG may question before the SC and the CA matters involving the criminal aspect of the case. Yet, there are instances where the Court allowed the private complainant to file an appeal or a petition for *certiorari*, without the OSG's participation, questioning the acquittal of the accused, the dismissal of the criminal case, and interlocutory orders rendered in the criminal proceedings.

Foremost, the Court recognized that private complainants have legal standing to question the acquittal of the accused or dismissal of the criminal case equivalent to an acquittal only through a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction or denial of due process rendering the judgment void. In *People v. Judge Santiago (Santiago)*, x x x, [t]he Court ruled that the acquittal is a nullity for want of due process because the trial court deprived the prosecution of an opportunity to present evidence.

x x x

In *Morillo v. People (Morillo)*, however, the Court allowed therein private complainant to appeal, without the OSG's participation, the dismissal of the criminal cases due to improper venue in view of the unique circumstances of the case and in the interest of substantial justice.

x x x

Moreover, there are instances where the Court recognized the personality of the private complainant to question interlocutory orders in criminal proceedings. Obviously, these interlocutory orders do not involve the acquittal of the accused or dismissal of the criminal case such as orders suspending the criminal case due to a prejudicial question, giving due course to the notice of appeal, or granting bail.⁴⁸ (Emphases supplied, citations omitted)

In sum, prior to *Austria*, an appeal or petition for *certiorari* filed solely by the private complainant may prosper: (1) if it only questions the civil aspect of the decision; or (2) even if it questions the criminal aspect of the case: a) the State and the private complainant were denied due process; b) the judge committed grave abuse of discretion and the interest of substantial justice requires giving due course to the appeal or petition; and c) the case involves special and compelling circumstances which leaves the private complainant no other recourse but to file the appeal or petition alone; or (3) it questions interlocutory orders that do not involve the acquittal of the accused or the dismissal of the criminal case.

The second set applies here.

First. Both the People and AAA261422 were denied due process when the trial court issued its judgment which was a mere echo of XXX261422's

⁴⁸ *Supra* note 39.

defenses. A careful scrutiny of the joint judgment of acquittal reveals that the *ratio* was filled purely with surmises and conjectures bereft of evidential support, making apparent that the trial court swallowed XXX261422's theory hook, line, and sinker without making its own consideration and evaluation of the parties' respective evidence. *

In doing so, the trial court did not even dedicate a single line among its many paragraphs to explain why AAA261422's testimony, apart from XXX261422's rebuttal thereof, is viewed with incredulity, such as any suspicious behavior in court or significant inconsistencies in her claims. No discussion was allotted to the probative value of her testimony at all. Instead, the trial court's judgment was replete with half-hearted and unsure conclusions which are simply unconvincing, such as:⁴⁹

These feelings of antipathy against CCC261422 and XXX261422 living together, compounded by the overt acts of XXX261422, **may have** led them to take steps to punish or to even the score with XXX261422. **Thus, the possibility of concocting a story is not remote.**

x x x

True, AAA261422 testified on affirmative matters which, ordinarily, prevails over the denials of XXX261422. But such a positive assertion is coupled with a cloud brought about by the open resentment of AAA261422's father's family on the relationship of XXX261422 and CCC261422. **It was not farfetched** that AAA261422, who was under the care of such family and still of tender age, may have been influenced. x x x (Emphases supplied)

To emphasize, the sacred adjudicatory powers entrusted to the courts by no less than the Constitution itself cannot be equated to mere guesswork, but must rest on strong and solid application of the law and due appreciation of evidence. For only then will the Judiciary be true to its mandate to dispense justice and equity.

In *People v. Court of Appeals*,⁵⁰ the Court upheld the private complainant's legal standing to file the petition for *certiorari*, questioning the appellate court's decision which similarly acquitted the accused of rape, albeit without the initial conformity of the OSG. For the Court of Appeals merely relied on the evidence of the defense and utterly disregarded that of the prosecution, *as here*.

On this exception alone, the Court may already grant this Petition.

⁴⁹ *Rollo*, p. 86.

⁵⁰ 755 Phil. 80 (2015) [Per J. Peralta, Third Division].

