

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAUL ANDERSON Y JEFFREY, ACCUSED-APPELLANT.

Ponente: SALAZAR-FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a91a9462d1d4/>

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Joint Decision[1] dated November 25, 2013 of the Regional Trial Court, National Capital Judicial Region, Branch 207, Muntinlupa City in Criminal Case No. 04-7619 for Acts of Lasciviousness and Criminal Cases Nos. 04-7618 and 04-7543 for two (2) counts of Rape, all in relation to R.A. No. 7610, entitled “People of the Philippines, Plaintiff, vs. Paul Anderson, Accused, and People of the Philippines, Plaintiff, versus Rainier Fahrenhorst y Utz, (who died on 15 March 2004, hence, case against him was dismissed per Order dated March 22, 2004) and Paul Anderson y Jeffrey, Accused.”, the dispositive portion of which reads:

“WHEREFORE, the court finds accused Paul Anderson y Jeffrey (1) guilty beyond reasonable doubt in Criminal Case No. 04-07543 for violation of Section 5(b) of Republic Act 7610 and is sentenced to an indeterminate penalty of twelve years of prision mayor in its maximum as the minimum period to twenty years of reclusion temporal maximum as the maximum period, and is ordered to pay “CCC” the amounts of P50,000.00 as and for civil indemnity and P50,000.00 as and for moral damages, and to pay a fine in the amount of P50,000.00 in accordance with Section 31(f) of R.A. 7610; (2) guilty beyond reasonable doubt in Criminal Case No. 04-7619 for violation of Section 5(b) of Republic Act 7610 and is sentenced to an indeterminate penalty of twelve years of prision mayor in its maximum as the maximum (sic) period to twenty years prision (sic) temporal in its maximum as the maximum period and is ordered to pay “BBB” the amounts of P50,000.00 as and for civil indemnity and P50,000.00 as and for moral damages, and to pay a fine in the amount of P50,000.00 in accordance with Section 31(f) of R.A. 7610; and (3) guilty beyond reasonable doubt for rape under Article 226-A(1)(c) of the Revised Penal Code in Criminal Case No. 04-7619 (sic) and is sentenced to reclusion perpetua without the possibility of parole and is ordered to pay “AAA” the amounts of P50,000.00 as and for civil indemnity and P50,000.00 as and for moral damages.

His preventive imprisonment shall be credited in his favour. (sic) The Jail Warden, Muntinlupa City is ordered to commit the accused to the New Bilibid Prison to serve his sentence with the application of Section 31(d) of R.A. 7610.

SO ORDERED.[2]”

The facts are:

On February 3, 2004[3] and April 26, 2004[4], accused-appellant Paul Anderson y Jeffrey (Anderson for brevity) was charged with two (2) counts of Rape and Acts of Lasciviousness, respectively, allegedly committed as follows:

Criminal Case No. 04-7618 for Rape in relation to Republic Act No. 7610:

“That in the year 2003, at Barangay San Isidro, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust

and lewd desire, and by means of force, intimidation and other fraudulent machinations, give (sic) monetary considerations to one BBB,[5] and did then and there willfully, unlawfully and feloniously commit sexual assaults on said BBB, an eleven (11) year old virgin, by inserting his penis in the mouth of BBB, and by inserting his finger in the vagina of the said complainant, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said BBB, as a human being, to her damage and prejudice.

Contrary to law.[6]"

Criminal Case No. 04-7543 for Rape in relation to Republic Act No. 7610:

"That during the period before (handwritten word after"with initial and date "2-20-04) the Christmas day of 2003, at White Beach, San Isidro, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, motivated by lust and lewd desire, and by means of force, intimidation and other fraudulent machinations, willfully, unlawfully and feloniously did lie, and succeed in having carnal knowledge of one CCC,[7] a nine (9) year old girl by inserting their penis in the mouth of CCC, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of the said CCC as a human being to her damage and prejudice.

Contrary to law.[8]"

Criminal Case No. 04-7619 for Acts of Lasciviousness in relation to Republic Act No. 7610:

"That sometime after Christmas of 2003, at Barangay San Isidro, Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, by means of force, intimidation and other fraudulent machinations, give (sic) monetary considerations, to one AAA,[9] an eight (8) year old virgin and did then and there willfully, unlawfully and feloniously commit acts of lasciviousness against the person of AAA, by embracing, kissing and touching her breast and sexual organ, against her will and consent, acts which debase, degrades (sic) or demean the intrinsic worth and dignity of the said AAA, to her damage and prejudice.

Contrary to law.[10]"

These cases were originally filed and heard before the Regional Trial Court (RTC), Branch 40, Calapan City, Oriental Mindoro but were transferred to the Regional Trial Court, Branch 207, Muntinlupa City by virtue of Supreme Court Resolution dated January 24, 2007[11] granting the Petition for Change Venue[12] filed by the private prosecutor.[13]

Upon arraignment, accused-appellant Anderson pleaded not guilty to the offenses charged.[14] For Criminal Case No. 04-7543, pre-trial conference was held and terminated on March 22, 2004¹⁵ while that of Criminal Cases Nos. 04-7618 and 04-7619 on August 25, 2004.[16] During the pre-trial conference held on March 22, 2004, counsel for accused Rainier Fahrenhorst informed the lower court that said accused died on March 15, 2004 and prayed that the case against him be dismissed. The lower court granted the Motion of said counsel and dismissed the criminal case against accused Rainier Fahrenhorst. Thereafter, a joint trial of the cases ensued.

The prosecution presented the victims AAA, BBB, and CCC, School Principal Emelie Delos Reyes-Marquez, DSWD Municipal Social Welfare and Development Officer Maharani Gilera Babasa and Police Officer Kimye Kong, as witnesses.

AAA, the private complainant in Criminal Case No. 04-7619 for Acts of Lasciviousness, testified[17] that: she was born on August 15, 1995, as shown in her birth certificate,[18] hence, she is ten (10) years old; she came to court to testify against accused-appellant Anderson, whom she identified in open court, for the abuse committed

against her; in December 2003, she was living in their house in Puerto Galera, Oriental Mindoro; sometime after Christmas, AAA went to the house of accused-appellant Anderson at White Beach, Puerto Galera; in said house, accused-appellant Anderson licked her vagina; this incident was repeated for two (2) more times, but the date she could not remember; she went to accused-appellant Anderson's house together with BBB, CCC and DDD upon instruction of CCC's mother, EEE,[19] so they would earn money (“para magkapera”); before they were sexually abused, accused-appellant Anderson allowed them to play outside his house in White Beach; later on, he called them inside his room and started licking their vaginas; he licked her vagina for a short period of time only (“madali”); and he paid each of them Php100.00; the money they received was given to EEE for safekeeping; the second and third incidents happened in the same house where she, BBB and CCC, went, again, per instruction of EEE; during the second incident, which happened in the morning, accused-appellant Anderson first offered them food and after eating, he called them in his room where he alternately licked their vaginas and paid them Php 100.00 each; the third incident which happened in the evening, after they watched cartoons on TV, accused-appellant Anderson also licked their vaginas; accused-appellant Anderson was not the only person who did this to her; and, she executed her affidavits[20] regarding these incidents, which she identified in court.

During her cross-examination she disclosed[21] that: she personally saw accused-appellant Anderson lick the vaginas of her other companions; she already knew “Lolo Rainier” even before she met accused-appellant Anderson because she used to go to Lolo Rainier's house together with BBB, CCC and DDD; when they were there, Lolo Rainier would also lick their vaginas and pay them Php150.00; she was brought to the NBI by the social workers from the DSWD to execute her affidavit but they did not explain to her why she was there; she was present when her statements were being prepared, and they allowed her to read them, after she read and understood the contents, she signed them; sometime in January 2004, she was at the Municipal Building of Puerto Galera because she was about to report to the police authorities the abuses committed against her by accused-appellant Anderson; and, the affidavits which she executed also narrated the abuses committed by Lolo Rainier against her.

