



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

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff-Appellee,*

**G.R. No. 233867**

Present:

PERLAS-BERNABE, *S.A.J.*,  
*Chairperson,*  
HERNANDO,  
ZALAMEDA,  
ROSARIO, and  
MARQUEZ, *JJ.*

- versus -

**XXX,**<sup>1</sup>

*Accused-Appellant.*

Promulgated:

**FEB 28 2022**

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**DECISION**

**HERNANDO, J.:**

On appeal<sup>2</sup> is the March 30, 2017 Decision<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07147 that affirmed with modifications the November 5, 2014 Joint Decision<sup>4</sup> of the Regional Trial Court (RTC), Branch 207, [REDACTED]

<sup>1</sup> Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 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.

<sup>2</sup> *Rollo*, pp. 16-17.

<sup>3</sup> *Id.* at 2-15. Penned by Associate Justice Florito S. Macalino, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy.

<sup>4</sup> *CA rollo*, pp. 57-68. Penned by Judge Philip A. Aguinaldo.

█████,<sup>5</sup> which found accused-appellant XXX (accused-appellant) guilty beyond reasonable doubt of the following charges: two counts of Rape through sexual assault under paragraph 2, Article 266-A of the Revised Penal Code<sup>6</sup> (RPC), as amended by Republic Act No. (RA) 8353,<sup>7</sup> in relation to RA 7610,<sup>8</sup> in Criminal Case Nos. 06-809 and 07-147; and, one count of Rape through sexual intercourse under paragraph 1, Article 266-A of the RPC, as amended, in relation to RA 7610, in Criminal Case No. 07-146.

### **The Factual Antecedents:**

This case arose from three separate Informations charging accused-appellant with two counts of Rape through sexual assault and one count of Rape through sexual intercourse, thus:

#### **Criminal Case No. 06-809**

[For rape under paragraph 2 of Article 266-A of the RPC (sexual assault) in relation to RA 7610]

That on or about the 2<sup>nd</sup> day September 2006 in ██████████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit an act of sexual assault on the person of the complainant, [AAA],<sup>9</sup> a fourteen (14) year old minor, by inserting his finger inside the latter's vagina against the will and consent of the said complainant.

With the presence of the aggravating/qualifying circumstance that the complainant is a fourteen (14) years [sic] old minor at the time of the commission of the offense.

Contrary to law.<sup>10</sup>

<sup>5</sup> As provided in the Amended Administrative Circular No. 83-2015, the identities of the victim and relatives, records, and court proceedings are kept confidential by replacing the names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identity of the victim.

<sup>6</sup> Act No. 3815, "AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS [THE REVISED PENAL CODE] (1930)." Approved: December 8, 1930.

<sup>7</sup> Republic Act No. 8353, "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE AND FOR OTHER PURPOSES [THE ANTI-RAPE LAW OF 1997] (1997)." Approved: September 30, 1997.

<sup>8</sup> Republic Act No. 7610, "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES [SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT] (1992)." Approved: June 17, 1992.

<sup>9</sup> "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 Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

<sup>10</sup> Records, p. 1.

**Criminal Case No. 07-146**

[For rape under paragraph 2 of Article 266-A of the RPC (sexual assault) in relation to RA 7610]

That on or about the 23<sup>rd</sup> day August 2006 in ██████████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual assault on the person of the complainant, [AAA], a fourteen (14) year old minor, by inserting his finger to the vagina of said complainant against the latter's will and consent.

Contrary to law.<sup>11</sup>

**Criminal Case No. 07-147**

[For rape under paragraph 1 of Article 266-A of the RPC in relation to RA 7610]

That on or about the 26<sup>th</sup> day August 2006 in ██████████, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of complainant, [AAA], a fourteen (14) year old minor, against the latter's will and consent.

Contrary to law.<sup>12</sup>

Accused-appellant pleaded not guilty to all charges.<sup>13</sup> The RTC resolved to consolidate the three cases,<sup>14</sup> and joint proceedings ensued.

**Version of the Prosecution:**

Accused-appellant was employed as a stay-in family driver during the time material to the cases.

The first incident (Criminal Case No. 07-146) transpired at around 2:00 a.m. of August 23, 2006. AAA was 14 years old at that time. She testified that she was suddenly awakened when accused-appellant entered her room; she recognized him because of the ambient light coming from the outside.<sup>15</sup> She then asked him what he was doing in her room, to which he did not respond.<sup>16</sup> Instead, he covered her mouth, then kissed her neck and lips.<sup>17</sup> She tried to resist and avoid his kisses, but he was aggressive.<sup>18</sup> He proceeded to insert his hand in her shirt and mashed her breasts.<sup>19</sup> He then inserted his finger in her vagina.<sup>20</sup>

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<sup>11</sup> Id. at 24.

<sup>12</sup> Id. at 25.

<sup>13</sup> Id. at 38, 126.

<sup>14</sup> Id. at 126.

<sup>15</sup> *Rollo*, p. 6.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. CA *rollo*, pp. 62-63.

