

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREDDIE SERNADILLA, ACCUSED-APPELLANT.

G.R. No. 201147. September 21, 2022

Ponente: GAERLAN, J.

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GAERLAN, J.:

This resolves the appeal pursuant to Section 13(c), Rule 124 of the Rules of Court as amended, from the Decision[1] dated June 17, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 31721. The CA affirmed the Decision[2] dated March 28, 2008 of the Regional Trial Court (RTC) of xxxxxxxxxxxx, Branch 96, finding the accused-appellant Freddie Sernadilla (accused-appellant), guilty beyond reasonable doubt of one (1) count of Rape under Article 266-A(1) of the Revised Penal Code (RPC) and two (2) counts of Child Abuse under Republic Act (R.A.) No. 7610.

The Antecedent Facts

The accused-appellant was charged with the crime of Rape in relation to R.A. No. 7610 by virtue of three (3) Informations, the accusatory portions of which read:

Criminal Case No. 3596

That on February 9, 2006 at xxxxxxxxxxxxxxxxxxxxxxx and within the jurisdiction of the Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one AAA,[3] who was then a sixteen (16) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[4]

Criminal Case No. 3599

That on October 28, 2005 at xxxxxxxxxxxxxxxxxxxxxxx and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously had carnal knowledge with one AAA, who was then a fifteen (15) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[5]

Criminal Case No. 3600

That sometime in October 2004, at xxxxxxxxxxxxxxxxxxxxxxx and within the jurisdiction of this Honorable Court and inside the premises of the Wenceslao Christian Fellowship, the said accused who was then the Pastor of the said church, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one AAA, who was then a fourteen (14) year old lass and a member of said church, against the latter's will and consent and thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[6]

The accused-appellant was arraigned on June 15, 2006 and assisted by counsel, entered a plea of not guilty to all the charges.[7] After pre-trial, trial on the merits ensued.[8]

The prosecution presented as witnesses- the victim AAA, her mother BBB, Adena San Jose, Dr. Roman Balangue (Dr. Balangue), and Dr. Rodolfo Eligio (Dr. Eligio).[9]

Their testimonies tend to establish that at the time the alleged crime was committed, AAA was a minor having been born January 11, 1990. The accused-appellant, on the other hand, was a married man in his mid-thirties and a Pastor of Wenceslao Christian Fellowship, a religious organization of which AAA and her family are members.[10] The accused-appellant was also a distant relative of AAA, as BBB's mother-in-law and the accused-appellant's father were second cousins.[11]

At around 10:00 in the evening of October 2004, AAA was in the kitchen of the pastoral house which also served as the accused-appellant's residence when the latter suddenly turned the lights off and started embracing her. The accused-appellant warned AAA not to shout or he would kill her. He then ordered AAA to lie down on a wooden bench, removed her shorts and underwear; and lowered his pants. Despite AAA's resistance, the accused-appellant succeeded in having carnal knowledge of AAA. The accused-appellant threatened AAA that he would harm her if she told anyone about what happened. AAA went home crying.[12]

The accused-appellant sexually ravished AAA for the second time on October 28, 2005. At around 3:00 in the afternoon, AAA was at a waiting shed in Barangay (Brgy.) xxxxxxxx when the accused-appellant came by and offered to bring her home on his tricycle. AAA agreed. However, the accused-appellant brought her in his hut located in a citrus plantation at xxxxxxxxxxxxxxxxxxxxxx. There, the accused-appellant had sexual intercourse with AAA and again told her not to tell anyone about what happened or else he would kill her.[13]

Still, months later, or on February 9, 2006, another incident happened. AAA and her classmates were ordered by their teacher to get cartons from the accused-appellant's father. While in the house, the accused-appellant's father insisted that AAA and her companions stay for a while as he would cook "kakanin" for them. At some point thereafter, the accused-appellant arrived. While waiting, AAA felt the need to urinate and went to the comfort room. There, the accused-appellant followed her and again sexually abused her by inserting his penis in her vagina. During the attack, the accused-appellant prevented AAA from shouting for help. It was after this incident that AAA revealed to her mother BBB that the accused-appellant raped her. BBB scolded AAA. Thereafter, they reported the incident to the police. AAA was then brought to a hospital in xxxxxxxxxxxxxxxxxxxxxx.[14]

Dr. Eligio, Medical Officer III of Aurora Memorial Hospital examined AAA on February 9, 2006. In the medicolegal certificate[15] he issued, he found "healed laceration at the 7 o'clock position" and sperm cells in AAA's vagina, which he concluded are "definitive evidence of sexual contact." [16]

AAA was again interviewed and seen by Dr. Balangue, Municipal Health Officer of xxxxxxxxxxxxxxxxxxxxxx on November 29, 2006. Dr. Balangue issued the corresponding medical certificate stating that he found "healed hymenal laceration" on AAA's vagina, which indicated that she had sexual intercourse in the past.[17]

The defense, for its part, presented the testimonies of the accused-appellant; Maydyn Gaspar, classmate and friend of AAA; CCC, DDD, nephew of the accused-appellant; and EEE, cousin of the accused-appellant.[18]

Succinctly, the defense rests upon the sweetheart theory. The testimonies of the defense witnesses tend to establish that AAA is the girlfriend of the accused-appellant and as such, any sexual act which may have occurred is consensual.[19]

The RTC Ruling

On March 28, 2008, the RTC rendered its Joint Decision,[20] ruling as follows:

WHEREFORE, premises considered, the Court renders judgment as follows:

1. Finding [accused-appellant] [Freddie Sernadilla], GUILTY beyond reasonable doubt of the crime of Rape in Criminal Case No. 3600 and hereby sentences him to suffer the penalty of reclusion perpetua and to pay AAA the civil indemnity of Fifty Thousand Pesos (P50,000.00), moral damages of Fifty Thousand Pesos (P50,000.00) and exemplary damages of Twenty Five Thousand Pesos (P25,000.00); and

2. Finding [accused-appellant] [Freddie Sernadilla] GUILTY beyond reasonable doubt of Child Abuse defined and penalized under Section 5(b), Article III of Republic Act No. 7610 in Criminal Case Nos. 3596 and 3599 and hereby sentences him, for each case, to suffer the indeterminate penalty of fifteen (15) years of reclusion temporal medium, as minimum, to seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal maximum, as maximum; to pay AAA the civil indemnity of Fifty Thousand Pesos (P50,000.00), moral damages of Fifty Thousand Pesos (P50,000.00) and exemplary damages of Twenty Five Thousand Pesos (P25,000.00); and to pay a fine in the amount of Fifty Thousand Pesos (P50,000) for all the charges to be administered as a cash fund by the Department of Social Welfare and Development of xxxxxxxx Province, to be disbursed for the rehabilitation of victim AAA.