BBB, the private complainant in Criminal Case No. 04-7618 for Rape, testified[22] that: she was born on February 23, 1992, she was twelve (12) years old when she was raped; she is in court to charge accused-appellant Anderson, whom she identified in open court, for the “pambabastos” committed against her consisting of a blow job, touching of her private parts and kissing her; “blow job” means that the male sexual organ would be inserted into her mouth; she performed blow jobs on accused-appellant Anderson several times; she met the latter at his house sometime in November 2003 through accused-appellant Anderson's daughter, FFF[23]; the incident happened when FFF invited her to sleep over at accused-appellant Anderson's house; after watching TV, she told FFF that she will go to sleep, but she was not able to sleep that night because accused-appellant Anderson entered their room; when he entered their room, he immediately switched off the lights and positioned himself between them; she saw him undressing FFF and held FFF's sexual organ; thereafter, he did the same thing to her (“sumunod na po ako”); when he did these acts to her, she was unable to move; he also asked them to perform blow job on him; after the abuse, he warned her not to report the incident to anyone; the same abuse was repeated every time FFF invited her to sleep over; and, she executed a “Sinumpaang Salaysay[24]” regarding this incident.

During her cross-examination, she revealed[25] that: Rainier Fahrenhorst also did to her the same sexual abuse she experienced with accused-appellant Anderson; she told her parents about what happened to her, but they did not believe her; she no longer wanted to go to accused-appellant Anderson's house but her mother still instructed her to go there; she met accused-appellant Anderson at his house sometime on November 3, 2003 through the latter's daughter, FFF, whom she met when she was washing clothes with her mother; FFF, DDD, CCC and AAA were her playmates at accused-appellant Anderson's house; at that time, she was living with her parents who were having financial difficulties because her stepfather was jobless; she helped out by selling odd things to foreigners

and she did household chores for accused-appellant Anderson at his house, for which she was paid; he gave financial assistance to her family but he always asked something in return; she eventually lived with accused-appellant Anderson in his house because he adopted her; she calls him “Papa PJ” since she considered herself as his adopted daughter; the wife of accused-appellant Anderson did not discover the sexual abuse because she was sleeping in a different room; when the incident happened, accused-appellant Anderson entered the room she shared with FFF, then he immediately switched off the lights and placed himself between them and gave her money later on; accused-appellant Anderson was arrested sometime in January 2004, after she told the school principal and her teacher about the sexual abuse committed on her; and, she executed a statement regarding the incident.

On re-direct examination, she asserted[26] that: it was EEE who explained to them the meaning of the word “blow job” in Tagalog because accused-appellant Anderson wanted them to perform a “blow job” on him; and, she sensed that accused-appellant Anderson expected something in return after he extended help to her family because she saw him giving money to her stepfather.

CCC, the private complainant in Criminal Case No. 04-7543 for Rape, testified[27] that: she is ten (10) year old; she was born on June 25 but she could not remember the year; she knows accused-appellant Anderson whom she identified in open court; BBB's sister introduced her to accused-appellant Anderson in Barangay Aninuan, Puerto Galera who she calls “PJ”; she filed a case against him because he is a bad guy, for abusing children; he licked her vagina and she performed “blow job” on him; the word “blow job” means that the penis is inserted in the mouth of the minor; after he licked her vagina, she felt pain; when the incident happened, it was dark so she and BBB could not prevent him from doing said act to them; she performed “blow job” on him because BBB forced her; while she was doing this, she felt like spitting; she wanted him to be incarcerated for sexually abusing her; and, she executed an affidavit[28] regarding the incident which she identified in open court.

On cross-examination she testified[29] that: her birthday is on June 25, 1994; her friend BBB told her that accused-appellant Anderson adopted her, so she lives in his house; accused-appellant Anderson also gave financial assistance to her mother and her family; she went to his house because her mother went there to clean and wash the clothes of BBB; BBB would also bring her there; it was BBB's sister, GGG,[30] who introduced her to accused-appellant Anderson; her mother did not take care of her and she did not love her because when accused-appellant Anderson sexually abused her, she did not do anything to report the matter to the police; she was present when accused-appellant Anderson and Rainier Fahrenhorst were arrested on January 14, 2004; the night before the arrest, she was at accused-appellant Anderson's house, and he was making her watch x-rated video, not suitable for children, and he told her that they will be doing what was shown in the video later on; when the police arrived to arrest him, accused-appellant Anderson and others were making her watch a bold video (“pinapanood po nila ako ng bold”), and they were caught by surprise so they unplugged the video; she was assisted by a social worker when she gave her statements regarding the case, but she was not coached as to what to say because she just told them the truth; she was not forced by the DSWD to file a complaint against accused-appellant Anderson; she escaped from the custody of the DSWD because her mother helped her escape; when she left, she did not understand the case very well, but when it was explained to her, she was enlightened and decided to stay with the DSWD; and, her mother wanted her to tell a lie and not to continue with the filing of the case but she really wanted to file the case.

On re-direct examination, she stated[31] that: it was her sister who forced her to write a letter in order to end the case; she declined her sister's request because she wanted justice and she was crying when she was forced to write said letter; thereafter, when she was at the defense counsel's house, her mother also forced her to write another letter narrating how accused-appellant Anderson was good to them and that he was helping them; she was rescued

by the DSWD from a big house with a terrace in White Beach; she was there because her mother was doing the laundry there; she knows that accused-appellant Anderson was staying in that house; when she was rescued, she was inside the house with accused-appellant Anderson and two other persons; at that time, they asked her to watch a bold movie; when the police came, they pulled the plug, and that was the time that the police arrested them; when she was rescued, that was not the first time that her mother left her in the house of accused-appellant Anderson; she felt ashamed; before the arrest, her mother would take her and two other girls to accused-appellant Anderson's house, then her mother would talk to accused-appellant Anderson and after they talked, he would do something to them; and, they were naked when accused-appellant Anderson would tell them to lie in bed, and he would kiss their vaginas.

On re-cross-examination, she just confirmed that, the letter which her sister forced her to write, was written by her.[32]

Emelie Delos Reyes-Marquez (Marquez for brevity), the Principal at Talipanan Mangyan Elementary School who discovered the sexual abuse committed against BBB and reported to the DSWD, testified[33] that: on January 13, 2004, teacher Florentina Garcia approached her and told her to interview a pupil named BBB because she was exhibiting a different behavior in class; according to the teacher, said student was observed to be inattentive, “matalay”, “laging nakaob-ob at hindi nakikinig sa klase”; she called BBB to her office and interviewed her; BBB told her that she has a problem; she discovered that BBB and CCC were living in the house of a foreigner name “PJ”; BBB revealed that all of them slept in one room and shared one bed, with PJ sleeping between them; BBB disclosed that PJ would sometimes touch their breasts, insert his finger in their sexual organ and lick the same; they were also asked to perform “blow job”, where they suck (“sinusupsop”) PJ's penis; after she learned about this matter, she instructed BBB to leave the house of PJ, but BBB said that she could not leave because her mother owed him money for the construction of a “banca”, and he was giving her “baon” and providing her with nice clothes; after she interviewed BBB, she went to the District Office to relay the incident to her District Supervisor who advised her to report the matter to the DSWD; she never informed BBB's parents about what she discovered because during the interview BBB claimed that she already confided the incident to her mother but the latter did not believe that PJ was doing those things to her; so she went to the DSWD in Puerto Galera to report the incident, and then she went to the National Bureau of Investigation (NBI) to execute her affidavit/statement.[34]

During her cross-examination, she clarified[35] that: BBB did not come to her to complain about the incident, but she learned about BBB's story after one of the teachers raised a concern about her behavior in class; she executed her affidavit before the NBI on January 22, 2004, while her interview with BBB happened on January 13, 2004; she did not take down notes when she was interviewing BBB; she personally prepared/related her statements regarding her interview with BBB to the NBI when she executed her affidavit, but she could not recall each paragraph verbatim because she gave her statements a long time ago.

On re-direct examination, she affirmed[36] that: she went to the NBI to execute her statement because she wanted to tell the truth for the welfare of her student; the NBI personnel typed the statements she supplied, and after she finished giving her statements, she read the contents of her affidavit then signed it.

On re-cross examination she maintained[37] that: she could not remember the contents of her affidavit, paragraph by paragraph, but she knows the contents thereof in its entirety; and, the statements she gave to the NBI were all her words.