Two. The trial court committed grave abuse of discretion when it completely disregarded the prosecution's evidence; and rendered a verdict of acquittal in violation of the People and AAA261422's constitutionally-protected right to due process. More important, the higher interest of substantial justice, which cannot rightfully be ignored, compels the Court to give due course to AAA261422's petition for *certiorari*.

It bears stress that the criminal cases here involved charged XXX261422 with rape and acts of lasciviousness which were committed against then 13-year-old AAA261422, a helpless minor who could not even rely on her mother to defend her. Worse, these acts were allegedly committed against her by someone whom she considered her stepfather, being the common law spouse of her mother. And, when she finally had the courage to reveal her ordeal and seek justice, her plight was barely accorded a scintilla of consideration, and her close relationship with the only people she could run to for help was perversely wielded to defeat her claims.

To this, the Court cannot turn a blind eye. For it is our State policy to protect the best interests of children, i.e., the totality of the circumstances and conditions which are most congenial to the survival, *protection* and *feelings of security* of the child and most encouraging to the child's physical, psychological and emotional development.⁵¹ At the very least, the State, in looking after the best interests of AAA261422, ought to afford her the due process which, in the first place, should never have been taken away from her. Having been rendered *sans* due process to the People and AAA261422, the trial court's judgment acquitting XXX261422 is void ab initio,⁵² as will be further discussed below.

Lastly. The special circumstances surrounding the case left AAA261422 with no option but to pursue the appeal herself. Apart from the trial court's misfeasance, notable is the inaction of the prosecutor in seeking reconsideration of the acquittal albeit it was rendered with patent irregularities.

Bleaker still was the OSG's treatment of the case, which offered no support to AAA261422's petition for *certiorari* and, in fact, prayed for its dismissal. The OSG's Comment was glaringly superficial, limited only in the technical aspects of the case *sans* consideration of its underlying merits. As counsel of the People and as the People's tribune, it bears stress that the OSG is strictly bound to discharge its duties with utmost circumspection and diligence, which requires meticulously studying all aspects of the case. A faithful performance of such duty would have led the OSG to come up with its own position whether there was indeed grave abuse of discretion committed by the trial court in rendering a verdict of acquittal, especially here

⁵¹ See *Aquino v. Aquino*, G.R. No. 208912, December 7, 2021 [Per J. Leonen, *En Banc*].

⁵² *Office of the Ombudsman v. Conti*, 806 Phil. 384 (2017) [Per J. Mendoza, Second Division].

where the violation of the People's right to due process was so manifest as in here.

Under these dire circumstances, AAA261422's petition must be given due course albeit only she wishes to pursue the same. For in striking a balance between the complainant's undeniable interest in the prosecution of the case on one hand, and the OSG's powers and authority on the other, the Court never meant to completely disregard the former.

The trial court judgment rendered in violation of the State and AAA261422's right to due process is void; double jeopardy has not set in

A judgment of acquittal, whether ordered by the trial court or the appellate court, is final, unappealable, and immediately executory upon its promulgation.⁵³ Accordingly, the State may not seek its review without placing the accused in double jeopardy.⁵⁴ Double jeopardy sets in only upon: (1) a valid indictment; (2) before a competent court; (3) after arraignment; (4) a valid plea having been entered; and (5) the case was dismissed or otherwise terminated without the express consent of the accused.⁵⁵

The second requisite is missing here, i.e., as earlier stated, the trial court was ousted of jurisdiction when it violated the People and AAA261422's right to due process, hence, it was not a competent court. Indeed, it is settled doctrine that double jeopardy cannot be invoked against the Court's setting aside of the trial court's judgment of acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process. For the cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction.⁵⁶

There being no violation of the rule on double jeopardy, nothing bars the Court of Appeals from entertaining the petition for *certiorari* filed by AAA261422 and reviewing the grave errors ascribed to the assailed judgment of the trial court. Considering, however, that the case had been pending for years, the Court, in the interest of expediency, shall itself resolve the merits of AAA261422's petition for *certiorari*. For indeed, nothing rings truer than the maxim, "justice delayed is justice denied."⁵⁷

⁵³ *People v. Alejandro*, 823 Phil. 684, 692 (2018) [Per J. Tijam, First Division].

⁵⁴ *People v. Arcega*, 880 Phil. 291, 307 (2020) [Per C.J. Peralta, First Division].