SO ORDERED.[21]

The RTC held that rape was committed by the accused-appellant in his first sexual intercourse with AAA but has established "his sweetheart relationship with her in his subsequent sexual congresses with her." [22]

On the element of force and intimidation, the RTC ruled that failure to allege the same in the Information is of no moment it having been proven in view of the great disparity in age and position of the accused-appellant that he wields ascendancy and influence over AAA.[23]

With respect to the remaining charges, the RTC held that the presence of consent is immaterial. In view of the accused-appellant's admission that he had numerous sexual encounters with AAA, a minor, the RTC adjudged him guilty of Child Abuse under Section 5 of R.A. No. 7610.[24]

The CA Ruling

The accused-appellant filed an appeal before the CA which rendered the herein assailed decision[25] dated June 17, 2011, affirming the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is DENIED, and the Joint Decision dated 28 March 2008 of the Regional Trial Court, Branch 96, xxxxxxxxxxxxxxxx, in Criminal Case Nos. 3600, 3596 and 3599 is hereby AFFIRMED.

SO ORDERED.[26]

In his appeal before the CA, the accused-appellant reiterated his arguments before the RTC that there is insufficiency of evidence to sustain the charges against him and that the Information in Criminal Case No. 3600 failed to allege the mode by which Rape was committed.[27]

In resolving the case, the CA held that there is no violation of the accused-appellant's constitutional right to information as the element of "force and intimidation" is supplied with the employment of the phrase "against the latter's will." [28]

Finally, the CA sustained the accused-appellant's conviction rationalizing that –

the trial court correctly found that forcible rape was committed by [accused-appellant] with respect to the first instance of sexual intercourse subject of Criminal Case No. 3600. However, force and intimidation were not

proven with respect to the subsequent sexual encounters. We, therefore, cannot conclude that Rape was committed. Be that as it may, considering that complainant here was a minor of 14, 15, and 16 years at the time material, such sexual adventures with the latter constitute sexual assault punishable under R.A. No. 7610.[29]

In fine, the CA ruled that consent is "irrelevant and immaterial" in Child Abuse under R.A. No. 7610, as the mere act of sexual intercourse with a child constitutes the offense.[30]

In this appeal, the plaintiff-appellee manifested that it will no longer submit a supplemental brief considering that it had already exhaustively discussed the issues in its brief before the CA.[31]

The accused-appellant filed a Motion/Manifestation[32] dated March 8, 2013 and a Supplemental Brief[33] dated June 13, 2013. Therein, the accused-appellant reiterated his position that no crime has been committed as he and the victim are in a relationship and the sexual intercourse that happened between them are consensual;[34] "that the numerous sexual intercourse between [AAA] and the [accused-appellant] negates rape";[35] and that AAA merely filed the instant criminal cases as she was jealous of the accused-appellant's other girlfriends.[36]

Ruling of the Court

The appeal is not meritorious.

Appeal in criminal cases throws the entire case open for review on any question or error though unassigned by the parties. The appellate tribunal can correct the appealed judgment or reverse altogether the decision of the trial court on any ground. The appeal confers the reviewing tribunal full jurisdiction over the criminal case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[37]

The subject Informations charge the accused-appellant of "Rape in relation to R.A. No. 7610," the RTC and the CA nonetheless convicted the accused-appellant of one (1) count of Rape and two (2) counts of Child Abuse under Section 5 of R.A. 7610.

At the time the crime was committed, the crime of rape is defined under Article 266-A and relative to the subject indictments 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;

x x x x

The first element is undisputed as the accused-appellant himself admitted that he had carnal knowledge of AAA. The second element is particularly contentious.

In order to establish the element of force and intimidation, the prosecution must prove: a) a complete absence of voluntariness on the part of the victim; and b) that the accused actually employed force and intimidation upon the victim to achieve his end.[38] In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. Proof of resistance is not necessary; the victim has no burden to prove that she did all within her power to resist the force and intimidation employed upon her.[39] It being enough that it is of such nature as to wield the victim to submit to the accused's desires.[40]

Intimidation includes the moral kind such as the fear caused when threatened with a knife or pistol, or when words employed are of such nature as would incite anxiety or distress leaving the victim without any choice but to

surrender.[41] As this Court held in *Nacario v. People*,[42] "[i]ntimidation is a state of mind, which cannot, with absolutely certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto." It involves largely an appreciation of the state of mind of the victim at the time of the commission of the crime. Hence, rather than the appellate courts which relies only on the cold and mute pages of the records which do not graphically convey emotion, the assessment of the trial court must be given binding finality in this respect.

The Court ordinarily puts great weight on the factual findings of the judge who conducted the trial of the case and heard the testimonies of the witnesses themselves. This is especially true in rape cases where the crime is usually committed in the presence of no other person but the victim and the accused. Compared to appellate magistrates who are merely faced with the cold and inanimate pages of the transcript of records brought before them, the trial judge comes face to face with the rape victim herself on the witness stand. He personally observes her conduct and demeanor while responding to the questions propounded by the prosecutor on direct examination as well as those from the defense counsel on cross examination. Moreover, it is also the trial judge who has the chance to pose clarificatory questions to said victim. Thus, when the trial judge makes his findings as to the issue of her credibility, such findings bear great weight upon the appellate court.[43]

Settled is the rule that "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, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." [44] In this case, none of these compelling reasons exists. Thus, We affirm the conclusion of the trial court, which was adopted by the CA, that the accused-appellant employed intimidation in order to have carnal knowledge of AAA in Criminal Case No. 3600; and that the same element is absent in Criminal Case Nos. 3596 and 3599.