After the act, accused-appellant threatened AAA not to tell anyone about the incident, otherwise, he will kill her and her family.<sup>21</sup> Thereafter, AAA woke up her younger sister BBB<sup>22</sup> (with whom she shares the room), and asked her to accompany her (AAA) in the bathroom so she can wash herself.<sup>23</sup> AAA did not tell anybody about the incident as she was afraid of the threats made by accused-appellant.<sup>24</sup>

The second incident (Criminal Case No. 07-147) happened during the wee hours of the morning of August 26, 2006, only a few days after the first incident. AAA testified that she was awakened when accused-appellant again entered her room and covered her mouth.<sup>25</sup> He pulled up her shirt and kissed her breasts, and then removed her jogging pants and underwear.<sup>26</sup>

Afterwards, accused-appellant inserted his penis into AAA's vagina for about five to 10 minutes.<sup>27</sup> She tried to stop him, but to no avail as he was much stronger.<sup>28</sup> When accused-appellant finished, he again threatened her not to tell anyone or else he will kill her and her family.<sup>29</sup> After accused-appellant left the room, AAA again woke BBB up and asked her to accompany her (AAA) to the bathroom so she can wash herself.<sup>30</sup>

The third incident (Criminal Case No. 06-809) occurred during the early hours of the morning of September 2, 2006. AAA testified that accused-appellant again entered her room.<sup>31</sup> Accused-appellant locked the door and proceeded to carry out his plans.<sup>32</sup> AAA was awakened when he kissed her lips and neck.<sup>33</sup> She again pleaded for him to stop, but to no avail.<sup>34</sup> He mashed her breasts.<sup>35</sup> She tried to wake BBB up who was sleeping on the other bed, but was not successful.<sup>36</sup> Accused-appellant continued the assault and proceeded to insert his finger in her vagina.<sup>37</sup>

Meanwhile, CCC,<sup>38</sup> a nursemaid in AAA's household, woke up and went to the maid's quarters to change her clothes as she was peed on by AAA's four

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<sup>21</sup> Id.

<sup>22</sup> Supra note 9.

<sup>23</sup> *Rollo*, p. 6.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id. at 6-7.

<sup>30</sup> Id. at 7.

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Supra note 9.

year old sister.<sup>39</sup> CCC stated that at that time, she heard a door being locked.<sup>40</sup> After changing clothes, she noticed that accused-appellant was not in his bed.<sup>41</sup> CCC woke the other maids up and they checked if accused-appellant went out of the house.<sup>42</sup> As the gates were still locked, they looked for him inside the house.<sup>43</sup> CCC proceeded to AAA and BBB's room and she noticed that the door was locked. CCC became anxious because the sisters do not usually lock the door in their room and at the same time, accused-appellant was missing.<sup>44</sup> CCC knocked on the door and called on to AAA and BBB, but no one answered for a time.<sup>45</sup> CCC kept on knocking and calling out AAA and BBB until AAA opened the door.<sup>46</sup>

Inside the room, accused-appellant was alarmed when he heard the knocking on the door; thus, he instructed AAA to pull up her pajama and underwear.<sup>47</sup> Accused-appellant tried to hide under the bed but he was too big to fit.<sup>48</sup> So he just sat down beside BBB's bed and asked AAA to open the door.<sup>49</sup> AAA opened the door and CCC saw accused-appellant sitting on the side of BBB's bed.<sup>50</sup>

CCC angrily asked accused-appellant what he was doing inside the room in the middle of the night with the door locked.<sup>51</sup> Accused-appellant explained that he was just patting BBB to sleep.<sup>52</sup>

Notably, Police Senior Inspector (PSI) Marianne Ebdane (PSI Ebdane) conducted a medical examination on AAA. PSI Ebdane found deep healed lacerations at the five and seven o'clock positions on AAA's hymen, which show clear evidence of blunt penetrating trauma to the hymen.<sup>53</sup>

### **Version of the Defense:**

Accused-appellant denied the charges against him.

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<sup>39</sup> *Rollo*, p. 7.

<sup>40</sup> *CA rollo*, pp. 60-61.

<sup>41</sup> *Rollo*, p. 7.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 7-8.

<sup>52</sup> *Id.* at 8.

<sup>53</sup> *Id.* at 11. Records, p. 21.

For the first and second incidents (August 23 and 26, 2006), accused-appellant claimed that he was nowhere near the room of AAA as he was sleeping inside his quarters located at the first floor of the house.<sup>54</sup>

As to the third incident (September 2, 2006), accused-appellant admitted that he was indeed inside AAA's room.<sup>55</sup> He, however, claimed that he did not molest the child.<sup>56</sup> He explained that the night before, on September 1, he and AAA were waiting inside the car for CCC, who was buying medicines in a drugstore, when suddenly, AAA had an asthma attack.<sup>57</sup> Accused-appellant stated that she told him not to tell anyone about the asthma attack.<sup>58</sup> When they returned, AAA also told him not to leave her.<sup>59</sup> Thus, he returned to her room (in the morning of the next day, September 2) to check her condition.<sup>60</sup>

Accused-appellant added that he could not think of any reason why they would file a case against him; except that his good intention of checking on AAA was taken with malice.<sup>61</sup> He stated that AAA's family treats him well, gives him his salary, and that they had a good relationship.<sup>62</sup>

### **Ruling of the Regional Trial Court:**

In its November 5, 2014 Joint Decision,<sup>63</sup> the RTC found accused-appellant guilty beyond reasonable doubt on all charges. First, the trial court

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<sup>54</sup> *Rollo*, p. 8.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *CA rollo*, p. 64.