⁵⁵ *Atty. Dimayacyac v. Court of Appeals, et al.*, 474 Phil. 139 (2004) [Per J. Austria-Martinez, Second Division].

⁵⁶ *People v. Judge Laguio, Jr.*, 547 Phil. 296, 311 (2007) [Per J. Garcia, First Division].

⁵⁷ *Tauro v. Judge Colet*, 366 Phil. 1 (1999) [Per J. Panganiban, Third Division].

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AAA261422's straightforward, candid, and categorical testimony deserves weight and credence

In crimes of rape, jurisprudence established the following guides to aid the Court determining the guilt of the accused: (1) an accusation of rape, while easy to make, is difficult to prove and even harder for the person accused, though innocent, to disprove; (2) because rape, by its very nature, involves only two persons, the testimony of the complainant should be scrutinized with the greatest caution; (3) the evidence for the prosecution must stand or fall on its own merits and must not be allowed to draw strength from the weakness of the evidence for the defense; and (4) the complainant's credibility assumes paramount importance because her testimony, if credible, is sufficient to support the conviction of the accused.⁵⁸

Following these principles, we find XXX261422 guilty of the offenses charged.

Indeed, the rule in rape cases is that in determining the victim's credibility, courts should be wary of adopting outdated notions of a victim's behavior based on gender stereotypes. Regardless of such preconceptions, conviction may be warranted based "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."⁵⁹

Upon careful review of AAA261422's testimony,⁶⁰ we find that the same evinces nothing but honesty, candidness, and spontaneity. Apart from her categorical, firm, and unwavering assertions that XXX261422 sexually assaulted her during three occasions, as will be discussed below, her demeanor and raw emotions as she recounted her ordeal spoke volumes and belied any falsehoods on her part, to wit:

ATTY. YOUNG:

We would like to put on record that the private complainant is crying.

COURT:

She is on tears. Noted.

ATTY YOUNG:

Thank you, Your Honor.⁶¹

⁵⁸ See *People v. Agao*, G.R. No. 248049, October 4, 2022 [Per J. Caguioa, *En Banc*].

⁵⁹ *People v. ZZZ*, 870 Phil. 725, 728 (2020) [Per J. Leonen, Third Division].

⁶⁰ TSN dated August 6, 2018, pp. 65–100.

⁶¹ *Id.* at 67.

x x x

ATTY. OPAY:

Your Honor, we request that the witness be allowed to drink water so that she can talk well.

A He replaced his hand with a pillow when he covered my mouth.

COURT:

Make it of record that the witness is drinking water and is still crying.⁶²

x x x

Q After inserting his finger inside your vagina, what else did he do to you if any?

A He put his penis in my thigh.

ATTY. YOUNG:

At this point, Your Honor, we would like to put on record that the private complainant is very restless and her legs are trembling and she continues to be sobbing.

COURT:

Noted.⁶³

x x x

Q What do you feel towards the accused now [AAA261422]?

A I'm angry.

Q Why did you file these three (3) cases against the accused?

A I want him to pay for what he has done to me so that he cannot do it to another person and to [FFF261422].

Q Who is [FFF261422] [AAA261422]?

A My sister.

Q Older sister or younger sister?

A Younger sister.

x x x

ATTY. OPAY:

Before that, Your Honor, we would like to put on record that from the start of the testimony until the end, Your Honor, the victim, the private complainant never stopped crying and sobbing and was

⁶² *Id.* at 72.

⁶³ *Id.* at 76.

very restless and her feet were both trembling, Your Honor.⁶⁴
(Emphasis supplied)

The Court has long acknowledged that there is no typical reaction or norm of behavior among rape survivors. The workings of the human mind when placed under emotional stress is unpredictable.⁶⁵ Nonetheless, AAA261422's deportment at the time she was examined, i.e., crying, sobbing, restless, and angry, exhibited genuine reactions that can only be elicited from someone who truly suffered from such traumatic experiences. Verily, the Court lends significant weight and credence to AAA261422's claims and allegations in her testimony.