Maharani Gilera Babasa (Babasa for brevity), the Municipal Social Welfare and Development Officer of the DSWD, testified[38] that: as a Social Worker, her function includes the handling of special child-court related

cases, particularly victims of child abuse, child molestation, child prostitution and other similar abuses against children; on January 14, 2004, Marquez went to their office and reported to her that one of their students in Talipanan Elementary School, BBB, was victimized by an alleged pedophile; after receiving this report, she went to the police to ask for their assistance in verifying said complaint; accordingly, around 9:45 o'clock in the morning of the same day, she and two (2) other social workers, assisted by three (3) policemen proceeded to the said school, coordinated with the teachers of BBB and talked to BBB privately to confirm the report they received from Marquez; during her interview with BBB, she discovered that the latter and another girl named CCC were staying with a certain "PJ" at White Beach, Puerto Galera; in order to confirm BBB's claim, they went to Aninuan Elementary School to look for CCC, but she was not there; in said school, they met CCC's relative, DDD,[39] who informed them that CCC was at PJ's place in White Beach, Puerto Galera; upon learning about this location, she, DDD, BBB, the representatives of the DSWD and the police officers proceeded to PJ's place; when they were near PJ's place, BBB ran and knocked at the closed door; the door was opened by "PJ", accused-appellant Anderson; when she reached the terrace of the house, she saw through the opened door, two (2) other foreigners, whom she later identified as Rainier Fahrenhorst and John Vanzeln, watching sexual acts on television; she saw on the television monitor a man and on top of him was a girl performing a sexual act; when she pushed the door, she saw CCC inside sitting on a bean bag and watching the television with Rainier Fahrenhorst and John Vanzeln; accused-appellant Anderson was initially outside the house by the door, but after she called the police, he entered the house, turned off the TV and gave the video cam to Rainier Fahrenhorst; she and the police asked them if they could see the video cam, but accused-appellant Anderson denied ownership of the same saying that it was Rainier Fahrenhorst's video cam; the latter also refused to show the video cam to them; the other foreigner, John Vanzeln, who was also inside the house, was able to escape; thereafter, the police invited accused-appellant Anderson and Rainier Fahrenhorst to the police station, while she took BBB, CCC and DDD to their office; at their office, she conducted her intake interview with the children where she asked them about their personal circumstances; during the course of said interview, CCC said, "Ate, salamat at dumating kayo. Kung hindi po kayo dumating tatabahuhin ko po ang tatlong foreigners." ; when she asked her what she meant by "tatabahuhin", CCC replied, "binabastos po kami ng mga Kano."; she prompted her with another question, "Anong klaseng pambabastos?"; CCC said, "bini-bj namin sila."; when she asked CCC to explain the act, the latter said that the penis of a man is being inserted into the mouth; she further asked the children what was being done to them by these foreigners and CCC related that "Pini-finger po kami at hinihimod po ang ari."; they could not remember how many times they were subjected to these acts, but, they said that these happened several times; she also learned about the identities of the other children who were victimized by these foreigners; after the intake interview, the children were brought to the Rural Health Center Unit for medical examination; then, they were brought to the police station for the filing of the appropriate complaint but the investigators were not around, so BBB and CCC, were taken to the NBI in Calapan City on January 16, 2004; they told the NBI that these children were victims of pedophiles in Puerto Galera, and since the PNP investigator was not present, they were brought before the NBI to give their statements; one of the social workers assisted the children in giving their statements; the parents of BBB were not informed of the filing of the case because BBB already told her mother about the incident but the latter did not listen; later it was revealed that the mother was receiving support/favors, like cash, house and lot and a boat; the next of kin and alleged mother of CCC, EEE, was also not informed of the filing of the case because she was suspected to be the one who brought the children to the foreigners ("ang nagdadala ng mga bata"); after BBB and CCC executed their affidavits before the NBI, AAA, BBB, and CCC were referred to the Bahay Tuluyan at Dasmariñas, Cavite for protective custody; aside from the intake interview, a deeper interview with the children was conducted for the preparation of the social case study report[40]; and, she also prepared a Report on the alleged sexual abuse cases.[41]

On cross-examination she reiterated[42] that: in January 2004, she worked as a Municipal Social Welfare Officer

for the DSWD at Puerto Galera; she personally received the report of Marquez at their office, then she went to the police station to ask for assistance after she relayed the same to the Chief of Police, Inspector Policarpio Lopez, who instructed three (3) of his police officers to accompany her and three (3) other social workers to Talipanan Mangyan Elementary School; to verify Marquez' report, she interviewed a teacher, Cristina Garcia, and BBB; the interview conducted was an oral interview because she was in the field and the purpose was only to verify so it was not reduced in writing, nonetheless there was also a written interview at the office when she did the intake interview; during her interview with BBB, she discovered that CCC was also a victim, so they went to the latter's school at Aninuan Elementary School but she was not there; at the school, they met CCC's cousin, DDD who told them that CCC was in PJ's house at White Beach, Puerto Galera and so they went to PJ's house; when they arrived at PJ's house, BBB ran towards the door and knocked; accused-appellant Anderson opened the door and he went out; she followed BBB and she reached the terrace of the house where she initially spoke with accused-appellant Anderson by the door; then, she saw his other companions, who were also foreigners, Rainier Farenhorst and John Vanzeln, who were watching a videotape exhibiting some sexual acts; she entered the house and she saw the two (2) foreigners drinking while CCC was sitting on a bean bag on the left side; under the circumstances, she assumed that accused-appellant Anderson and his companions were in violation of R.A. 7610, for attempting to commit prostitution but she did not ask the police to arrest them, instead they were invited to the police station for the sex videos they were watching; at that time, accused-appellant Anderson unplugged the video cam from the TV set and gave it to Rainier Fahrenhorst; when she asked if they could see the videos, they refused, so the police invited them to the police station; only the two of them were brought to the police station because John Vanzeln escaped through the back door of the house; the police did not have any warrant of arrest or search warrant when they went to the house; she documented her participation in this case, and it was stated in her report which she submitted to the NBI when the children gave their statements.

Police Officer Kimye Kong (PO Kong for brevity), the Chief Investigator at the Puerto Galera, Police Station in 2004 who responded/investigated the report made by Marquez and Babasa on January 14, 2004 relative to this case, testified[43] that: on January 14, 2004, Major Policarpio Lopez (Major Lopez for brevity) from the Puerto Galera Police Station received a report from a DSWD Social Worker and the Principal of Talipana Elementary School at Puerto Galera, regarding incidents of molestation of several children committed by some foreigners at White Beach, Puerto Galera; upon receipt of said report, the same was entered in their Police Blotter Logbook; thereafter, he and two (2) other policemen accompanied/assisted the DSWD Social Worker, the Principal and one of the victims who led them to the place where the suspects were found; when they arrived at the place, they saw the three (3) foreigners with two (2) children inside a cottage; the foreigners were drinking while watching a sex video with the two (2) girls; when they went inside the cottage, one of the foreigners unplugged the video, while the DSWD attended to the children; one of the foreigners present was accused-appellant Anderson, whom he identified in open court; initially, there were three (3) suspects but one escaped so they invited the remaining two (2), namely: accused-appellant Anderson and Fahrenhorst at the police station; some videos, a video cam, a personal computer, and certain pornographic objects like plastic vibrators of different sizes found inside the cottage were also confiscated and were brought to the police station; subsequently, these confiscated items were turned over to the Court with a corresponding report when they filed the case.

During cross-examination, he explained[44] that: accused-appellant Anderson and his companion, Fahrenhorst, were not arrested through warrantless arrest and in fact a Warrant of Arrest was not necessary when they invited them to the police station on January 14, 2004 because they were just conducting a rescue operation of the two (2) girls found at the place reported to them; the complainant of the rescue operation was Heidi Cobarubias, a Municipal Social Worker of Puerto Galera, who informed them about the molestation committed by these foreigners against the rescued children; the DSWD Social Worker talked to the suspects before they entered the

place, and when they came in they saw them watching pornographic videos; they did not arrest them but they invited them to the police station for them to explain why they were watching such videos and explain the complaint against them; they accepted the invitation, so they escorted them to the police station; at the police station, they investigated them and after the complaint against them were confirmed, they were turned over to the court; they did not have a search warrant when they seized the tv monitor, the computer and other pornographic items from the foreigner's house, but the tv monitor and the computer were confiscated because they were using them to show lewd videos; these items, as far as he knows, were turned over by their "Hepe" to the court; the vibrators, on the other hand, were lying around the "sala" and were in plain view when they collected them; each individual item seized did not have any marking on them, but the original plastic bag which initially contained these items was marked; nonetheless, despite the absence of identifying marks, he could still identify these items because he personally confiscated these things; after they confiscated these items, they prepared their police blotter; he was the evidence custodian of the confiscated items but he turned over the same to the custody of their "Hepe", Major Lopez, and the latter subsequently turned over said items to the court; they did not issue a receipt for the confiscated items to the owner; and, he prepared an investigation report documenting all these events and it was submitted to the court.