While the term "force and intimidation" was not specifically mentioned in the Information, We find that its presence has been sufficiently alleged with the statement that the accused-appellant is a Pastor of the church to which AAA is a member,[45] as this depicts the ascendancy which the former wields over the latter. The test in determining whether the information validly charges the offense is whether material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. As the objective is to enable the accused to adequately prepare for his defense. Thus, it is more important to aver the ultimate facts rather than employ the technical term employed by the law alone.[46]

In October 2004, AAA was merely 14 years old while the accused-appellant was about 34 years old.[47] In addition, the accused-appellant is a pastor of the religious organization of which AAA and her family are members and as such exerts moral ascendancy over the victim, which then satisfies the element of force and intimidation.[48] To be sure, jurisprudence instructs that even the victim's failure to tenaciously resist the accused-appellant does not ipso facto indicate voluntariness. In rape, intimidation is viewed in the light of the victim's perception and judgment at the time of the commission of the crime.[49] As in the circumstances of the case at bar, the difference in age— the accused-appellant being more than double the age of AAA, taken together with his position by virtue of which he wields moral ascendancy and influence over AAA, it is an inevitable conclusion that the element of intimidation is present.

The accused-appellant's defense anchored on the "sweetheart theory" deserves scant consideration. Jurisprudence instructs that "sweetheart theory" in rape is not credible when it is based on the bare testimony of the accused as the same is self-serving. The theory needs strong corroboration in that even the testimony of a relative will not suffice.[50] A sweetheart defense, to be credible, should be substantiated by evidence of the romantic relationship such as love letters, memento or pictures.[51] This is glaringly lacking here despite the accused-appellant's submission that he and AAA have been in a relationship for at least two (2) years.[52] The testimonies offered by the defense to prove such romantic relationship are insufficient, inasmuch as they do not directly attest to its

existence but only relate to the interaction of AAA and accused-appellant. What they narrated to have witnessed are equivocal acts not necessarily indicative of a romantic relationship. The same holds true with the photographs submitted.

At any rate, even lacking the same propositions and assuming further as true the accused-appellant's submission that he and AAA are sweethearts, the existence of such relationship is not tantamount to consent. Proof of romantic relationship does not necessarily indicate consent nor negate the absence of consent to the sexual encounter. As the Court previously ruled, "a love affair does not justify rape, for the beloved cannot be sexually violated against her will. Love is not a license for lust." [53]

In all three (3) charges, the accused-appellant admitted having sexual intercourse with AAA. In the first event which happened in October 2004, the RTC and the CA correctly found the presence of force and intimidation based on the testimony of AAA, that she tried to resist but was threatened by the accused-appellant that he would kill her. Thus, the accused-appellant prevailed in satisfying his lust. [54] To be sure, the degree of force and resistance is relative, depending on the circumstances of each case and on the physical capabilities of each party. As aforesaid, force and violence need not be overpowering or irresistible. It suffices that it brings about the desired result. [55] Insofar as Criminal Case No. 3600 therefore, the accused-appellant should be convicted of rape under paragraph 1(a), Article 266-A of the RPC, as amended by R.A. No. 8353 and meted with the penalty of reclusion perpetua. In accordance with jurisprudence, the accused-appellant must also pay AAA civil indemnity, moral damages, and exemplary damages, set at P75,000 each, and subject to interest at the rate of six percent (6%) per annum from finality of this decision until fully paid. [56]

With respect to Criminal Case Nos. 3596 and 3599, the RTC and the CA both concluded that there is dearth of evidence to prove "that the carnal knowledge was done against the will and consent of complainant." [57] In these two (2) instances, AAA was led to have sexual intercourse with the accused-appellant who gave her monetary allowances and other material support. [58] Proceeding from these, the RTC and the CA concluded that in the absence of element of force and intimidation, sexual intercourse with a minor even if done with consent is still punishable as Child Abuse under R.A. No. 7610. [59]

As in the earlier case, the Court sees no reason to deviate from the factual finding of the lower court that evidence is insufficient to establish that sexual congress between the accused-appellant and AAA on October 28, 2005 and on February 9, 2006 were attended by force and intimidation. In both of these instances nonetheless, AAA was still a minor, she was 15 years old during the second incident, and 16 in the later occurrence.

Before an accused can be held criminally liable under Section 5(b) of R.A. No. 7610, the following requisites must be present: 1) offender is a man; 2) he indulges in sexual intercourse with a female exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances; and 3) coercion or influence of any adult, syndicate or group is employed against the child. [60]

In the landmark case of *People v. Tulagan*, [61] the Court explained that in rape involving a minor who is under 12 years old or is demented consent is immaterial as the law presumes the victim's incapacity to discern good and evil;

[c]onsent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances. Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse either "due to money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group." [62] (Emphasis in the original)

Simply, sexual intercourse with a victim who is under 12 years of age or is demented is always statutory rape and

the accused-appellant will be prosecuted under paragraph 19(d), Article 266-A of the RPC, as amended by R.A. No. 8353. Meanwhile, if the victim is 12 years old or less than 18 and is deemed to be a child "exploited to prostitution and other sexual abuse" because she agreed to the sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," the crime could not be Rape under RPC as there is consent. Rather, the offender should be penalized under Section 5(b), R.A. No. 7610. However, when the victim consented to the sexual intercourse, and no consideration, coercion or influence is involved, no crime is committed; except where "force, threat, or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority" and in instances which fall as qualified seduction under Article 337 or simple seduction under Article 338 of the RPC.[63]

In this case, the remaining charges against the accused-appellant merely stated that the accused-appellant had carnal knowledge of AAA against the latter's will and consent. It was proven during trial that AAA submitted to the carnal desires of the accused-appellant on account of his inducement, enticement, or coercion, in the form of monetary support; thus establishing the offense of Sexual Abuse under Section 5(b) of R.A. No. 7610. We note however that the element of "inducement, enticement, or coercion" was not alleged in the Information, thus violating the accused-appellant's constitutional right to be informed of the nature and cause of accusation against him. It follows therefore that acquittal must ensue in Criminal Case Nos. 3596 and 3599.