XXX261422's denial and imputation of ill-will against AAA261422, allegedly at the behest of DDD261422's family, without more, is insufficient to defeat AAA261422's firm narration of her ordeal. To be sure, apart from his bare assertions, XXX261422 did not provide any evidence to buttress his claims. More, it is highly unlikely that a child of tender years, like AAA261422, would impute the grave charge of rape against any person and thereby expose herself to arduous litigation, if her claims were not true.⁶⁶

Indeed, judicial experience taught the Court that denial is a common defense in rape cases. It is an intrinsically weak defense which must be supported with strong evidence of non-culpability to merit credibility. The bare-faced denial of the accused cannot prevail over the positive and forthright identification by the victim of him as the perpetrator of the dastardly act.⁶⁷

As regards XXX261422's defense that the house was small, such that it was highly unlikely for him to have molested AAA261422 without the other family members noticing, the same deserves scant consideration. We have held that lust is no respecter of time and place. Rape can be committed even in places where people congregate in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.⁶⁸

XXX261422 is guilty of three counts of lascivious conduct under Section 5(b) of Republic Act No. 7610 in Criminal Case Nos. 21-3964, 21-3965, and 21-3966

⁶⁴ *Id.* at 81–82.

⁶⁵ *People v. Ramos*, 838 Phil. 797, 811 (2018) [Per J. Reyes, Second Division].

⁶⁶ See *People v. Umayam*, 450 Phil. 543 (2003) [Per J. Panganiban, *En Banc*].

⁶⁷ *People v. Gabriel*, 807 Phil. 516, 523 (2017) [Per J. Del Castillo, First Division].

⁶⁸ *People v. Pecayo, Sr.*, 401 Phil. 239 (2000) [Per J. Panganiban, *En Banc*].

To recall, in Criminal Case Nos. 21-3964 and 21-3966, XXX261422 was charged with rape as defined and penalized under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, which reads:

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 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.
- 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Under Article 266-A, there are two kinds of rape: (a) rape by sexual intercourse; and (b) rape by sexual assault. For a charge of rape through sexual intercourse to prosper, the following elements must be proven beyond reasonable doubt: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by force or intimidation.⁶⁹

On the other hand, to prove rape through sexual assault, the following elements must be established: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and (3) that the act of sexual assault is accomplished by using force or intimidation or any of the circumstances enumerated in Article 266-A(1).⁷⁰

Here, albeit the Informations charged XXX261422 both with rape through sexual intercourse, i.e., he had “carnal knowledge of [AAA261422] against her will,”⁷¹ and rape through sexual assault, i.e., he “further unzip[ped] [AAA261422's] short pants and inserted his finger unto her vagina several

⁶⁹ See *People v. Caoili*, 815 Phil. 839, 883 (2017) [Per J. Tijam, *En Banc*].

⁷⁰ *Id.*

⁷¹ *CA rollo*, pp. 100–102.

times,” only the latter was proven by the prosecution’s evidence. Meanwhile, in Criminal Case No. 21-3965, XXX261422 was charged with acts of lasciviousness in relation to Republic Act No. 7610 for “touching AAA261422’s vagina, caressing, kissing and licking her breasts against her will.”⁷²

In *People v. Tulagan*,⁷³ however, the Court explained that where the victim is at least 12 years old but below 18 years old, *as here*, acts of sexual assault under Article 266-A(2) of the Revised Penal Code, as amended, and acts of lasciviousness under Article 366 of the same law, which also constitute lascivious conduct under Section 5(b) of Republic Act No. 7610, were committed against said victim, the offender shall be held liable for the latter offense as it imposes a higher penalty consistent with the State’s policy to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination.

XXX261422’s acts of kissing, licking, and caressing AAA261422’s breasts and inserting his finger into her vagina several times on December 25, 2017 and the second week of January 2018, as well as his acts of kissing, licking and caressing her breasts and touching her vagina during the third week of January 2018, constitute violations of Section 5(b) of Republic Act No. 7610 in relation to Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, *viz.*:

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

(b) Those who commit the act of sexual intercourse **or lascivious conduct with a child** exploited in prostitution **or subject to other sexual abuse**; Provided, That when the victim 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; x x x

Section 2. Definition of Terms. – As used in these Rules, unless the context requires otherwise –

(h) “Lascivious conduct” means **the intentional touching, either directly or through clothing, of the**

⁷² *Id.*

⁷³ 819 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether 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[.] (Emphases supplied)

To warrant a conviction of lascivious conduct under Section 5(b) of Republic Act No. 7610, the following elements must be shown with moral certainty: (1) the accused committed the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.⁷⁴

In *Tulagan*, the Court clarified that “other sexual abuse” is a broad term that includes all other acts of sexual abuse other than prostitution. Consequently, a single act of lascivious conduct may be punished under Section 5(b) of Republic Act No. 7610 when the victim is at least 12 years old but below 18 years old.