Meanwhile, accused-appellant Anderson was the sole witness for the defense, and he testified^[45] that: he arrived in the Philippines on November 6, 2001; initially, he stayed in Boardwalk, Batangas, then moved to Waterworks, Batangas where he met a Filipina, Cristina Aguila; after some time he married Cristina Aguila and they moved to Aninuan, Puerto Galera; he knows BBB because the latter's father worked for him for about 8 to 9 months, raising chickens and doing errands for him; around November 2003, he learned from BBB's father that BBB ran away from home, and at that time he tried to talk to her and convinced her to come home; late December 2003, EEE, mother of CCC, came to him and begged him to take in BBB, but he refused because he was then living alone as he was separated from his wife; after further prodding, he decided to talk to BBB's parents first, thereafter, he allowed BBB to live with him on condition that she will go back to school and help with the house chores; he took her in around January 4 or 5, 2004; the accusation of BBB against him is not true because it never happened and the only reason she filed a case against him was he refused to give her money; BBB did not want to live in the house alone so she talked to EEE and CCC agreed to stay at the house; he did not adopt BBB, he only allowed her to live with him; CCC started staying in his house around the same time as BBB; around Christmas of 2003 he took his wife back to her family in Batangas and they separated; he went back to Aninuan and spent the holiday there, then, he moved to White Beach; BBB and CCC lived at EEE's house before they stayed with him; the accusation of CCC is not true because it never happened and she only filed the case against him because the DSWD forced her to; AAA's accusation is also not true and he could not think of a reason why she would file a case against him; sometime in January 2004 he was arrested at his house; late November or late December 2003, BBB's father introduced him to Rainier, a German national; he knew him only for a month; later, Rainier and his friend went to his house to watch home movies because the former had no TV; when he saw what was being shown on TV he wanted to shut it off because CCC was there; he did not want to start an argument so he asked her to go home but she refused and she started jumping and laughing; he went to the kitchen and ate a sandwich and drank his beer thinking of a plan on how to shut off the video; when he walked back to tell them to take a break, CCC threw herself at him, he tried to calm her down and that was the time when he saw people coming; they introduced themselves as DSWD and the police; the DSWD walked inside his house and then he was told that the commissioner wanted to invite him to his office for coffee to get to know the people in the area better; so he went, but when they got there he was taken to a cell and locked up; no one explained what was going on; later that night he found out from the police about the criminal charges against him which are not true; and, he did not file any counter-statement because he did not have a lawyer or legal representation.

On cross-examination, he admitted[46] that: he is also known as and called "PJ"; initially he was staying in Batangas and married there to his wife Cristina Aguila on January 31, 2003; he knew her for about 3 or 4 months before they got married; she has a daughter, FFF, who was about 9 years old at that time; by March 2003 from Batangas they transferred to Aninuan, Puerto Galera; his wife, FFF and a maid stayed in the house permanently; two (2) months after he moved to Puerto Galera, BBB's father worked for him to raise chicken; it was when he moved to White Beach, Puerto Galera late December, 2003 to early January, 2004 when BBB's father, mom and brother worked for him at the house; late December 2003 his wife already left him; around the same time, his chicken business went up in flames, and BBB's family was rendered homeless so he bought a piece of land and gave it to them and they constructed a house there; on January 3 or 4 2004 he moved to White Beach, Puerto Galera; BBB lived with him on January 3, 2004; he met EEE, CCC's mother, through Rainier; he sent her to the hospital to help her because she was bleeding due to blotched abortion; Rainier, his neighbor, brought a certain John to his house; he does not know how old BBB was but she was a small child; CCC was about 9 or 10 years old, while AAA was younger than her; when he took BBB in, they agreed that she would do chores around the house; CCC volunteered to stay at the rented house after BBB moved in; the girls slept on the bottom bunk while he slept on the edge of the bed and they slept together; AAA had been to his house two to three times to visit BBB and CCC; the girls never came to visit but they lived in the house with him; at the time of his arrest, Rainier and his friend John were in his house to watch home movies because they had no TV set; when he saw that they were watching pornography, he did not like it; he asked CCC to go home to her family, but she started jumping and laughing; she was in that home movie; he did not want to start a fight so he went to the kitchen, ate a sandwich and drunk beer as he was thinking of a plan to make them stop; CCC was nine or ten then; he wanted CCC to go home because he did not want her to watch pornography; he owns the TV while Rainier brought his own camera which he connected to the TV; he brought two tapes; the tapes were not his and they were not found in his house; the children stayed with him because they liked to ride around in his owner type jeep; EEE went to his house to do laundry; he helped BBB's family by giving her Php100.00 to take to her family to buy food; he also helped EEE to get medical attention; as regards AAA, he gave her money once and drove her back home after he refused to let her live with him.

After trial, the lower court rendered a judgment of conviction against accused-appellant Anderson.[47] Hence, this appeal raising the following assignment of errors:[48]

I. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE ITS FAILURE TO CLEARLY AND DISTINCTLY STATE THE FACTS AND THE LAW UPON WHICH ITS DECISION WAS BASED.

II. THE COURT A QUO GRAVELY ERRED IN TAKING JUDICIAL NOTICE OF THE AGES/MINORITY OF PRIVATE COMPLAINANTS CCC AND BBB

III. THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.

The appeal is without merit.

The main thrust of the appeal focuses on the alleged error committed by the lower court in convicting accused-appellant Anderson of the charges against him despite the failure of the prosecution to properly establish the ages of the victims at the time of the commission thereof. Accordingly, this Court is tasked to determine whether said convictions were correct and whether the proper penalties were imposed.

In Criminal Case No. 04-7619 accused-appellant Anderson was charged for Acts of Lasciviousness in relation to R. A. No. 7610. The pertinent provision of Section 5 (b), Article III of said law penalizes those who engage in

lascivious conduct with a child exploited in prosecution or subjected to other sexual abuses as follows:

“xxx 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.

xxx xxx xxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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; xxx”

Corollary, Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, which was promulgated to implement the provisions of R.A. No. 7610, defines lascivious conduct, to wit:

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

In this case, the lascivious conduct committed by accused-appellant Anderson is depicted in the following testimonies of AAA:

“xxx Atty. Sevilla:

Q: AAA, why are you here in court today?

A: To narrate the abuse made on my person by the accused, ma'am.

Q: Who is this accused you are referring to?

A: Paul Anderson, ma'am

Q: And is this Paul Anderson inside the court today?

A: Yes, ma'am.

Q: Can you point and identify this Paul Anderson?

A: Witness points to a person inside the court who after having been pointed at by the witness identified himself as Paul Anderson.

xxx xxx xxx

Court:

Q: What kind of abuse did Paul Anderson do to you?

A: He licked my vagina, Your Honor.

Q: How many times that he licked your vagina?

A: Three times, Your Honor.

Q: Can you tell the Court the place where the accused Paul Anderson licked your vagina for three (3) times?

A: In White Beach, Puerto Galera, Oriental Mindoro, Your Honor.

Q: Where in White Beach, Puerto Galera?

A: In the house of the accused, Your Honor.

Atty. Sevilla:

Q: AAA, when you said three (3) times, do you mean three (3) incidents? Are you referring to the incident where the accused licked your vagina thrice or in separate days or incidents?

A: On separate dates ma'am.

Q: Can you still recall when all these incidents transpired?

A: I don't recall, ma'am.

Q: You said that you started staying at Bahay Tuluyan sometime in January 2004 but that on (sic) December 2003, you were still residing in Puerto Galera. Do you know when Christmas is AAA?

A: Yes, ma'am.

Q: When is Christmas?

A: December 25, ma'am.

Q: Can you tell us if on December 25 these sexual abuses you were referring to already happened?

A: Not yet, ma'am.

Q: So, are you then saying that these sexual abuses happened after December 25?

A: Yes, ma'am.

Q: Now, can you tell the Honorable Court how the first incident of sexual abuse happened?

A: The accused first let us play, ma'am.

Q: Who is this accused you are referring to?

A: Paul Anderson, ma'am.

Q: How do you call Paul Anderson?

A: PJ, ma'am.

Atty. Sevilla:

May the witness be allowed to call the accused in the name that the witness is used to call him?

Court:

Alright.

Atty. Sevilla

Q: Now, AAA, you said that PJ allowed you to play. Where exactly is it that he allowed you to play?

A: Outside, ma'am.

Q: Outside of what?

A: Outside the house, ma'am.

Q: And whose house is this?

A: PJ's house.

Q: And where is this located?

A: In White Beach, ma'am.

xxx xxx xxx

Q: So, when you were there, what happened after you were instructed by PJ to play outside his house? What happened next, if any?