<sup>63</sup> *Id.* at 57-68. The dispositive portion reads:

**WHEREFORE**, the court finds accused guilty under the following Informations:

1. Sexual assault in Criminal Case No. 06-809 defined under paragraph 2 of Article 266-A of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, and is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day prison correccional in its medium [sic] as the minimum period to eight (8) years and one (1) day prison mayor in its medium [sic] as the maximum period, and to pay AAA the amount of P25,000.00 as and for civil indemnity, P25,000.00 as and for moral damages, and P25,000.00 as fine in accordance with Section 31(f) of RA 7610, with 6% interest per annum from the finality of this decision up to its full payment[;]
2. Sexual assault in Criminal Case No. 07-147 defined under paragraph 2 of Article 266-A of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, and is sentenced to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prison correccional in its medium [sic] as the minimum period to eight (8) years and one (1) day of prison mayor in its medium [sic] as the maximum period. He is ordered to pay AAA the amount of P25,000.00 as and for civil indemnity, P25,000.00 as and for moral damages, and P25,000.00 as fine in accordance with Section 31(f) of RA 7610, with 6% interest per annum from the finality of this decision up to its full payment[;]

gave more credence on the testimonies of AAA and CCC as against the mere denial of accused-appellant.<sup>64</sup> Second, accused-appellant did not deny that he was in the residence during the material dates; he even admitted that he was inside AAA's room on the date of the third incident.<sup>65</sup> The RTC likewise found accused-appellant's excuse of checking on the complainant for asthma unbelievable.<sup>66</sup> Third, there is no reason for AAA to concoct a story of sexual molestation.<sup>67</sup> The RTC also held that the acts of locking the door of AAA's room and not opening it immediately when CCC knocked show that accused-appellant intended to commit sexual acts against AAA.<sup>68</sup> Lastly, there is no reason for accused-appellant not to tell AAA's parents about the asthma attack.<sup>69</sup> Accused-appellant does not have any medical background; thus, if he really was concerned about AAA's condition, he should have just informed her parents about it.<sup>70</sup>

Aggrieved, accused-appellant appealed the case to the CA.<sup>71</sup> In his brief,<sup>72</sup> he attacked AAA's credibility and pointed out that her testimony was not corroborated as her sister BBB (with whom she shares the room) and their parents (whose room was next to hers) were not presented.<sup>73</sup> BBB and their parents could have heard AAA's squeals during the act even if her mouth was covered. Accused-appellant also claimed that there was a "window of opportunity" for the complainant to scream and wake BBB up before her mouth was covered.<sup>74</sup> It was expected that a normal 14 year old girl would have screamed upon seeing a potential rapist.<sup>75</sup>

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3. Rape in Criminal Case No. 07-146 defined under paragraph 1 of Article 266- A of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, and is sentenced to reclusion perpetua with no possibility of parole. He is ordered to pay AAA the amount of P50,000.00 as and for civil indemnity, P50,000.00 as and for moral damages, and P50,000.00 as fine in accordance with Section 31(f) of RA 7610, with 6% interest per annum from the finality of this decision up to its full payment.

The Jail Warden, [REDACTED] City Jail, [REDACTED], [REDACTED] City is ordered to immediately transfer the custody of accused XXX to the New Bilibid Prisons [sic] for the service of his sentence.

His full preventive imprisonment shall be credited in his favour.

So ordered.

<sup>64</sup> Id. at 65-66.

<sup>65</sup> Id. at 66.

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Id. at 67-68.

<sup>70</sup> Id.

<sup>71</sup> Id. at 13-14.

<sup>72</sup> Id. at 44-56.

<sup>73</sup> Id. at 53.

<sup>74</sup> Id.

<sup>75</sup> Id.

The prosecution (through the Office of the Solicitor General) filed its appellee's brief.<sup>76</sup> The prosecution countered that there is no clear-cut behavior that can be expected of a person being sexually abused or has been abused.<sup>77</sup> Further, the trial court's assessment of the witnesses must be given great respect, especially testimonies of child victims of sexual abuse.<sup>78</sup> Lastly, the prosecution reiterated that accused-appellant's defense of denial fails in light of AAA's positive testimony and identification of him in court.<sup>79</sup>

### **Ruling of the Court of Appeals:**

In its March 30, 2017 Decision,<sup>80</sup> the CA affirmed the RTC Joint Decision, with modification on the amounts of the civil indemnities, damages, and fines to be paid by accused-appellant for all convictions. The CA notably added that the non-presentation of AAA's sister and parents is not fatal to the case; conviction may be based on the sole testimony of the victim as long as it is logical, credible, consistent, and convincing, which is the case here.<sup>81</sup> Further, the testimony was corroborated by the medico-legal findings showing deep healed lacerations.<sup>82</sup> AAA's failure to shout for help should not be taken against her as people react differently to highly stressful situations such as the incidents in this case.<sup>83</sup> There is also no showing of any ill motive on the part of AAA and her family against accused-appellant; thus, the testimony of AAA should be accorded full weight and credit.<sup>84</sup>

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED**. Accordingly, the 5 November 2014 Joint Decision of the Regional Trial Court of ██████ City, Branch 207 in Criminal Case Nos. 06-809, 07-146 and 07-147 is **AFFIRMED with MODIFICATION**. Judgment is hereby rendered as follows:

1. In Criminal Case No. 06-809, Accused-Appellant is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* in its medium period as minimum to eight (8) years and one (1) day of *prision mayor* in its medium period as the maximum and to pay the victim the amount of PhP30,000.00 as civil indemnity, PhP30,000.00 as moral damages, PhP30,000.00 as exemplary damages and PhP25,000.00 as fine in accordance with Section 31(f) of R.A. 7610;

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<sup>76</sup> Id. at 93-96.