All the elements of lascivious conduct under Section 5(b) were proved by the prosecution’s evidence to have been committed by XXX261422 on three separate occasions here.

First. AAA261422 identified XXX261422 in open court as the perpetrator of the dastardly acts done against her.⁷⁵ Specifically, she testified that on two separate occasions, he inserted his finger into her vagina several times and on the third occasion, he was only able to touch her vagina because her mother woke up. During all three instances, he licked and sucked her breasts too, *viz.*:

ATTY. YOUNG:

Q [AAA261422], how many cases that [sic] you filed against the accused?

A Three (3).

Q What are these three (3) cases [AAA261422]?

A Two (2) rape cases and one (1) acts of lasciviousness.

x x x

⁷⁴ See *Rosauro v. People*, G.R. No. 252093, July 7, 2021 (Resolution).

⁷⁵ TSN dated August 6, 2018, p. 68.

ATTY. YOUNG:

Who is this XXX261422 [AAA261422]?

A My stepfather.

Q Why is he your stepfather?

A He is the live-in partner of my mother.

x x x

Q If XXX261422 is around, can you please point at him and describe what he is wearing?

A That man, that demon wearing white shirt.

Q What incident happened first [AAA261422]?

A When he raped me.

Q When did this happen?

A December 25.

x x x

Q When you said that you were first raped on December 25 early in the morning, what were you doing when it first happened?

A I was sleeping

Q Where?

A At the floor of our bedroom.

Q What happened when you were sleeping?

A I woke up Ma'am because someone touched my breasts.

Q What happened next when you woke up?

A I saw uncle XXX261422.

Q What happened after that when you saw him and he was touching your breasts as you mentioned earlier?

A He covered my mouth with his hand.

Q What happened next if any?

A He replaced his hand with a pillow.

x x x

ATTY. YOUNG:

Q So he replaced his hand with a pillow, what happened next?

A He unzipped my short pants.

Q What happened after that, after your short pants was unzipped by the accused?

A He touched my vagina and inserted his finger into my vagina.

Q After inserting his finger into your vagina, what did he do with his finger?

A He inserted his finger into my vagina several times and pushed and pulled it.

Q How long did it take for him to push and pull his finger inside your vagina [AAA261422]?

A For quite a time.

Q [AAA261422], you mentioned earlier that he touched your breasts before he unzipped your short pants, was it the only thing that he did to your breasts?

A He kissed and sucked my breast Ma'am.

Q Which breast [AAA261422]?

A Two (2) breasts.

Q What did you feel when his finger entered your vagina [AAA261422]?

A I felt pain Ma'am.

x x x

ATTY. YOUNG:

Q What was the second incident that happened [AAA261422], what did he do to you [AAA261422]?

A He again raped me.

Q Do you remember when was that [AAA261422]?

A Second week of January Ma'am.

x x x

Q What did he do to you this time [AAA261422]?

A He also covered my mouth Ma'am.

Q What did he use to cover your mouth [AAA261422]?

A His hand.

Q After covering your mouth with his hand, what did he do [AAA261422]?

A He again kissed and sucked my breast.

Q Which breast, the left or the right?

A The two (2) breasts.

Q After licking and sucking your breasts, what did he do to you [AAA261422]?

A He unzipped the zipper of my short pants.

Q What happened after that [AAA261422]?

A Again, he inserted his finger into my vagina.

Q After inserting this finger inside your vagina, what else did he do to you if any?

A He put his penis in my thigh.

x x x

ATTY. YOUNG:

Q After he inserted his finger inside your vagina, was there a push and pull movement that he made to you [AAA261422]?

A Yes Ma'am.

Q You mentioned also [AAA261422] that while he was inserting his finger inside your vagina, he also touched his penis on your thigh?

A Yes Ma'am.