In *Villarba v. CA*,[64] the Court reiterated and explained the rule requiring that an Information must state all the material elements of the offense in relation to the constitutional right of the accused to be informed of the nature and cause of accusation against him— an Information must state the acts or omissions that constitute the offense, which must be "described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged." Factual allegations constitutive of the offense are substantial matters and an accused's right to question a conviction based on facts not alleged in the Information cannot be waived. Therefore, even if the prosecution satisfies the burden of proof, but if the offense is not charged or necessarily included in the information, conviction cannot ensue.[65]

In this case, while the elements of the offense of Sexual Abuse under Section 5(b) of R.A. No. 7610 were proven during trial, it cannot be said nonetheless that the accused-appellant was given sufficient opportunity to defend himself in this respect as the Information failed to state the elements of such offense in the Informations for Criminal Case Nos. 3596 and 3599. Accordingly, he must be acquitted of these charges.

WHEREFORE, in view of the foregoing, the appeal is hereby PARTLY GRANTED. Judgment is hereby rendered as follows:

- In Criminal Case Nos. 3596 and 3599, Accused-appellant Freddie Sernadilla is ACQUITTED. The Decision dated June 17, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 31721 which affirmed the Regional Trial Court of xxxxxxxxxxxxxxxx, Branch 96, is hereby REVERSED and SET ASIDE.
- In Criminal Case No. 3600, the Decision dated June 17, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 31721 is AFFIRMED with MODIFICATION. Accused-appellant Freddie Sernadilla is found GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A(1) in relation to Article 266-B of the Revised Penal Code, for which he is sentenced to suffer the penalty of reclusion perpetua. Accused-appellant is also ORDERED to pay the victim, AAA, P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages. Legal interest at the rate of six percent (6%) per annum is imposed on the monetary awards from the finality of this Decision until fully paid.

SO ORDERED.

Inting and Dimaampao, JJ., concur.

Caguioa, J., see concurring opinion.

Singh, J., please see concurring opinion.

[1] Rollo, pp. 2-11. Penned by Associate Justice Manuel M. Barrios, with Associate Justices Mario L. Guariña III, and Apolinario D. Bruselas, Jr., concurring.

[2] CA rollo, pp. 17-37. Penned by Presiding Judge Corazon D. Soluren.

[3] Pursuant to Supreme Court Amended Administrative Circular No. 83-2015, the personal circumstances and other information which tend to establish or compromise the identity of the victim, including the names of her family members or relatives, and the barangay and town where the incidents occurred, are withheld. The names of the victim and her family members or relatives are replaced with fictitious initials. Likewise, the real name of the accused-appellant is replaced with fictitious initials by reason of his relationship to the minor victim.

[4] Records, pp. 1-2.

[5] CA rollo, pp. 13-14.

[6] Id. at 15-16.

[7] Records, pp. 62-63.

[8] CA rollo, p. 18.

[9] Id. at 18-21.

[10] Rollo, p. 4, CA rollo, p. 19.

[11] CA rollo, p. 19.

[12] Rollo, p. 4, Records p. 69.

[13] Id.

[14] Rollo, p. 5, CA rollo, p. 20.

[15] Records, p. 71.

[16] CA rollo, p. 20.

[17] Id.

[18] Id. at 21-23.

[19] Id. at 24-25.

[20] Id. at 17-37.

[21] Id. at 36-37.

[22] Id. at 27.

[23] Id. at 29.

- [24] Id. at 33-35.
- [25] Rollo, pp. 2-11.
- [26] Id. at 10.
- [27] Id. at 6-7.
- [28] Id. at 8.
- [29] Id. at 9.
- [30] Id. at 10.
- [31] Id. at 18-19.
- [32] Id. at 31-33.
- [33] Id. at 38-45.
- [34] Id. at 40.
- [35] Id. at 43.
- [36] Id. at 41.
- [37] Ramos, et al. v. People, 803 Phil. 775, 783 (2017).
- [38] People v. Tionloc, 805 Phil. 907, 915 (2017).
- [39] People v. Bisora, 810 Phil. 339, 344 (2017).
- [40] People v. Tionloc, supra.
- [41] Id.
- [42] G.R. No. 222387, June 8, 2020.
- [43] People v. Rayles, 555 Phil. 377, 384-385 (2007).
- [44] People v. De Jesus, 695 Phil. 114, 122 (2012).
- [45] CA rollo, pp. 15-16.
- [46] People v. Solar, G.R. No. 225595, August 6, 2019.
- [47] Records, p. 87, CA rollo, p. 23.
- [48] People v. Amoc, 810 Phil. 253, 260 (2017), citing People v. Ofemiano, 625 Phil. 92, 108 (2010), and People v. Corpuz, 597 Phil. 459, 464-465 (2009).
- [49] People v. Bisora, supra note 39 at 344.
- [50] People v. Nogpo, Jr., 603 Phil. 722, 742 (2009), citing People v. Casao, 292-A Phil. 482, 484 (1993).
- [51] Id. at 742-743.
- [52] CA rollo, p. 24.
- [53] People v. Bisora, supra note 39 at 345, citing People v. Lagangga, 775 Phil. 335, 342-343 (2015).

[54] Rollo, p. 4, Records p. 6, Transcript of Stenographic Notes (TSN) of hearing dated September 29, 2006, pp. 10-11.

[55] *People v. Nogpo, Jr.*, supra note 50 at 744.

[56] *People v. Ejercito*, 834 Phil. 837 (2018); *People v. Jugueta*, 783 Phil. 806 (2016).

[57] Rollo, p. 9.

[58] *Id.* at 8, CA rollo, pp. 32-35.

[59] Rollo, pp. 9-10, CA rollo, p 35.

[60] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[61] *Id.*

[62] *Id.*

[63] *Id.*, See *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

[64] G.R. No. 227777, June 15, 2020.