<sup>77</sup> Id. at 99-101.

<sup>78</sup> Id. at 101-102.

<sup>79</sup> Id. at 103.

<sup>80</sup> *Rollo*, pp. 2-15.

<sup>81</sup> Id. at 11.

<sup>82</sup> Id.

<sup>83</sup> Id. at 11-12.

<sup>84</sup> Id. at 12.



2. In Criminal Case No. 07-146, Accused-Appellant is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* in its medium period as minimum to eight (8) years and one (1) day of *prision mayor* in its medium period as the maximum and to pay the victim the amount of PhP30,000.00 as civil indemnity, PhP30,000.00 as moral damages, PhP30,000.00 as exemplary damages and PhP25,000.00 as fine in accordance with Section 31(f) of R.A. 7610;
3. In Criminal Case No. 07-147, Accused-Appellant is sentenced to suffer the penalty *reclusion perpetua* and is ordered to pay the victim PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages, PhP75,000.00 as exemplary damages and PhP50,000.00 as fine in accordance with Section 31(f) of RA 7610.

In addition, interest is imposed on all damages awarded at the rate of 6% per annum from date of finality of judgment until fully paid.

**SO ORDERED.**

Still aggrieved, accused-appellant elevated his case to this Court.<sup>85</sup> The parties opted to no longer file supplemental briefs.<sup>86</sup>

**Issue**

The issue is whether the conviction of accused-appellant on all charges is proper.

**Our Ruling**

There is no merit in the appeal. The Court affirms accused-appellant's conviction on all charges.

Article 266-A of the RPC provides how rape 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

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<sup>85</sup> Id. at 16-19.

<sup>86</sup> Id. at 26-33.

- 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.

Based on the provision, there are two modes of committing Rape: (a) Rape through sexual intercourse as provided in paragraph one; and, (b) Rape through sexual assault as provided in paragraph two.

The elements of rape under paragraph one are as follows: (1) the accused had carnal knowledge of the victim; and, (2) the act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>87</sup>

On the other hand, the elements of the second mode of rape are as follows: (1) the accused committed an act of sexual assault by (a) inserting his penis into another person's mouth or anal orifice, or (b) inserting any instrument or object into the genital or anal orifice of another person; and, (2) the act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>88</sup> Carnal knowledge is the operative act that distinguishes the first mode from the second mode.

In the instant case, the Court is convinced that all the elements of both offenses as appropriately charged against accused-appellant were present.

At the outset, the trial court is in the best position to evaluate the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination.<sup>89</sup> The Court is therefore generally bound by the findings of the trial court, especially when affirmed by the appellate court, in the absence of any misapprehension of facts that would warrant the reversal of the lower court's findings.<sup>90</sup>

Here, the RTC is correct in finding AAA a credible witness and in ruling that all the elements of both offenses were present. AAA was able to identify accused-appellant in open court as the perpetrator in the three incidents. She

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<sup>87</sup> *People v. Catig*, G.R. No. 225729, March 11, 2020.

<sup>88</sup> *People v. Bagsic*, 822 Phil. 784, 800 (2017).

<sup>89</sup> *People v. Catig*, supra note 87, citing *People v. Abat*, 731 Phil 304, 312 (2014).

<sup>90</sup> *Id.*

was able to narrate in a clear and straightforward manner what had happened during the three incidents that she was assaulted by accused-appellant.

The relevant portions of her testimony regarding the first incident are as follows:

Direct Examination of AAA

Atty. Arellano (private prosecutor)

x x x x

Q: On August 23, 2006 at around two o'clock in the morning, do you remember anything unusual which occurred?

A: Yes, sir.

Q: Can you please tell us what happened during that time?

A: Pinasok po ako sa kwarto.

Q: Who entered your room?

A: The family driver, sir.

Q: Is [XXX] here right now?

A: Yes, sir.

Q: Can you please point him out?

Interpreter

**The witness pointed to a man wearing yellow shirt and when the said man was asked by the Court about his name, he identified himself as [XXX].**

Q: You mentioned before that the accused entered your room. Can you please tell us what happened next?

A: **Parang may tumatabi sa'kin nung time na yun tapos biglang sinabi ko, "anong ginagawa mo dito?", wala siyang sinabi pero tinakpan lang niya yung mouth ko tapos biglang hinalikan na'ko sa labi tapos 'yung shirt ko...inano niya 'yung breast ko tapos finingger niya po ako.**

Q: After the accused did those things to you, what happened next, if any?

A: Gisining ko po si [BBB] tapos nagpasama ako sa banyo para hugasan ang buong katawan ko.

Q: Did you tell your parents about the said incident?

A: No, sir.

x x x x

Q: You said a while ago that [XXX] entered your room and started kissing your neck and mashing your breast and touch your genitalia, is there anything else that [XXX] do?

A: **Nag-threaten siya sa'kin.**

Q: And what did he tell you?

A: **'Wag ko daw sasabihin kundi papatayin kami.**

x x x x

Prosecutor Alejo

x x x x

Q: You also said that finingger ka nya, by finingger, exactly, can you tell us explicitly what you mean by finingger?