Q How long did he do that?

A Quite a time, Ma'am.

Q After that AAA261422, what else did he do to you?

A He walked away and he told me not to tell anyone because "I will kill you".

x x x

Q You mentioned also that there was a third crime what is that third incident that he did to you?

A He molested me.

Q When did this happen if you can remember?

A Third week of January.

x x x

Q What happened while you were sleeping?

A I woke up when my arms touched something.

Q What happened when you touched something?

A I saw uncle XXX261422 and he told me not to tell anyone.

x x x

Q After telling you "do not tell anyone," what did he do to you if any?

A He licked and sucked my breast.

Q Which breast?

A The two (2) breasts Ma'am.

Q After he licked and sucked both of your breasts, what else did he do to you if any?

A He unzipped my shorts.

Q After that?

A He inserted his finger into my vagina.

Q At this time [AAA261422], was he able to insert his finger inside your vagina?

A No because my mother moved.

Q How did you know that your mother moved?

A The bed moved and created noise.⁷⁶ (**Emphases supplied**)

As mentioned, AAA261422's testimony, being honest and forthright, deserves weight and credibility and is sufficient to prove the commission of the crimes charged. To be sure, however, her testimony does not stand alone. It finds corroboration in the Medico Legal Certificate issued by Dr. Liwanag, which revealed that AAA261422 had a lacerated hymen at the 7 o'clock position.⁷⁷ As explained by Dr. Liwanag, the same may possibly be caused by the insertion of a finger.⁷⁸

⁷⁶ *Id.* at 70-78.

⁷⁷ TSN dated July 3, 2018, p. 11.

⁷⁸ *Id.* at 10.

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Second. These lascivious acts were committed by XXX261422 against AAA261422, a child subjected to other sexual abuse. As testified by AAA261422, during the two incidents, XXX261422 was able to succeed in sexually assaulting her through intimidation. Particularly, he covered her mouth with a pillow or his hand to subdue her and prevent her from shouting, and even threatened to kill her.

Even assuming, however, that such actions are insufficient to constitute intimidation, XXX261422's moral ascendancy over his child victim substitutes for the element of force, threat, or intimidation since the relationship and close proximity of the victim and the offender amplifies the fear of the former which subdues her to silent submission.⁷⁹

Here, we recall that AAA261422 was living with her mother and XXX261422 at the time and was fully dependent on them. She treated XXX261422 as her stepfather, and he was the only father figure she had in her life ever since her father passed away.⁸⁰ Verily, proof of force or intimidation becomes superfluous in view of XXX261422's moral ascendancy over AAA261422. Similarly, in *People v. Fraga*,⁸¹ the Court recognized that, "[a]ccused-appellant started cohabiting with complainants' mother in 1987. As the common-law husband of their mother, he gained such moral ascendancy over complainants that any more resistance than had been shown by complainants cannot reasonably be expected."

In any case, settled is the rule that violation of Section 5(b) of Republic Act No. 7610 is *malum prohibitum*, the mere act of committing lascivious conduct with a child subjected to sexual abuse already constitutes the offense.⁸²

Third. AAA261422 was then 13 years old, hence, below 18 years old, as proven by her Certificate of Live Birth,⁸³ which showed that she was born on November 2, 2004.

All the elements of the crime being present, the Court finds XXX261422 guilty of three counts of lascivious conduct under Section 5(b) of Republic Act No. 7610 in Criminal Case Nos. 21-3964 to 21-3966.

Penalties

⁷⁹ See *People v. BBB*, 846 Phil. 540 (2019) [Per J. Peralta, Third Division].

⁸⁰ TSN dated August 6, 2018, p. 68.

⁸¹ 386 Phil. 884 (2000) [Per J. Mendoza, *En Banc*].

⁸² *People v. Udang*, 823 Phil. 411, 431-432 (2018) [Per J. Leonen, Third Division].

⁸³ *Rollo*, p. 80.

Republic Act No. 7610 imposes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* for lascivious conduct under Section 5(b). Under Section 31, the penalty shall be imposed in its maximum period when the perpetrator is, among others, the ascendant, parent, guardian, step-parent, or collateral relative within the second degree of consanguinity or affinity. Verily, the circumstance of relationship alleged in the Informations, i.e., XXX261422 being the common law husband of AAA261422's mother, cannot be considered an aggravating circumstance to increase the impossible penalty to its maximum, since the same is not covered by the relationships mentioned.