[65] *Id.*

CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia that the guilt of accused-appellant Freddie Sernadilla (Sernadilla) was proven beyond reasonable doubt in only one of the three (3) charges.[1]

I write this Concurring Opinion, nevertheless, to laud the ponencia's ruling in upholding the right of the accused to be informed of the cause of the accusation against him. In addition, I also take this opportunity to illustrate how the ruling of the Court in *People v. Tulagan*[2] (*Tulagan*) has caused the unintended confusion resolved by this case.

Brief review of the facts

Sernadilla, a Pastor, was charged with three (3) counts of Rape for having carnal knowledge of AAA,[3] a 14 (or 15)-year-old attender of his church. The accusatory portions of the three Informations are as follows:

Criminal Case No. 3596

That on February 9, 2006 in Brgy. Sto. Tomas, Maria Aurora, Aurora and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, had carnal knowledge with one [AAA], who was then a sixteen (16) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[4] (Emphasis and underscoring supplied)

Criminal Case No. 3599

That on October 28, 2005 at Brgy. Baubo, Maria Aurora, Aurora and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously, had carnal knowledge with one [AAA], who was then a fifteen (15) year old barrio lass against her will and consent thereby effectively

prejudicing her development as a child.

CONTRARY TO LAW.[5] (Emphasis and underscoring supplied)

Criminal Case No. 3600

That sometime in October 2004 at Brgy. Wenceslao, Maria Aurora, Aurora and within the jurisdiction of this Honorable Court and inside the premises of the Wenceslao Christian Fellowship, the said accused, who was then the Pastor of the said church, did then and there willfully, unlawfully and feloniously, had carnal knowledge with one [AAA], who was then a fourteen (14) year old barrio lass and a member of the said church, against the latter's will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[6] (Emphasis and underscoring supplied)

The first rape incident pertained to Criminal Case No. 3600, where AAA testified that one evening in October 2004, she was in the kitchen of the pastoral house which also served as Sernadilla's residence when Sernadilla suddenly turned the lights off and started embracing her. Sernadilla warned her not to shout or he would kill her. He then ordered her to lie down on a wooden bench, removed her shorts and underwear, and had carnal knowledge of her. Sernadilla even threatened AAA that he would harm her if she told anyone about what happened.[7]

The second charge involved the Information in Criminal Case No. 3599, where AAA testified that on October 28, 2005, she was at a waiting shed when Sernadilla came by and offered to bring her home in his tricycle. Instead of bringing her home, however, he brought her to a hut where he had sexual intercourse with her again.[8]

The last Information, filed as Criminal Case No. 3596, involved the incident on February 9, 2006, where AAA and her classmates were doing their school project at the house of Sernadilla's father. Soon after, Sernadilla arrived at the said house. When AAA went to the comfort room to urinate, Sernadilla followed her and again sexually abused her by inserting his penis into her vagina.[9]

As his defense for all of the charges, Sernadilla invoked the sweetheart theory and claimed that all the sexual encounters that he and AAA had were consensual.[10]

The Regional Trial Court of Baler, Aurora, Branch 96 (RTC) issued a Joint Decision[11] dated March 28, 2008 convicting Sernadilla of one (1) count of Rape, defined and penalized under Article 266-A(1)[12] of the Revised Penal Code (RPC), in Criminal Case No. 3600 under the first charge, but convicting him of two (2) counts of Child Abuse defined and penalized under Section 5(b),[13] Article III of Republic Act No. (R.A.) 7610 in Criminal Case Nos. 3596 and 3599 under the second and third charges. The variance was due to the factual finding that force and intimidation were proven only in the first charge. For the second and third charges, the RTC found that AAA submitted to Sernadilla's desires because he had been giving her monetary allowances and other material support. Because there was "influence," the RTC convicted Sernadilla for violation of Section 5(b) of R.A. 7610. The RTC added that in cases involving violations of R.A. 7610, consent is immaterial, so it proceeded to convict Sernadilla. The Court of Appeals (CA) merely affirmed the RTC's rulings in a Decision[14] dated June 17, 2011 in CA-G.R. CR No. 31721.

The ponencia affirms the conviction for Rape under the first charge, but acquits Sernadilla for the second and third charges.[15] For the first charge, the ponencia rules that the Information was sufficient, as it stated that the sexual intercourse happened against AAA's will. During the trial, it was proved that force was employed, and more importantly, he as her Pastor exercised moral ascendancy over her.[16]

As to the second and third charges, however, the ponencia acquits Sernadilla because the factual finding made

was not that there was force or intimidation, but rather, there was "influence" arising from the material considerations that Sernadilla had been giving AAA. According to the ponencia, Sernadilla should have been prosecuted under Section 5(b) of R.A. 7610. Since the Information, however, alleged that the sexual intercourse happened "against [AAA's] will and consent," the Information is properly a prosecution under the RPC, not Section 5(b) of R.A. 7610 (which, to recall, used "coercion" or "influence" as the element of the crime). In sum, the ponencia holds that if Sernadilla were to be convicted under Section 5(b), it would violate his right to be informed of the cause of the accusation, as the constitutive elements of Section 5(6) were not alleged in the Information.[17]

I fully concur with the ponencia.

Indeed, to convict the accused of a crime, the elements of which are not included in the Information would undoubtedly violate his right to be informed of the cause of the accusation. I agree with the ponencia's ruling that ultimately, the crimes penalized under the RPC, on the one hand, and Section 5(b) of R.A. 7610, on the other, have different elements.

I reiterate and maintain my position in Tulagan that R.A. 7610 and the RPC, as amended by R.A. 8353[18] or the Anti-Rape Law of 1997 "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors." [19] Section 5(b) of R.A. 7610 applies only to the specific and limited instances where the child-victim is "exploited in prostitution or subjected to other sexual abuse" (EPSOSA).[20]

In other words, for an act to be considered under the purview of Section 5(b) of R.A. 7610, so as to trigger the higher penalty provided therein, "the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child 'exploited in prostitution or subjected to other sexual abuse;' and (3) the child whether male or female, is below 18 years of age." [21] Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — a separate and distinct element — must first be both alleged and proved before a conviction under Section 5(b) of R.A. 7610 may be reached.