A: Finingger niya yung genital ko kase naramdaman ko...(interrupted)

Q: **What explicitly do you mean by finingger ang genital? Did he harm your genital? Did he merely touch, caress it or placed his finger inside your genital?**

A: **Placed his finger inside my...**

Q: **Genitals.**

A: **Yeah.**<sup>91</sup>

x x x x

Atty. Arellano

x x x x

Q: [AAA], in your previous testimony, you mentioned that in the early morning of August 23, 2006 you were at your house located at [REDACTED], is that correct?

A: Yes, sir.<sup>92</sup>

x x x x

Q: **Did he pin you down in your bed, [AAA]?**

A: **Yes, sir.**

Q: What did he use in pinning you down, Ms. Witness?

A: His arms and legs, sir.

x x x x

Q: After inserting his finger in your vagina, Ms. Witness, for how many minutes did the accused do that?

A: For about ten minutes, sir.

Q: During such time, [AAA], what were you doing to the accused?

A: I cannot do anything because he was too strong, sir.

Q: After ten minutes, what did the accused do, Ms. Witness?

A: He stood up and he told me something, sir.

<sup>91</sup> TSN, May 6, 2009, pp. 4-7. Emphases supplied.

<sup>92</sup> TSN, February 17, 2010, p. 2. The testimony on the August 23, 2006 incident was reiterated during the February 17, 2010 hearing (see TSN, February 17, 2010, pp. 2-8).

Q: What did the accused told [sic] you, Ms. Witness?

A: **“Wag kang maingay, ‘wag kang magsasabi kahit kanino kung hindi papatayin ko kayo.”<sup>93</sup>**

AAA was able to clearly narrate that in the early morning of August 23, 2006, accused-appellant entered her room and assaulted her by inserting his finger in her vagina—thereby satisfying the first element of performing sexual assault by inserting an object into a person’s genital. AAA likewise stated that accused-appellant pinned her down and employed intimidation by threatening her not to tell anybody about the deed or else, he will kill her and her family—thereby satisfying the second element by performing the sexual assault through force or intimidation. Thus, this Court is convinced that the elements were present for the first charge.

For the second charge—this time Rape through sexual intercourse—the trial court again was correct in finding AAA a credible witness. The relevant portions of her testimony regarding the second incident are as follows:

Atty. Arellano

x x x x

Q: Also, [AAA], on August 26, 2006, where were you at around 2 o’clock in the morning?

A: In my house, sir.

x x x x

Q: While you were sleeping on such date and time, do you remember anything unusual which occurred during that date and time?

A: Yes, sir.

Q: Can you please tell us what that unusual incident was?

A: Someone covered my mouth, sir.

Q: Who is that person who covered your mouth?

A: The accused, sir.

Q: After the accused covered your mouth and after you woke up, what happened next?

A: I recognized his face, sir.

Q: How were you able to recognize his face?

A: Because there was a light coming from our window, sir.

Q: After recognizing the accused, [AAA], what happened next, if any?

A: He kissed my lips and my neck, sir.

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<sup>93</sup> Id. at 4 and 6-7. Emphases supplied.

Q: Did the accused say anything after he kissed your lips and neck?

x x x x

A: **“Wag kang maingay; ‘wag kang magsasalita.”**

Q: After that statement by the accused, Ms. Witness, what happened next, if any?

A: He put up my shirt and kissed my breast, sir.

Q: While the accused kissed your neck and breast, what was he doing during such time?

A: **He also covered my mouth, sir.**

Q: **Did you try to fight back the accused?**

A: Yes, sir.

Q: Were you able to repel what the accused do [sic], [AAA]?

A: No, sir.

Q: Why is that, [AAA]?

A: **Because he was so strong, sir.**

Q: After kissing your breast and your neck, what did the accused do to you?

A: He put on [sic] my panty and jogging pants, sir.

Q: **After removing your underwear and your jogging pants, what happened next?**

A: **He spread my legs and put his penis on, sir.**

Q: **The accused put his penis into your vagina, is that correct?**

A: **Yes, sir.**

Q: **How do you know that, [AAA]?**

A: **I felt it, sir.**

Q: **You felt the penis of the accused inside your vagina, correct?**

A: **Yes, sir.**

Q: **Can you still remember, [AAA], for how long did the accused insert his penis into your vagina?**

A: **Five to ten minutes, sir.**

Q: And he did that repeatedly, is that correct?

A: Yes, sir.

Q: **Did you consent to what the accused was doing to you?**

A: **No, sir.**

- Q: **Did you try to stop the accused from what he was doing to you?**  
A: **Yes, sir, but he was too strong.**
- Q: After five to ten minutes, what did the accused do?  
A: **He stood up and then threw my jogging pants and my panty to me and said, "Wag kang magsasabi kahit kanino kundi papatayin ko kayo."**
- Q: After the incident, what happened next, if any?  
A: I woke up my sister again, sir.
- Q: After waking up your sister, what happened next, Ms. Witness?  
A: I washed my body and I felt something bleeding, sir.
- Q: **What was that bleeding? Where was the bleeding coming out [sic], Ms. Witness?**  
A: **In my vagina, sir.**

x x x x

- Q: What was the threat which you are afraid of, [AAA]?  
A: **"Wag kang magsasabi kahit kanino kung hindi papatayin ko kayo."**
- Q: And that specific statement came out of the accused, is that correct?  
A: Yes, sir.<sup>94</sup>

Once again, AAA was able to narrate in a clear and straightforward manner the rape that had transpired. AAA testified that accused-appellant inserted his penis into her vagina—thereby satisfying the first element of carnal knowledge. For the second element, it can be gleaned from the testimony that accused-appellant again employed force and intimidation to perform the rape. AAA stated that accused-appellant covered her mouth and that she tried to fight back, but to no avail because of his strength. Further, she recalled that accused-appellant again uttered threats of killing her and her family. And notably, she clearly stated that she did not consent to having sexual intercourse with accused-appellant. Thus, the Court is convinced that the elements of rape through sexual intercourse are present in the second charge.