At present, common law relationship is considered a qualifying relationship only in rape under Article 266-A of the Revised Penal Code. It is notably omitted in the enumeration under Article 31(c)⁸⁴ of Republic Act No. 7610 and even as an alternative circumstance under Article 15, wherein relationship is always considered an aggravating circumstance in crimes against chastity. In *People v. Atop*,⁸⁵ the Court explained that, in deference to the maxim, "penal statutes are to be liberally construed in favor of the accused," the law cannot be stretched to include common law relations when not so explicitly provided, *viz.*:

Neither can we appreciate relationship as an aggravating circumstance The scope of relationship as defined by law encompasses (1) the spouse; (2) an ascendant; (3) a descendant; (4) a legitimate, natural or adopted brother or sister; or (5) a relative by affinity in the same degree. Relationship by affinity refers to a relation by virtue of a legal bond such as marriage. **Relatives by affinity therefore are those commonly referred to as "in-laws," or stepfather, stepmother, stepchild and the like;** in contrast to relatives by consanguinity or blood relatives encompassed under the second, third and fourth enumeration above. **The law cannot be stretched to include persons attached by common-law relations. Here, there is no blood relationship or legal bond that links the appellant to his victim. Thus, the modifying circumstance of relationship cannot be considered against him.**⁸⁶ (Emphasis supplied)

Vis-à-vis Republic Act No. 7610, the Court had likewise refrained from appreciating common law relationship as an ordinary aggravating circumstance because it is not so specified under the law. In *People v. Barcelá*,⁸⁷ wherein the accused, who was the common law husband of the victim's mother, was found guilty of violating Republic Act No. 7610, the Court stated:

⁸⁴ Republic Act No. 7610, Section 31. Common Penal Provisions. – 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;

⁸⁵ 349 Phil. 825 (1998) [Per J. Panganiban, *En Banc*].

⁸⁶ *Id.* at 838–839.

⁸⁷ 734 Phil. 332, 351–352 (2014) [Per J. Mendoza, Third Division].

The circumstance of relationship, *Barcela* being the common-law husband of BBB's mother, cannot be considered as an ordinary aggravating circumstance to increase the imposable penalty. While it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity (such as Acts of Lasciviousness), regardless of whether the offender is a relative of a higher or lower degree of the offended party, it is only taken into consideration under Article 15 of the Revised Penal Code "when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender." The relationship between *Barcela* and BBB is not covered by any of the relationships mentioned.⁸⁸

And, in *People v. Villa*,⁸⁹ the Court likewise stated:

The CA was correct in not appreciating the element of relationship, (*i.e.*, accused-appellant being the common-law husband of BBB), as common-law relationship is not included under Section 31, Article XII of R.A. No. 7610 as a separate aggravating circumstance for purposes of increasing the penalty in its maximum period.⁹⁰ (Emphasis supplied)

Similar ruling was made in the 2023 case of *People v. XXX*⁹¹ where the accused, who was the common-law husband of the victim's mother, was convicted of Section 5(b) of Republic Act No. 7610. Initially, the trial court therein appreciated the aggravating circumstance of relationship, but the Court reversed, ordaining that common-law relationship is not covered by any of the relationships mentioned under the law.

Indeed, settled is the rule that courts must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them. Any reasonable doubt must be resolved in favor of the accused.⁹²

Consequently, in the absence of any applicable modifying circumstances, the imposable penalty here is the medium period of the prescribed penalty, *i.e.*, seventeen (17) years, four (4) months, and one (1) day to twenty (20) years of *reclusion temporal*. Applying the Indeterminate Sentence Law, the same shall serve as the maximum term. The minimum term shall be the range of the penalty next lower in degree, *i.e.*, *prision mayor* in its medium period to *reclusion temporal* in its minimum period or eight (8) years and one (1) day to fourteen (14) years and eight (8) months.

⁸⁸ *Id.* at 351-352.

⁸⁹ 892 Phil. 374 (2020) [Per J. Delos Santos, Third Division].

⁹⁰ *Id.* at 404.