A: PJ instructed us to get inside his room.

Court:

Q: And who were with you when PJ instructed you to go inside the house?

A: DDD, CCC and BBB, Your Honor.

Q: Did you together with your other companions actually go to the room of the house of the accused?

A: Yes, your Honor.

Q: And when you were already inside the room of the house of the accused, who were inside the room?

A: PJ only, Your Honor.

Q: No other person inside the room except PJ?

A: Yes, Your Honor.

Court:

Proceed.

Atty. Sevilla:

Q: And what did PJ do, if any?

A: PJ licked our vaginas, ma'am.

Court:

Q: You stated our vaginas. Whom are you referring to?

A: DDD, CCC and BBB, Your Honor.

Court.

Proceed.

Atty. Sevilla:

Q: Are you saying then that the accused took turns in licking your vagina and that of CCC, BBB and DDD?

A: Yes, ma'am.

xxx xxx xxx

Court:

Q: On your part, how long did the accused licked (sic) your vagina?

A: Just for a short time, Your Honor. (“madali”)

xxx xxx xxx

Atty. Sevilla:

Q: Now, after PJ licked your private organ and that of CCC, BBB and DDD, what happened next, if any?

A: He paid us One Hundred Pesos, ma'am.

xxx xxx xxx

Q: This was the first incident you are referring. Can you tell us the second incident that you referred to earlier? When did it happen? Can you still recall the date when it happened?

A: I cannot recall anymore.

Q: Where did it happened, the second incident?

A: The second incident happened also in the house of the accused ma'am.

Q: Who were with you at that time when it happened?

A: CCC and BBB.

xxx xxx xxx

Court:

Q: And did you actually go to the house of the accused upon instruction of your Tita EEE?

A: Yes, Your Honor.

Q: And upon reaching the house of the accused, what happened?

A: He first offered us food, Your Honor.

Q: Did you actually partake that food?

A: Yes, Your Honor.

Q: After you have eaten that food offered to you by the accused, what happened next?

A: He called us in his room, Your Honor.

Q: You mean to say that you and your two (2) companions BBB and CCC?

A: Yes, Your Honor.

Q: And once inside the room of the accused, what happened next?

A: He again licked our vaginas, Your Honor.

Q: Whose vaginas are you referring to that the accused licked?

A: First Ate BBB, the Ate CCC, then mine, Your Honor.

xxx xxx xxx

Atty. Sevilla:

Q: And then after he did this to you and to your two other companions, what happened next, if any?

A: He paid us, ma'am.

Court:

Q: How much?

A: One Hundred pesos, Your Honor.

xxx xxx xxx

Atty. Sevilla:

Q: Now, we go to the third incident that you referred to earlier. How did it happen in the morning, in the afternoon or in the evening?

A: In the evening ma'am.

Q: And where did (sic) this (sic) happened,(sic) this third incident?

A: In his house also, ma'am.

xxx xxx xxx

Q: Who were you with at that time when this third incident happened in the house of PJ?

A: Ate CCC and Ate BBB, ma'am.

Q: So, when you arrived in the house of PJ upon the instruction of EEE, what happened or what did you do, if any?

A: He let us watched cartoons, ma'am.

Q: After watching cartoons on TV, what happened next, if any?

A: He again instructed us to enter his room, ma'am.

Q: And upon entering his room, did you see PJ inside that room also?

A: Yes, ma'am.

Q: And who else was with you inside that room you referred to?

A: Ate CCC and Ate BBB, ma'am.

Q: And what happened next, if any?

A: He licked our vaginas, ma'am.

Q: After the accused licked your private parts, what happened next, if any?

A: He paid us Php100.00 ma'am.[49] xxx" (emphasis ours)

From the foregoing, it is beyond cavil that the act of accused-appellant Anderson in intentionally licking the vagina of AAA on three separate occasions constitutes lascivious conduct. Significantly, the penalty imposed for the commission of this crime is likewise stated in Section 5(b), Article III of R. A. No. 7610, viz.:

“(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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; xxx” (emphasis ours)

In this case, this Court notes that the minority of AAA was not put in issue. Accordingly, the records show that the latter's age was properly alleged in the Information[50] and was established through the presentation of her birth certificate[51] that she was in fact only eight (8) years old when accused-appellant Anderson sexually abused her. Therefore, since she was indeed below twelve (12) years old at the time the offense was committed, the penalty of reclusion temporal in its medium period, should be imposed as provided in Section 5 (b) of R.A. No. 7610. For the imposition of the correct indeterminate prison term, this Court is guided by the pronouncement in the case of *Nicanor Dulla vs. Court of Appeals, et al.*, [52] viz.:

“xxx The penalty for acts of lasciviousness under Art. III, Section 5(b) of R.A. No. 7610 is reclusion temporal in its medium period, the range of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances, the maximum term of the sentence to be imposed shall be taken from the medium period of the imposable penalty, which is reclusion temporal medium, the range of which is from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days, while the minimum term shall be taken from the penalty next lower in degree, which is reclusion temporal minimum, the range of which is from 12 years and 1 day to 14 years and 8 months.” (emphasis ours)

Following the above ruling, the penalty next lower in degree to reclusion temporal in its medium period is not prison mayor, as prescribed by the lower court, but reclusion temporal in its minimum period. Thus, the proper imposable penalty should be imprisonment of twelve (12) years and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum.[53] The award of civil indemnity, moral damages and the amount of fine paid to AAA is reduced in the amount of Php20,000.00, Php15,000.00, and Php15,000.00, respectively, as mandated by prevailing jurisprudence.[54] Nonetheless, an additional award of exemplary damages in the amount of Php15,000.00 should be granted to AAA. The award of exemplary damages is justified as ruled in the case of *People of the Philippines vs. Michael Lindo y Vergara*, [55] to wit:

“xxx Art. 2229 of the Civil Code serves as the basis for the award of exemplary damages as it pertinently provides, 'Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.' Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. By subjecting a child to his sexual depredations, accused-appellant has displayed behavior that society has an interest in curbing. Thus, the purpose of exemplary damages to serve as a deterrent finds application to the present case, to protect the youth from sexual abuse. xxx”

In Criminal Case No. 04-7618, accused-appellant Anderson is charged with rape through sexual assault in relation to R. A. No. 7610. Rape through sexual assault, otherwise known as "instrument or object rape or gender free rape," is committed as follows:

“xxx Art. 266-A. Rape; when and how committed. — Rape is committed —

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.[56] xxx” (emphasis ours)

The elements of this crime are the following:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) By inserting his penis into another person's mouth or anal orifice; or
 - (b) By inserting any instrument or object into the genital or anal orifice of another person;
- (3) That the act of sexual assault is accomplished under any of the following circumstances:
 - (a) By using force or intimidation;
 - (b) When the woman is deprived of reason or otherwise unconscious; or
 - (c) By means of fraudulent machination or grave abuse of authority; or
 - (d) When the woman is under 12 years of age or demented.[57]

The undeniable circumstance of rape through sexual assault committed by accused-appellant Anderson was established by the following testimonies of BBB, to wit:

“xxx Atty. Barias:

Q: Do you know why you are here in this courtroom right now?

A: Yes, ma'am.

Q: Could you tell us briefly why are you here?

A: To charge PJ, ma'am

Q: Who is PJ?

A: The accused ma'am.

Court:

Q: Do you mean to say the accused in this case Paul Anderson?

A: Yes, Your Honor.

xxx xxx xxx

Court:

Q: You stated that you want to charge Paul Anderson, the accused in this case, of what?

A: Because of the case, Your Honor.

Q: What case was that?

A: “Pambabastos”

Q: And what was that “pambabastos” that you want to charge Paul Anderson? Will you please relay to this Court?

A: By blow job, touching my private part and kissing me, Your Honor.

Q: And what do you mean by that blow job? Will you please demonstrate before this Court, what is that blow job?

A: Blow job means his sexual organ would be inserted into my mouth, Your Honor.

Q: How many times that the accused inserted his sexual organ on your mouth?

A: For several times, Your Honor.

xxx xxx xxx

Atty. Barias:

Q: Who introduced you to PJ?

A: A certain FFF, ma'am.

Q: Who is FFF?

A: PJ's daughter, ma'am.

Q: Would you remember when was this?

A: In November 2003, ma'am.

xxx xxx xxx

Q: Where did FFF introduced (sic) you to PJ?

A: In PJ's house, ma'am.

xxx xxx xxx

Court:

Q: You stated that PJ is Paul Anderson, is that correct?