With regard to the third charge, which is again sexual assault, the RTC was once again accurate in finding AAA a credible witness. The relevant portions of her testimony regarding the third incident are as follows:

Atty. Arellano

x x x x

- Q: Also, [AAA], on September [2,] 2006 at around 2 o'clock in the morning, can you please tell us where were you?  
A: In my room, sir.

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<sup>94</sup> TSN, February 17, 2010, pp. 8-12. Emphases supplied.

x x x x

Q: Do you remember anything unusual which happened during such date and time?

A: Yes, sir.

Q: Can you please tell us what was that?

A: Someone kissed my lips, sir.

Q: Who was that person who kissed your lips?

A: It was the accused, sir.

Q: How were you able to know that it was the accused who kissed you?

A: There was light coming from the window, sir.

Q: Where was that light coming from?

A: From the tower guard, sir.

Q: After kissing your lips, [AAA], what happened next, if any?

A: He kissed my neck also, sir.

Q: What else happened, Ms. Witness?

A: He also smashed [sic] my breast, sir.

Q: **After kissing and touching you in your private parts, [AAA], what happened next, if any?**

A: **He inserted his finger in my genital, sir.**

Q: **What specific genital is that, [AAA]?**

A: **My vagina, sir.**

Q: **Did you feel the finger of the accused inserted in your vagina?**

A: **Yes, sir.**

Q: **Why do you know that the finger was inserted in your vagina?**

A: **I felt his hands, sir.**

Q: After inserting his finger into your vagina, Ms. Witness, what happened next, if any?

A: Someone knocked at the door, sir.<sup>95</sup>

x x x x

Q: And [sic] ibig sabihin ba nun willing ka mag-suffer na ginagawa sa iyo without even revealing or without even telling them na ganito na pala ang nangyayari sa iyo?

A: Syempre nagpapadala ako sa threat nya.

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<sup>95</sup> Id. at 12-14. Emphases supplied.

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Q: Sa threat?

A: Opo.

Q: Ano ba iyong threat na sinasabi mo?

A: Na kapag sinabi ko kahit kanino baka patayin kami.

Q: **Ibig mo bang sabihin na tuwing mangayayari [sic] ito meron parating threat o meron parating pananakot na tinatawag?**

A: **Opo.**

Q: Pero ibig sabihin kung ito ay hindi mo plinanong sabihin pansamantala at ito ay gusto mong ireserba ibig sabihin pagsabi nung pangyayari sa iyo gusto mong gawin some other time nalang kung kelan [sic] kumpleto kayo, ibig sabihin ba nun na willing kang isakripisyo ang sarili mo?

A: Hindi naman po.

Q: Willing ka na pagdaanan yung pinagdadaanan mo na hindi mo man lang sinasabi sa magulang mo kung ano na talaga nangyayari sa iyo?

A: Hindi naman.

Q: Hindi naman ganun, eh ano yun?

A: **Natatakot lang talaga ako sa threat na binigay nya.**<sup>96</sup>

x x x x

The Court:

x x x x

Q: Pag-ginagawa nang [sic] akusado nung unang pangyayari ano yung mga exact words na sinabi nya sa iyo?

A: **Sabi nya kapag magsasalita daw ako o magsasabi nang [sic] nangyari papatayin nya kami.**

Q: Okay, and sa second time, anong sabi nya ulit?

A: Ganun din po.

Q: **And the third time?**

A: **Ganun din po.**

Q: Bakit ka naglakas ng loob nung third time na nag-report?

A: Nahuli na po kasi sya.

Q: Dahil sa nahuli na sya?

A: Opo.<sup>97</sup>

Here, AAA was again able to narrate that accused-appellant inserted his finger into her vagina—thereby satisfying the first element of performing sexual assault through insertion of an object into a person's genital. Notably for the second element, there was no narration during the direct testimony of the

<sup>96</sup> TSN, April 21, 2010, pp. 5-6. Emphases supplied.

<sup>97</sup> Id. at 9.

offended party regarding the employment of force or intimidation. However, it can be gleaned during the cross-examination and questioning by the trial court that accused-appellant indeed continued to threaten her during the third incident. It was clarified that accused-appellant employed threats even during the third incident. AAA answered in the affirmative when the counsel for the accused-appellant asked her during cross-examination if accused-appellant threatened her during each of the incidents (including the third time). AAA also answered in the affirmative when asked by the RTC regarding the third incident. Thus, the Court is satisfied that the second element of employing intimidation is present in the third charge.