⁹¹ G.R. No. 244290, January 11, 2023 (Notice).

⁹² *People v. Atop*, supra note 85.

We thus impose on XXX261422 the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum term, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum term, for each count of lascivious conduct under Section 5(b) of Republic Act No. 7610, in accordance with *Talisay v. People*.⁹³ More, per *Tulagan*, XXX261422 shall pay AAA261422 PHP 50,000.00 each as civil indemnity, moral damages, and exemplary damages for each of the three violations committed in Criminal Case Nos. 21-3964 to 21-3966. He shall also pay PHP 15,000.00 as fine per Section 31(f) of Republic Act No. 7610.⁹⁴

These amounts are subject to 6% interest per annum from the finality of this Decision until fully paid.

ACCORDINGLY, the Petition is **GRANTED**. The Resolution dated June 25, 2020 and Resolution dated December 22, 2020 of the Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 09615-MIN are **REVERSED**.

- 1) In **Criminal Case No. 21-3964**, respondent XXX261422 is found **GUILTY** of lascivious conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and is ordered to **PAY a FINE of PHP 15,000.00**.

He is also **ORDERED** to **PAY** petitioner AAA261422 the following amounts.

- (a) **PHP 50,000.00** as civil indemnity;
- (b) **PHP 50,000.00** as moral damages; and
- (c) **PHP 50,000.00** as exemplary damages.

- 2) In **Criminal Case No. 21-3965**, respondent XXX261422 is found **GUILTY** of lascivious conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and is ordered to **PAY a FINE of PHP 15,000.00**.

He is also **ORDERED** to **PAY** petitioner AAA261422 the following amounts:

⁹³ G.R. No. 258257, August 9, 2023 [Per C.J. Gesmundo, First Division].

⁹⁴ G.R. No. 252791, August 23, 2022 [Per J. Inting, Third Division].

- (a) **PHP 50,000.00** as civil indemnity;
- (b) **PHP 50,000.00** as moral damages; and
- (c) **PHP 50,000.00** as exemplary damages; and

3) In **Criminal Case No. 21-3966**, respondent XXX261422 is found **GUILTY** of lascivious conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and is ordered to **PAY** a **FINE** of **PHP 15,000.00**.

He is also **ORDERED** to **PAY** petitioner AAA261422 the following amounts:

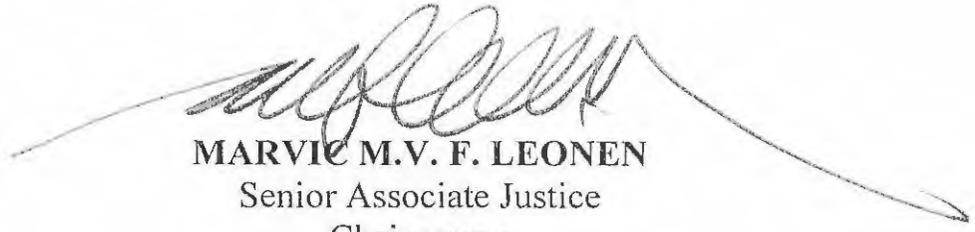
- (a) **PHP 50,000.00** as civil indemnity;
- (b) **PHP 50,000.00** as moral damages; and
- (c) **PHP 50,000.00** as exemplary damages.

These amounts shall earn 6% interest per annum from finality of this Decision until fully paid.

SO ORDERED.”


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



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



MARIO V. LOPEZ
Associate Justice



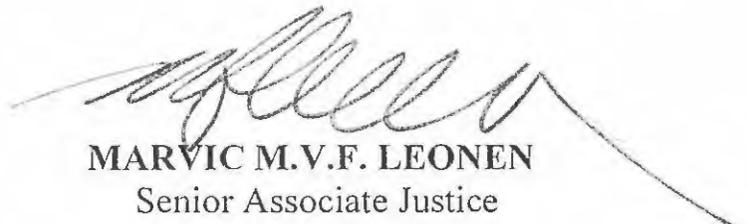
JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

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

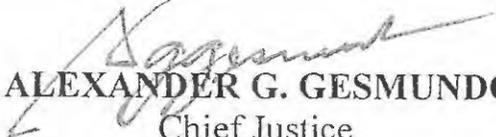


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

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