A: Yes, Your Honor.

Q: And Paul Anderson is the accused in this case?

A: Yes, Your Honor.

Q: And you stated awhile ago that if Paul Anderson will be here, you can identify him.

A: Yes, Your Honor.

Q: Is he now in this courtroom?

A: Yes, Your Honor.

Q: Will you please point at him?

A: Witness points to a person inside the courtroom who identified himself after having been pointed at by witness as Paul Anderson.

Atty. Barias:

Q: When was that second time that you saw PJ?

A: When FFF invited me to sleep in their house, ma'am.

xxx xxx xxx

Q: What did you do when you slept in PJ's house?

A: FFF first told me that we first washed up before we go to sleep, ma'am.

Q: Did you have your own room when you slept in PJ's house?

A: I did not, ma'am.

Q: Who were with you inside the room?

A: FFF, ma'am.

Q: When you slept in PJ's house, did anything unusual happened?

A: Yes, ma'am.

Q: What was that?

A: After watching television programs, I told FFF that I was about to sleep, ma'am. Q: And were you able to sleep that night?

A: I was not, ma'am.

Q: Why?

A: Because I heard somebody entered the room FFF and I were occupying, ma'am.

Q: Who entered the room?

A: Paul Anderson, ma'am.

Q: Were the lights turned on or off at that time?

A: He immediately put the switch off upon entrance to the room, ma'am.

Q: What did Paul Anderson do as soon as he entered the room?

A: Paul Anderson after having the light switched off placed himself between FFF and I, ma'am.

Q: What else did he do if any?

A: When Paul Anderson was already between FFF and me, I saw that FFF was being undressed, ma'am.

Q: After undressing FFF, did PJ do anything else?

A: Yes, ma'am.

Q: What was that?

A: After undressing FFF, PJ held FFF's sexual organ and then PJ likewise held me, ma'am.

Q: When you mentioned that "sumunod na po ako", what do you mean by that?

A: PJ did to me what he did with (sic) FFF, ma'am.

Q: And what did you do after that?

A: I was unable to move, ma'am.

Q: Did PJ do anything else after that, if any?

A: We were told to perform blow job, ma'am.

Q: Did you do that? When PJ asked you to do a blow job, did you follow his orders?

A: Yes, ma'am.

Q: Did PJ do anything else after that?

A: He warned me not to report to anybody ma'am.

Q: After that, did PJ do anything else aside from ordering you not to tell any one about the incident?

A: No more, ma'am.[58] xxx (emphasis ours)

From the foregoing statements, it is crystal clear that all the elements of rape through sexual assault are present. As narrated above, the act of sexual assault committed by accused-appellant Anderson happened when he forced the victim, BBB, to perform a blow job on him. Having established the guilt of accused-appellant Anderson for the crime of rape through sexual assault, this Court will now examine the propriety of the penalty imposed for said offense.

In its imposition of the penalty, the lower court considered the minority of BBB in the absence of independent proof[59] establishing the latter's age and penalized the crime committed by accused-appellant Anderson under the pertinent provisions of R. A. No. 7610.[60] This is not proper. In the case of *People of the Philippines vs. Ricardo Agravante y Zantua*,[61] it was held that judicial notice of the victim's age may be taken if the victim is 10 years old or below, otherwise, there must be independent proof of the age of the victim, such as a birth certificate. Here, a perusal of the records shows that the Information[62] properly alleged that the victim, BBB, was only eleven (11) years old when she was molested by accused-appellant Anderson. In fact, a copy of the Certificate of Live Birth[63] of BBB was submitted on record. Unfortunately, the same document was not offered as evidence[64] nor was it admitted as such per Order[65] dated July 2, 2012 of the lower court. Since there is no document offered to support her claim of minority, the same cannot be appreciated in her favor.[66] Thus, the penalty provided for rape through sexual assault under Article 266-B of the Revised Penal Code, which is prison mayor, should apply.[67] Concomitantly, the case of *People of the Philippines vs. Roberto Garcia y Padiernos*,⁶⁸ illustrates the proper indeterminate penalty for simple rape by sexual assault, to wit:

“xxx In the absence of any qualifying circumstance, the crime committed by Garcia is Simple Rape by Sexual Assault and the penalty should be prison mayor as provided in Art. 266-B par. 7 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64 (1) 27 of the RPC. Applying the Indeterminate Sentence Law, Garcia should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, prison correccional (6 months and 1 day to 6 years) and the maximum of which should be within the range of prison mayor in its medium period (8 years and 1 day to 10 years). Accordingly, the Court imposes the indeterminate penalty ranging from six (6) years of prison correccional, as minimum, to ten (10) years of prison mayor, as maximum. xxx”

Under the circumstances, the indeterminate penalty of “twelve years of prison mayor in its maximum as the minimum period to twenty years of prison temporal in its maximum as the maximum period”, imposed by the lower court is incorrect. To remedy this error, this Court hereby adopts and imposes the proper indeterminate penalty of six (6) years of prison correccional, as minimum, to ten (10) years of prison mayor, as maximum, upon accused-appellant Anderson.[69] Likewise, only the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages should be awarded to BBB, as dictated by prevailing jurisprudence.[70]

Criminal Case No. 04-7543 also charges accused-appellant Anderson for rape through sexual assault in relation to R. A. No. 7610, and his guilt is evident in the following statements of the victim, CCC, to wit:

“xxx Pros. Joya

Q: Do you know Paul Anderson, one of the accused in this case?

A: Yes, ma'am.

Q: Is Paul Anderson inside this courtroom?

A: Yes, ma'am.

Q: Please point to him.

Witness: (points to a person seated on the accused's bench wearing eye-glasses)

Atty. Sulit: We manifest that the witness pointed to the accused.

Pros. Señoren:

Q: Why do you know Paul Anderson?

A: BBB's sister introduced me to Paul Anderson, ma'am.

Q: When were you introduced to Paul Anderson?

A: I cannot recall anymore when I was introduced by BBB's sister to Paul Anderson, ma'am.

Q: In what place were you introduced?

A: In Barangay Aninuan, Puerto Galera, ma'am.

Q: How do you call Paul Anderson?

A: PJ, ma'am.

Q: Why did you file this case against PJ Anderson?

A: Because he is a bad guy, ma'am.

Q: What made you say that he is a bad guy?

A: Because PJ abuses children ma'am.

Q: What kind of child abuse does PJ do?

A: Kissing vagina and doing blow job, ma'am.

Q: What is blow job?

A: PJ's penis is being inserted to the mouth of the minors, ma'am.

Q: As against you, what did PJ do?

A: The same, ma'am.

Q: What did he do, what does your answer "the same, ma'am" mean?

A: He licked my vagina and made me do the blow job, ma'am.

xxx xxx xxx

Q: By the way, according to you, PJ licked your vagina and made you perform a blow job, for how many times did PJ do that to you?

A: I cannot recall anymore for how many times PJ licked my vagina but I performed blow job, ma'am.

Q: After doing that licking of your vagina, what did you feel?

A: I felt pain, ma'am.

Q: Why did you let PJ do that to you?

A: It was dark at that time, BBB and I could not prevent him from what he was then doing ma'am.

Q: Did you in fact perform blow job on PJ Anderson?

A: Yes, ma'am.

Q: Why did you do that?

A: Because BBB forced me to, ma'am.

Q: While you were doing that to PJ, what did you feel?

A: I spit, ma'am.

Q: After that incident, was there any other incident that happened after that?

A: No more ma'am.[71] xxx" (emphasis ours)

Unlike in Criminal Case No. 04-7618, the lower court in this case properly took judicial notice of the age of CCC, who was only nine (9) years old at the time of the commission of the offense even in the absence of independent proof, like a certificate of live birth, to prove her age. The rationale behind this ruling is explained in the case of *People of the Philippines vs. Romeo Tipay y Nuite*,[72] viz.:

"xxx The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance. In this situation, the prosecution has the burden of proving with certainty the fact that the victim was under 18 years of age when the rape was committed in order to justify the imposition of death penalty under the above-cited provisions. xxx" (emphasis ours)

This notwithstanding, the penalty imposed by the lower court is still erroneous. On this matter, the ruling in the case of *People of the Philippines vs. Armando Chingh*[73], is instructive:

"xxx In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period.