In sum, the Court affirms the RTC's assessment of the witness, AAA, regarding the narration of the events that transpired during those three nights. In addition, it must be remembered that a child's testimony on sexual abuse deserves great respect, thus:

x x x When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Errorless recollection of a harrowing incident cannot be expected of a witness, especially when she is recounting details of an experience so humiliating and so painful as rape. What is important is that the victim's declarations are consistent on basic matters constituting the elements of rape and her positive identification of the person who did it to her.<sup>98</sup>

Further, AAA's account was corroborated by the medico-legal report issued by PSI Ebdane. The report stated that AAA's vagina suffered deep healed lacerations at the five and seven o'clock positions of the hymen, which show clear evidence of blunt penetrating trauma.<sup>99</sup> It is settled that when the offended party's testimony is corroborated by physical findings of penetration (which in this case are the fingers and the penis), there is sufficient basis to conclude that sexual intercourse (and sexual abuse) had occurred.<sup>100</sup>

On accused-appellant's defense of denial, the Court finds it feeble. The defense of denial is inherently weak due to the ease with which it can be concocted; it cannot prevail over the positive identification of the accused by the victim.<sup>101</sup> Case law provides that "mere denial, unsubstantiated by clear and convincing evidence, is [a] negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters."<sup>102</sup>

<sup>98</sup> *People v. XXX*, G.R. No. 238405, December 7, 2020, citing *People v. ZZZ*, G.R. No. 224584, September 4, 2019.

<sup>99</sup> *Rollo*, p. 11. Records, p. 21.

<sup>100</sup> *People v. XXX*, G.R. No. 238405, December 7, 2020, *supra* note 98.

<sup>101</sup> *People v. XXX*, G.R. No. 246194, November 4, 2020.

<sup>102</sup> *Id.*

Accused-appellant claimed that as to the first two alleged incidents, he was not in AAA's room because he was sleeping in his quarters. However, the defense failed to substantiate or corroborate this claim. No one saw him sleeping in his quarters during those times. Thus, it is not impossible for accused-appellant to not be in AAA's room at those times.

As for the third incident, accused-appellant admitted that he was inside the room. He claimed, however, that he did not assault AAA and that he was merely checking in on her asthma. Again, his assertion remains uncorroborated. In fact, his admission that he was inside the room is altogether inconsistent with his denial. Also, CCC corroborated that accused-appellant was indeed inside the room. While CCC did not have personal knowledge of the sexual assault itself, she had personal knowledge of accused-appellant's presence inside the room as she saw that he was sitting on CCC's bed when the door was opened. More importantly, AAA's positive identification of accused-appellant on all three incidents defeats the latter's weak defense of denial.

The Court likewise finds that the other contentions raised by accused-appellant do not cast reasonable doubt on his guilt.

On the issue on the non-presentation as witnesses of AAA's parents and sisters, it is settled that "a conviction for rape may be upheld based on a complainant's testimony when it is credible, natural, convincing, and consistent with human nature and the normal course of things."<sup>103</sup> As already shown, the Court here finds AAA's testimony sufficient to be the primary basis of accused-appellant's conviction for all charges.

Accused-appellant also raised the behavior of AAA during and after the incidents. To recall, the offended party failed to report the incidents to her mother or other housemates until the third incident. Further, accused-appellant claimed that AAA's squeals, even if her mouth was covered, should have been heard by her parents (whose room is next to hers) and her sister (with whom she shares the room), and that there was a "window of opportunity" for her to scream before he covered her mouth. In this regard, there is no standard form of behavior for a rape victim. A victim's behavior and reaction cannot be predicted accurately; people react differently to a given situation.<sup>104</sup> Not all rape victims can be expected to act according to the usual expectation of the majority.<sup>105</sup>

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<sup>103</sup> *People v. Viñas*, G.R. No. 234514, April 28, 2021.

<sup>104</sup> *People v. XXX*, G.R. No. 246194, November 4, 2020, supra note 101, citing *People v. Lolos*, 641 Phil. 624, 633-634 (2010).

<sup>105</sup> *Id.*

Considering all the foregoing, the Court affirms accused-appellant’s guilt beyond reasonable doubt on all two counts of Rape through sexual assault and one count of Rape through sexual intercourse.

At this juncture, the Court deems it necessary to correct the nomenclature of the crimes charged and to impose the proper penalties.

It is undisputed that AAA was 14 years old at the time of the commission of the three offenses. This fact calls for the application of RA 7610.

In *People v. Tulagan*<sup>106</sup> (*Tulagan*), the Court summarized the applicable laws and penalties for the crimes of Acts of Lasciviousness or Lascivious Conduct and Rape through sexual intercourse or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs one and two of Article 266-A and Article 336 of the RPC, as amended by RA 8353, and Section 5 (b) of RA 7610.<sup>107</sup>

In instances where the lascivious conduct committed against a child covered by RA 7610, and the act is covered by sexual assault under paragraph two Article 266-A of the RPC, the offender shall be liable for violation of Section 5 (b) of RA 7610.<sup>108</sup> *Tulagan*, citing *People v. Caoili*,<sup>109</sup> provides for the proper nomenclature of the crime of Rape through sexual assault and the imposable penalty if the victim is more than 12 years of age but below 18 years of age:

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:

- 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

x x x x

- 3. If the victim is **exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age**, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as “**Lascivious Conduct under Section 5(b) of R.A. No. 7610,**” and the imposable penalty is *reclusion temporal in its medium period to reclusion perpetua*.

x x x x

<sup>106</sup> G.R. No. 227363, March 12, 2019.