Specifically, in order to impose the higher penalty provided in Section 5(b) as compared to Article 266-B of the RPC, as amended by R.A. 8353, it must be alleged and proved that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.[22]

In this case, the Informations only alleged that the victim was 14 or 15 years old at the time of the incidents, and that the sexual intercourse happened "against her will and consent." There was no allegation that she was EPSOSA. Thus, even if there was evidence presented during the trial that she engaged in sexual intercourse for consideration — thereby arguably making her EPSOSA — then Sernadilla cannot be convicted under Section 5(b) of R.A. 7610 because the Informations filed against him did not include the element that his victim was EPSOSA.

At this juncture, I point out that the RTC's error in convicting Sernadilla for a different crime not specified in the Information would not have happened if not for the Court's erroneous interpretations of Section 5(b) of R.A. 7610 in previous cases decided by the En Banc, particularly *Dimakuta v. People*[23] (*Dimakuta*), *Quimvel v. People*[24] (*Quimvel*), *People v. Caoili*[25] (*Caoili*), and later on, *Tulagan*.

In these aforecited cases, the Court ended up muddling the separate but complementary spheres of application of the RPC and R.A. 7610, all in the name of imposing a heavier penalty on the person who committed sexual abuse

on a child. The case of Dimakuta, for instance, involved an Information that was completely similar in the present case:

That on or about the 24[th] day of September 2005, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously commit a lascivious conduct upon the person of one AAA, who was then a sixteen (16) year old minor, by then and there embracing her, touching her breast and private part against her will and without her consent and the act complained of is prejudicial to the physical and psychological development of the complainant.[26] (Emphasis and underscoring supplied)

Despite the above Information, the Court En Banc in Dimakuta still convicted the accused under Section 5(b) of R.A. 7610. In justifying its ruling, Dimakuta equated the element of "coercion or influence" in Section 5(b) of R.A. 7610 with "force or intimidation" in the RPC, and then laid down a rule that became the progenitor for prosecuting under R.A. 7610 all cases of sexual abuse involving children:

x x x [I]n instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is reclusion temporal medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by prision mayor, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides for the higher penalty of reclusion temporal medium, if the offended party is a child victim. x x x

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.[27] (Emphasis omitted)

The foregoing rule was reiterated in cases likewise decided by the Court En Banc, namely Quimvel, Caoili, and culminating in the case of Tulagan where the Court laid down guidelines for the nomenclature of sexual crimes committed against children.

In Tulagan, the Court correctly made a distinction between the crimes punished in the RPC and Section 5(6) of R.A. 7610 insofar as crimes involving sexual intercourse was concerned:

First, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.

Second, when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

x x x x

As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of "prostitute" was retained by the new law:

Article 202. Prostitutes; Penalty. — For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this article shall be punished by arresto menor or a fine not exceeding 200 pesos, and in case of recidivism, by arresto mayor in its medium period to prison correccional in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 where the victim indulged in sexual intercourse because she is exploited in prostitution either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group" — the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of R.A. No. 7610.[28]

The foregoing ruling in Tulagan — relied upon by the ponencia in this case — which distinguishes between the elements of Rape by sexual intercourse under the RPC, on the one hand, and Lascivious Conduct under Section 5(b) of R.A. 7610, on the other, is correct. This is thus the reason why, as I have mentioned, I give my full concurrence with the ponencia as it holds that Rape under the RPC and Section 5(b) of R.A. 7610 have different elements and courts cannot, therefore, convict on one if the Information filed against the accused was for the other.

It must still be mentioned, however, that Tulagan refused to apply the distinctions between the crimes under the RPC and Section 5(b) of R.A. 7610 when the act involved did not constitute sexual intercourse. If the act involved constituted either Rape by sexual assault or Acts of Lasciviousness under the RPC, but the victim was a minor, Tulagan still holds that Section 5(b) of R.A. 7610 applies:

As pointed out by the ponente in Quimvel, where the victim of acts of lasciviousness is under 7 years old, Quimvel cannot be merely penalized with prisión correccional for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. x x x

x x x x

Justice Caguioa is partly correct. Section 5(b) of R.A. No. 7610 is separate and distinct from common and ordinary acts of lasciviousness under Article 336 of the RPC. However, when the victim of such acts of lasciviousness is a child, as defined by law, We hold that the penalty is that provided for under Section 5(b) of R.A. No. 7610 — i.e., reclusion temporal medium in case the victim is under 12 years old, and reclusion temporal medium to reclusion perpetua when the victim is between 12 years old or under 18 years old or above 18 under special circumstances — and not merely prisión correccional under Article 336 of the RPC. Our view is consistent with the legislative intent to provide stronger deterrence against all forms of child abuse, and the evil sought to be avoided by the enactment of R.A. No. 7610 x x x.[29]

In the discussions of sexual acts not constituting rape by sexual intercourse, Tulagan even contradicted the distinctions it earlier made and said:

x x x [T]hat for purposes of determining the proper charge, the term "coercion or influence" as appearing in the law is broad enough to cover "force and intimidation" as used in the Information; in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by R.A. No. 7610 and by the Information are different." x x x[30]

We also ruled that a child is considered one "exploited in prostitution or subjected to other sexual abuse" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult." [31]

These loose discussions understandably cause confusion to lower courts, as the same decision says one thing in one part but contradicts itself on another even as it deals with just one crime: Rape. To recall, Rape, as defined in the RPC, as amended by R.A. 8353, has the same elements regardless of whether it is rape by sexual intercourse or rape by sexual assault.[32]

The absurdity of the Court's ruling all the more becomes apparent when juxtaposed with the present case. The very same discussions in Tulagan relied upon by the present ponencia (on the distinction between the elements of crimes under the RPC and R.A. 7610) was not applied in Tulagan itself, even as the Information therein closely resembles the Information in the present case:

Information in Tulagan

Information in the present case

That sometime in the month of September 2011, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength forcibly laid complainant AAA, a 9-year-old minor in a cemented pavement, and did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of the said AAA, against her will and consent.[33] (Emphasis and underscoring supplied)

That on October 28, 2005 at Brgy. Baubo, Maria Aurora, Aurora and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously had carnal knowledge with one [AAA], who was then a fifteen (15) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.[34] (Emphasis and underscoring supplied)

As can be seen above, both Informations (1) allege the element of force or intimidation (or against the will and consent of the victim), (2) without mentioning that the victim was EPSOSA. Despite such similarities, the results of the two cases diverge — one ending in acquittal, the other resulting in conviction, even when both cases ultimately deal with the crime of Rape.