The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by prision mayor. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of

reclusion temporal. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is reclusion temporal in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. xxx” (emphasis ours)

Guided by this concept, there is no denying that accused-appellant Anderson is guilty of rape through sexual assault when he forced his victim, CCC, to perform a blow job on him. Considering that CCC was only nine (9) years old at that time, the pertinent provisions of R.A. No. 7610 may be applied for the imposition of the appropriate penalty. Consistently, Section 5(b) of Article III of R. A. No. 7610 penalizes the commission of lascivious conduct against children exploited in prostitution and other sexual abuses, in this wise:

“xxx (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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; xxx” (emphasis ours)

The vast definition of lascivious conduct[74] under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, the implementing rules of R. A. No. 7620, effectively cover the sexual assault[75] committed by accused-appellant Anderson against CCC. Thus, the penalty of reclusion temporal in its medium period should be imposed in this case. Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal.[76] On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is reclusion temporal in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.[77] Therefore, this Court imposes upon accused-appellant Anderson the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum.[78] Moreover, the amount of civil indemnity, moral damages and exemplary damages awarded to CCC should be reduced and fixed at Php30,000.00 each pursuant to prevailing jurisprudence.[79]

Accused-appellant Anderson likewise claims that the lower court disregarded his defense of denial. The defense of denial is viewed as an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[80] Accused-appellant Anderson's plea of denial was not corroborated by any competent proof, as his statements were merely supported by self-serving claim that the alleged incidents of sexual abuse did not happen.[81] Review of the records also shows that his own admissions destroyed his chosen defense. In the following statements, he not only admitted that the victims lived with him in his house in White Beach where said incidents of sexual abuse were committed, but he also confirmed that he was sleeping in the same bed with these abused children, to wit:

TSN of the witness accused-appellant Anderson taken on May 28, 2013, pp. 4-14:

“xxx Q: In criminal case C-04-7618, the private complainant is BBB, do you know her?

A: I know her.

xxx xxx xxx

Q: Since when (sic) BBB started living at your house?

A: She moved into my house to live in my house about January 4 or 5 of like that.

Q: Of what year?

A: About 2004 January.

xxx xxx xxx

A: When she moved in to my house, (sic) did want to clean in my house by (sic) myself, by herself and she talked to EEE, and CCC agreed to stay with her which makes me happy because they wouldn't be alone. They will have each other to communicate whenever I would have trouble in communicating.

Q: You kept on mentioning about a certain CCC?

A: She opted to stay in my house. When BBB moved in to my place, CCC moved in for companionship, right.

Q: CCC is one of the complainants. She is a complainant in criminal case C-04-7619...

Q: Since when (sic) CCC started living at your house together with BBB?

A: Same date.

Q: Same date, in January?

A: Yes.

xxx xxx xxx

Q: CCC also filed this criminal case?

A: Yes.

Q: And are you aware that she stated in her statement and she testified that after Christmas of 2003, you allegedly inserted your penis in her mouth and afterwards you inserted your finger in her private parts and then, you would pay her One Hundred Pesos (Php 100.00)?

A: It's not true.

Q: And why do you say that it is not true?

A: Because it never happened.

xxx xxx xxx

Q: There is another complainant named AAA. Do you know her?

A: Yes. If I know her better about 2 to 3 times at White Beach around and around and so forth. One time she cried, beg for me to stay at, you know, she wants to stay at my house and I said no, no, no, right? And i drove her home in my owner and she was crying the whole way saying her mother is a drug addict, and an alcoholic and once she came home her mother will beat her because she can't have any money and I gave her a couple of Hundred Pesos and took her home. I did not sex (sic) molested that girl.

Q: Because AAA alleged that when she was at your house in Puerto Galera, you embraced, kissed and touched her vagina and afterwards you pay her One Hundred Pesos (Php 100.00)

A: Negative. xxx"

TSN of the witness accused-appellant Anderson taken on May 30, 2013, pp. 15-16:

"xxx Q: So, you let BBB in? You let CCC in? And where did these girls sleep?

A: They slept on the bottom bunk bed, in the back, and I sleep on the single bed.

Q: So you sleep together, is that correct?

A. I slept on the edge of the bed, yes. xxx"

Denial, like alibi, is inherently a weak defense and constitutes self-serving negative evidence which can not be accorded greater evidentiary weight than that of a declaration coming from a credible witness who testifies on positive matters.⁸² Thus, the denial proffered by accused-appellant Anderson must yield to the victims' direct, positive and categorical assertions.⁸³ In the same vein, the lower court cannot be faulted for giving full weight and credence to the testimonies of the victims. Jurisprudence instructs that 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.^[84] The case of *People of the Philippines vs. Armando Ching y Parcia*,^[85] further elucidates, thus:

“xxx Time and again, this Court has held that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. xxx” (emphasis ours)

Likewise, it is a cardinal rule that the factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal.^[86] Fundamentally, jurisprudence dictates that the questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate court.^[87] A significant discussion on this doctrine is given in the case of *People of the Philippines vs. Sergio Bentonio*,^[88] to wit:

“xxx the trial court is in the best position to assess the credibility of witnesses and their testimonies, because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve. Consequently, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. xxx” (emphasis ours)

WHEREFORE, premises considered, the appeal is hereby DENIED. The Joint Decision dated November 25, 2013 of the Regional Trial Court, Branch 207, Muntinlupa City in Criminal Cases Nos. 04-7618, 04-7619, and 04-7543 is hereby AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Case No. 04-7619 for Acts of Lasciviousness in relation to R.A. No. 7610, accused-appellant Paul Anderson is hereby sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum. He is likewise ordered to pay AAA the amounts of Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, and Php15,000.00 as exemplary damages. The amount of fine awarded to AAA is however reduced and set at Php15,000.00 pursuant to prevailing jurisprudence.

(2) In Criminal Case No. 04-7618 for Rape through Sexual Assault under Article 266-A, paragraph 2 of the Revised Penal Code, accused-appellant Paul Anderson is hereby sentenced to suffer the indeterminate penalty of six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. He is also ordered to pay BBB the amounts of Php30,000.00 as civil indemnity, Php30,000.00 as moral damages, and Php30,000.00 as exemplary damages in line with prevailing jurisprudence.

(3) In Criminal Case No. 04-7543 for Rape through Sexual Assault in relation to R. A. No. 7610, accused-appellant Paul Anderson is hereby sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum. In addition, he is ordered to pay CCC the amounts of Php30,000.00 as civil indemnity, Php30,000.00 as moral damages and Php30,000.00 as exemplary damages as dictated by prevailing jurisprudence.

All damages awarded shall earn interest at the rate of six percent (6%) per annum from the date of finality of the judgment until fully paid.[89]

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A., JJ., concur.

[1] Records, pp. 885-905

[2] Records, p. 905

[3] Records, pp. 1-2 (Crim. 04-7543, Vol. I)

[4] Records, pp. 1-2 (Crim. 04-7619, Vol. I); pp. 1-2 (Crim. 04-7618, Vol. I)

[5] Per Supreme Court Resolution dated September 19, 2006 in A. M. No. 04-11-09-SC, as well as the ruling in People vs. Cabalquinto (G. R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262, also known as the “Anti-Violence Against Women and Their Children Act of 2004”, and its implementing rules, the real names of the victims, as well as those of their immediate family or household members, are withheld and fictitious initials instead are used to represent them, to protect their privacy. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise their identities as well as those of their immediate family or household members, shall not be disclosed. See People vs. Cabalquinto, G. R. No. 167693, September 19, 2006, 502 SCRA 419 and the Supreme Court Resolution dated September 19, 2006.