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> 815 Phil. 839, 893-894 (2017).

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Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be “Lascivious Conduct under Section 5 (b) of R.A. No. 7610” with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as “Sexual Assault under paragraph 2, Article 266-A of the RPC” with the imposable penalty of *prision mayor*.<sup>110</sup>

If the victim is 12 years old and under 18 years old, and the acts committed fall under rape through sexual assault under the RPC, the proper nomenclature is “Lascivious Conduct under Section 5(b) of RA 7610.” The imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

As for Rape through sexual intercourse, and the victim is 12 years old and under 18 years old, *Tulagan* again instructs that the proper nomenclature is “Rape under Article 266-A (1) in relation to Article 266-B of the RPC,” and the imposable penalty is *reclusion perpetua*.<sup>111</sup>

To recap, the Court finds that Rape through sexual assault was committed in Criminal Case Nos. 06-809 and 07-146. Considering that AAA was 14 years old at the time of the commission of the acts, the Court changes the nomenclature of the two charges to “Lascivious Conduct under Section 5(b) of RA 7610.” Resultantly, the Court modifies the penalty imposed by the appellate court; after all, an appeal of a criminal case throws the entire case wide open for review and the reviewing court can increase the penalty to conform with what is provided by the violated penal law.<sup>112</sup> For Criminal Case No. 06-809, accused-appellant is sentenced to suffer an indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.<sup>113</sup> The same sentence shall be imposed for Criminal Case No. 07-146.

As for the Rape through sexual intercourse in Criminal Case No. 07-147, the Court revises the nomenclature of the offense to “Rape under Article 266-A (1) in relation to Article 266-B of the RPC” or Simple Rape. The CA did not err in imposing the penalty of *reclusion perpetua*.

The Court also modifies the imposition of civil indemnities, damages, and fines to conform with *Tulagan* and *People v. Jugueta*.<sup>114</sup> For Criminal Case No.

<sup>110</sup> *People v. Tulagan*, supra note 106. Emphases supplied.

<sup>111</sup> *Id.*

<sup>112</sup> See *People v. Bernardo*, G.R. No. 242696, November 11, 2020.

<sup>113</sup> See *Pendoy v. Court of Appeals (18<sup>th</sup> Division)-Cebu City*, G.R. No. 228223, June 10, 2019.

<sup>114</sup> 783 Phil. 806, 849 (2016)

06-809, accused-appellant is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. For Criminal Case No. 07-146, accused-appellant is likewise ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. For Criminal Case No. 07-147, accused-appellant is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All amounts are subject to six percent (6%) legal interest that will commence to run from the finality of this Decision until full payment thereof. The fines imposed by the appellate court for all cases shall be deleted for lack of legal basis.<sup>115</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The March 30, 2017 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 07147 is hereby **AFFIRMED** with **MODIFICATIONS**. The Court finds accused-appellant XXX guilty beyond reasonable doubt, as follows:

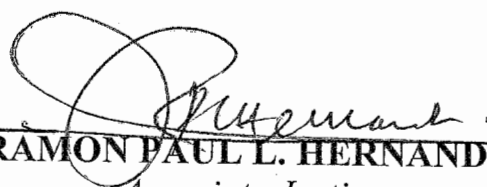
1. In Criminal Case No. 06-809, of Lascivious Conduct under Section 5(b) of Republic Act No. 7610, for which he is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages;
2. In Criminal Case No. 07-146, of Lascivious Conduct under Section 5(b) of Republic Act No. 7610, for which he is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages; and
3. In Criminal Case No. 07-147, of Simple Rape under Article 266-A (1) in relation to Article 266-B of the RPC. He is sentenced to suffer the penalty of *reclusion perpetua*, and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All monetary awards shall earn interest at the rate of six percent (6%) per *annum* from the finality of this Decision until full payment thereof.

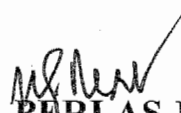
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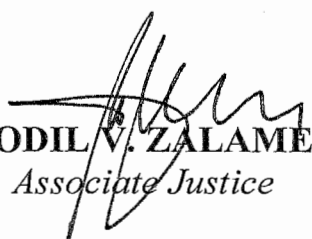
<sup>115</sup> See SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT, Sec. 31(f). See also *Uddin v. People*, G.R. No. 249588, November 23, 2020.

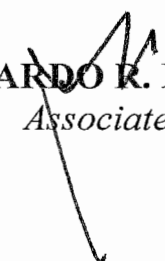
**SO ORDERED.**

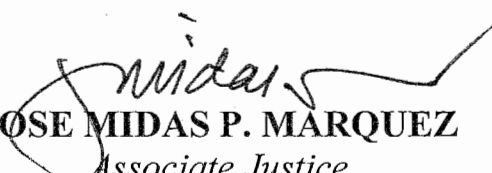
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*


  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

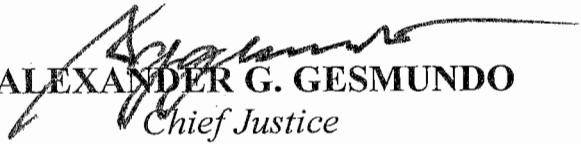
### ATTESTATION

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.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

### 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*