Verily, the error of the RTC that the ponencia now rectifies could have been avoided altogether had Tulagan simply upheld the differences in the constitutive elements of the crimes under the RPC, on the one hand, and Section 5(b) of R.A. 7610 on the other. To reiterate, these two laws "have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors." [35]

All told, I fully concur with the ponencia as it affirms Sernadilla's conviction in Criminal Case No. 3600, but acquits him of the charges in Criminal Case Nos. 3599 and 3596 for failure of the prosecution to establish the elements of the crime charged therein. Specifically, I concur that Sernadilla could not be convicted for violation of Section 5(b) of R.A. 7610, the crime proven by the prosecution in Criminal Case Nos. 3599 and 3596, as the Informations in the said cases outline the elements for Rape by sexual intercourse under the RPC. Meanwhile, for

Criminal Case No. 3600, I concur with the affirmance of Sernadilla's conviction for Rape, as the evidence presented during the trial support the elements of the crime alleged in the Information charging Rape by sexual intercourse.

In view of the foregoing, I vote to PARTLY GRANT the present Petition, and for judgment to be rendered as follows:

- In Criminal Case Nos. 3596 and 3599, accused-appellant Freddie Sernadilla is ACQUITTED. The Decision dated June 17, 2011 of the Court of Appeals in CA-G.R. CR No. 31721 which affirmed the Regional Trial Court of Baler, Aurora, Branch 96, is hereby REVERSED and SET ASIDE.

- In Criminal Case No. 3600, the Decision dated June 17, 2011 of the Court of Appeals in CA-G.R. CR No. 31721 is AFFIRMED with MODIFICATION. Accused-appellant Freddie Sernadilla is found GUILTY beyond reasonable doubt of the crime of Rape under Article 266-A(1) in relation to Article 266-B of the Revised Penal Code, for which he is sentenced to suffer the penalty of reclusion perpetua, Accused-appellant is also ORDERED to pay the victim, AAA, P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages. Legal interest at the rate of six percent (6%) per annum is imposed on the monetary awards from the finality of this Decision until fully paid.

[1] Ponencia, p. 13.

[2] 849 Phil. 197 (2019).

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (R.A.) 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," approved on June 17, 1992; R.A. 9262, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of Administrative Matter No. 04-10-11-SC, known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN," effective November 15, 2004. (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 (2013). See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

[4] Records, p. 1.

[5] *Id.* at 139.

[6] *Id.* at 38.

[7] Rollo, p. 4; records p. 69.

[8] *Id.*; *id.*

[9] *Id.* at 4-5; records, p. 541.

[10] Records, pp. 544-545.

[11] Id. at 537-558. Penned by Presiding Judge Corazon D. Soluren.

[12] Article 266-A. Rape; When And How Committed. - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

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

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

x x x x

(b) Those who commit the act of sexual intercourse 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[.]

[14] Rollo, pp. 2-11. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr.

[15] Ponencia, p. 13.

[16] See id. at 8-10.

[17] Id. at 11-13.

[18] 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, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES, approved on September 30, 1997.

[19] J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, supra note 2, at 382. Emphasis and underscoring omitted.

[20] Id. at 343. Emphasis and underscoring omitted.

[21] Id. at 365-366.

[22] See id. at 368.

[23] 771 Phil. 641 (2015).

[24] 808 Phil. 889 (2017).

[25] 815 Phil. 839 (2017).

[26] Dimakuta v. People, supra note 24, at 652. Citation omitted.

[27] Id. at 670-671. Citations omitted.

[28] People v. Tulagan, supra note 2 at 241-246. Citations omitted.

[29] Id. at 262, 272.

[30] Id. at 276. Citation omitted.

[31] Id.

[32] Article 266-A. Rape; When And How Committed. - Rape is committed:

1)

By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a)

Through force, threat, or intimidation;

b)

When the offended party is deprived of reason or otherwise unconscious;

c)

By means of fraudulent machination or grave abuse of authority; and

d)

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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. (Emphasis supplied)

[33] People v. Tulagan, supra note 2, at 212-213.

[34] Records, p. 139.

[35] J. Caguioa, Concurring and Dissenting Opinion in People v. Tulagan, supra note 2, at 382. Emphasis omitted

CONCURRING OPINION

SINGH, J.:

The accused Freddie Sernadilla (Sernadilla) was charged in three separate Informations, the accusatory portions of which read:

Criminal Case No. 3596

That on February 9, 2006 at , Aurora and within the jurisdiction of the Honorable Court, the said accused, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one AAA ,[1] who was then a sixteen (16) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[2]

Criminal Case No. 3599

That on October 28, 2005 at , Aurora and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully, and feloniously had carnal knowledge with one AAA , who was then a fifteen (15) year old barrio lass against her will and consent thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[3]

Criminal Case No. 3600

That sometime in October 2004, at , Aurora and within the jurisdiction of this Honorable Court and inside the premises of the Wenceslao Christian Fellowship, the said accused who was then the Pastor of the said church, did then and there willfully, unlawfully, and feloniously, had carnal knowledge with one AAA , who was then a fourteen (14) year old lass and a member of said church, against the latter's will and consent and thereby effectively prejudicing her development as a child.

CONTRARY TO LAW.[4]

The Regional Trial Court, Branch 96, Baler, Aurora convicted Sernadilla of one count of Rape, defined and penalized under Article 266-A(1) of the Revised Penal Code (RPC), in Criminal Case No. 3600, and two counts of Violations of Section 5(b), Article III of Republic Act (R.A.) No. 7610 in Criminal Case Nos. 3596 and 3599, in a Joint Decision,[5] dated 28 March 2008. To this, the Court of Appeals agreed in a Decision,[6] dated 17 June 2011.