[6] Records, pp. 1-2 (Crim. 04-7618, Vol. 1);

[7] Supra, footnote 5

[8] Records, pp. 1-2 (Crim. 04-7543, Vol. 1)

[9] Supra footnote 5

[10] Records, pp. 1-2 (Crim. 04-7619, Vol. 1)

[11] Records, p. 338-339 (Crim. 04-7543, Vol. 1)

[12] Records, p. 347-368 (Crim. 04-7543, Vol. 1)

[13] Records, pp. 885-886 (Vol. 2)

[14] Records, pp. 22 (Crim. 04-7619, Vol. 1), 23 (Crim. 04-7618, Vol. 1), 44 (Crim. 04-7543, Vol.1)

[15] Records, pp. 74-75 (Crim. 04-7543, Vol. 1)

[16] Records, p. 43 (Crim. 04-7618, Vol. 1)

[17] Transcript of Stenographic Notes (TSN) of the witness AAA taken on August 26, 2005, pp. 38-82

- [18] Records, p. 11 (Crim. 04-7619, Vol. 1)
- [19] Supra, footnote 8
- [20] Records, pp. 3-7 (Crim. 04-7619, Vol. 1)
- [21] TSN of the witness AAA taken on August 26, 2005, pp. 83-117 and April 5, 2006, pp. 27-100
- [22] TSN of the witness BBB taken on May 17, 2005, pp. 3-29
- [23] Supra, footnote 5
- [24] Records, p. 3 (Crim. 04-7618, Vol. 1)
- [25] TSN of the witness BBB taken on May 17, 2005, pp. 31-65; May 18, 2005, pp. 4-20 and August 16, 2010 pp. 2-30
- [26] TSN of the witness BBB taken on April 6, 2010, pp. 4-15
- [27] TSN of the witness CCC taken on April 19, 2004, pp. 3-19
- [28] Records, p. 3, 12 (Crim. 04-7543, Vol. 1)
- [29] TSN of the witness CCC taken on November 11, 2004, pp. 11-50; April 21, 2005, pp. 8-33; January 29, 2008, pp. 9-41; March 25, 2008, pp. 12-47 and June 3, 2008, pp. 8-61
- [30] Supra, footnote 5
- [31] TSN of the witness CCC taken on June 3, 2008, pp. 61-94 and May 5, 2009, pp. 2-7
- [32] TSN of the witness CCC taken on May 5, 2009, pp. 7-8
- [33] TSN of the witness Emelie Delos Reyes-Marquez taken on April 20, 2006, pp. 22-44
- [34] Records, pp. 6-7 (Crim. 04-7610, Vol. 1)
- [35] TSN of the witness Emelie Delos Reyes-Marquez taken on April 20, 2006, pp. 45-85
- [36] TSN of the witness Emelie Delos Reyes-Marquez taken on April 20, 2006, pp. 92-95
- [37] TSN of the witness Emelie Delos Reyes-Marquez taken on April 20, 2006, pp. 96-101
- [38] TSN of the witness Maharani Gilera Babasa taken during the hearings held in the morning and in the afternoon of on June 9, 2006, pp. 37-78 and pp. 4-70
- [39] Supra, footnote 5
- [40] Records, pp. 279-281 (Crim. 04-7543, Vol. 1)
- [41] Records, pp. 282-284 (Crim. 04-7543, Vol. 1)
- [42] TSN of the witness Maharani Gilera Babasa taken during the hearing held in the afternoon of on June 9, 2006, pp. 71-150 and on July 7, 2006, pp. 5-51
- [43] TSN of the witness Police Officer Kimye Kong taken on February 23, 2012, pp. 6-23
- [44] TSN of the witness Police Officer Kimye Kong taken on February 23, 2012, pp. 23-63
- [45] TSN of accused-appellant Paul Anderson y Jeffrey taken on May 28, 2013 pp. 2-19

[46] TSN of accused-appellant Paul Anderson y Jeffrey taken on May 30, 2013 pp. 2-33

[47] Supra, footnote 1

[48] Rollo, p. 40

[49] TSN of the witness AAA taken on August 26, 2005, pp. 43-44, 47-52, 55-59, 64-70, 72-74

[50] Records, pp. 1-2 (Crim. 04-7619, Vol. 1)

[51] The case of People of the Philippines vs. Natalio Hilarion y Laliag (G. R. No. 201105, November 25, 2013) citing the case of People vs. Buado, Jr. (G.R. No. 170634, January 8, 2013), states the guidelines in appreciating the victim's "age", to wit:

“xxx 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. xxx”

[52] G.R. No. 123164. February 18, 2000.

53Nicanor Dulla vs. Court of Appeals, et al. (G.R. No. 123164. February 18, 2000)

54In the case of People of the Philippines vs. Guillermo Lomaque (G. R. No. 189297, June 5, 2013), it was held that:

“In Criminal Case No. Q-00-96402, appellant is found guilty of Acts of Lasciviousness in relation to Section 5 (b), Article III of RA 7610. The imposable penalty is reclusion temporal in its medium period since the victim was under 12 years of age at the time the crime was committed. xxx xxx xxx Applying the Indeterminate Sentence Law, the penalty next lower in degree is reclusion temporal in its minimum period with a range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. xxx xxx xxx "AAA" is entitled to P20,000.00 as civil indemnity and P15,000.00 as moral damages.” (Emphasis ours)

The case of People of the Philippines vs. Ireneo Bonaagua y Berce (G. R. No. 188897, June 6, 2011), held that:

“xxx It is beyond cavil that when the sexual abuse was committed by Ireneo, AAA was only eight (8) years old. Hence, the provisions of R.A. No. 7610, or The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, should be applied.

Thus, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is reclusion temporal in its medium period which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. As the crime was committed by the father of the offended party, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. Therefore, Ireneo should be meted the indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of reclusion temporal, as minimum, to sixteen (16) years, five (5) months and ten (10) days of reclusion temporal, as maximum.

Moreover, the award in the amount of P15,000.00 as moral damages and a fine in the amount of P15,000.00, is proper in line with current jurisprudence. However, civil indemnity ex delicto in the amount of P20,000.00 should also be awarded. In view of the presence of the aggravating circumstance of relationship, the amount of P15,000.00 as exemplary damages should likewise be awarded. xxx” (emphasis ours)

[55] G. R. No. 189819, August 9, 2010

[56] People of the Philippines vs. Roberto Garcia y Padiernos (G. R. No. 206095. November 25, 2013)

[57] Id.

[58] TSN of the witness BBB taken on May 17, 2005, pp. 9, 11-12, 14-15, 17-23

[59] The case of *People of the Philippines vs. Roberto Garcia y Padiernos* (G. R. No. 206095, November 25, 2013), citing the case of *People v. Arpon* (G. R. No. 183563, December 14, 2011), provided the guidelines for appreciating the age of the victim, to wit:

“xxx 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. xxx”

[60] Note: Section 5(b) of Article III of R. A. No. 7610 in relation to Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases imposes the penalty of reclusion temporal in its medium period against persons who commit lascivious conduct against children exploited in prostitution and other sexual abuse who are below twelve (12) years old.

[61] G.R. Nos. 137297 & 138547-48. December 11, 2001

[62] Records, pp. 1-2 (Crim. 04-7618, Vol. 1)

[63] Records, p. 8 (Crim. 04-7618, Vol. 1)

[64] Records, pp. 718-722 (Vol. 2)

[65] Records, p. 789 (Vol. 2)

[66] *People of the Philippines vs. Roberto Garcia y Padiernos* (G. R. No. 206095. November 25, 2013) citing *People v. Arpon* (G.R. No. 183563, December 14, 2011) states:

“xxx 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. xxx”

[67] *People of the Philippines vs. Ricardo Agravante y Zantua* (G.R. Nos. 137297 & 138547-48. December 11, 2001)

[68] G.R. No. 206095. November 25, 2013

[69] People of the Philippines vs. Roberto Garcia y Padiernos (G. R. No. 206095. November 25, 2013)

[70] Id.

[71] TSN of the witness CCC taken on April 19, 2004, pp. 6-10, 14-16

[72] G. R. No. 131472, March 28, 2000

[73] G.R. No. 178323. March 16, 2011

[74] Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines lascivious conduct as follows:

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

[75] Note: Accused-appellant Anderson forced his victim CCC to perform blow jobs on him and this is done by inserting his penis into the mouth of the victim.

[76] People of the Philippines vs. Armando Chingh (G.R. No. 178323. March 16, 2011)

[77] Id.

[78] Id.

[79] Id.

[80] People of the Philippines vs. Floro Buban Barcelá (G. R. No. 208760, April 23, 2014)

[81] TSN of accused-appellant Paul Anderson y Jeffrey taken on May 28, 2013 pp. 8, 12, 14

[82] People of the Philippines vs. Ruel Baway y Aligan (G. R. No. 130406. January 22, 2001)

[83] People of the Philippines vs. Guillermo Lomaque (G. R. No. 189297, June 5, 2013)

[84] People of the Philippines vs. Joel Crisostomo y Malliar (G. R. No. 196435, January 29, 2014)

[85] G. R. No. 178323, March 16, 2011

[86] People of the Philippines vs. Dina Dulay y Pascual (G. R. No. 193854, September 24, 2012)

[87] People of the Philippines vs. Floro Buban Barcelá (G. R. No. 208760, April 23, 2014)

[88] G.R. No. 119165, September 26, 1997

[89] People of the Philippines vs. Benjamin Soria y Gomez (G. R. No. 179031, November 14, 2012)

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.