The ponencia upheld Sernadilla's conviction for Rape in Criminal Case No. 3600, but acquitted him of the Violations of Section 5(b) of R.A. No. 7610.[7]

I concur. I would like, however, to offer another reason why the Court cannot convict Sernadilla of Rape in Criminal Cases Nos. 3596 and 3599.

To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.[8]

I agree that, in so far as Criminal Case No. 3600 where Sernadilla was convicted, the prosecution properly alleged the element of "force and intimidation" in the Information, through the use of the words "against the latter's [AAA's] will and consent," coupled with an allegation that Sernadilla was the Pastor of AAA and her family's church. The Information in Criminal Case No. 3600 categorically alleged that Sernadilla was "then the Pastor of the [Wenceslao Christian Fellowship],"[9] to which AAA and her family belonged. Jurisprudence clearly instructs that the accused's moral ascendancy may take the place of force and intimidation in rape cases.[10]

The ponencia aptly held:

While the term "'force and intimidation" was not specifically mentioned in the Information, We find that its

presence has been sufficiently alleged with the statement that the accused-appellant is a Pastor of the church to which AAA is a member, as this depicts the ascendancy which the former wields over the latter. The test in determining whether the information validly charges the offense is whether material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. As the objective is to enable the accused to adequately prepare for his defense. Thus, it is more important to aver the ultimate facts rather than employ the technical term employed by the law alone.[11] (citations omitted; emphasis supplied)

This moral ascendancy was not alleged in the Informations in Criminal Case Nos. 3596[12] and 3599,[13] both of which merely stated that Sernadilla "had carnal knowledge with one AAA, who was then a fifteen (15) year old barrio lass against her will and consent thereby prejudicing her development as a child." This constitutes a crucial textual difference between the Information in Criminal Case No. 3600, on the one hand, and the Informations in Criminal Case Nos. 3596 and 3599, on the other, which justified the acquittal of Sernadilla on the two other counts.

Rule 110, Section 6 provides:

Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. (emphasis supplied)

Quimvel v. People[14] instructs:

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived. As further explained in Andaya v. People:

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (emphasis added)

In the recent case of People v. Cubay,[15] the Supreme Court acquitted the accused who was charged with 44 counts of Rape because, among other things, the Information failed to allege the material elements of the offense, violating the right of the accused to be informed of the nature and cause of the accusation against him:

We quote anew the forty-four (44) separate Informations, which except for the material dates, uniformly read:

That on or about the 7th day of September, 2007, in the evening, at XXX, province of Bukidnon, Philippines particularly at the Special Education Dormitory (SPED) and within the jurisdiction of this Honorable Court, the above- named accused, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], (an) 18 year-old (who) suffered (a) physical defect (hearing impaired) against her will, to the damage and prejudice of [AAA] in such amount as (may be) allowed by law.

CONTRARY to (and) in violation of R.A. 8353.

The Informations conspicuously lack the second element of rape, i.e. the accused employed force or intimidation, or that the victim was deprived of reason, unconscious, under twelve (12) years of age, or was demented.

Surely, being a deaf-mute does not necessarily take the place of the element of force or intimidation or having been deprived of reason, unconscious, or demented. The allegation that the accused "did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, an 18 year-old (who) suffered a physical defect (hearing impaired) against her will, x x x" does not equate to force or intimidation either.

In fine, the Informations do not validly charge the crime of rape or any offense at all. The same, for sure, cannot be the basis of a valid judgment of conviction.[16] (citations omitted; emphasis supplied)

Thus, "intimidation" cannot be appreciated against Sernadilla, although proven by the prosecution, because it was not alleged in the Information in these two cases. The difference in the averments of the three Informations concretely explains why "intimidation" on account of Sernadilla's position as a Pastor, relative to Criminal Case No. 3600, cannot be extended to Criminal Case Nos. 3596 and 3599, despite joint trial. The facts proven during such joint trial does not automatically extend to all criminal cases consolidated, when the subject Informations contain differing allegations, as in these cases. In fact, Rule 110, Section 6 on the sufficiency of the Information gains greater prominence in these cases with respect to allegations and proof.

Consequently, Sernadilla cannot be said to have been informed of the nature and cause of the accusation against him in Criminal Case Nos. 3596 and 3599, particularly, if the charge that the prosecution wanted to prove was rape. As to force, the prosecution failed to prove that such force was used by Sernadilla to rape the victim as alleged.

In this regard, the prosecution successfully proved that Sernadilla exercised moral ascendancy in order to have sexual intercourse with AAA in Criminal Case No. 3600. It should further be noted that the heinous act took place inside the premises of the Wenceslao Christian Fellowship, categorically alleging that such moral ascendancy was employed deliberately to violate the sexual integrity of the victim. The factual findings of the RTC, as affirmed by the Court of Appeals, deserve respect, particularly its finding that AAA was a credible witness and that her testimony is worthy of belief.

I also agree that Sernadilla also cannot be convicted of Child Abuse under Section 5(b) of RA 7610 because the Information in Criminal Case Nos. 3596 and 3599 likewise failed to allege the elements comprising such crime. The Court in *People v. Tulagan* identified "coercion or influence" as an element of a Violation of Section 5(b). Following the reasoning above, nowhere in the Informations for Child Abuse did the prosecution allege that Sernadilla employed some artifice to coerce or influence AAA to engage in sexual intercourse with him. Thus, although the prosecution proved during trial that Sernadilla gave monetary allowances and other material support, such ultimate fact was not included in the Informations in these cases.

As a final note, the Informations uniformly refer to the minor victim as a "barrio lass." Perhaps, the investigating prosecutor believed that by such description, all that is needed to be alleged, i.e., that the victim was subjected to force or intimidation, or undue influence, had been alleged. Let this be a reminder to all that the Court does not look with favor on gender stereotypes. The Constitution and our laws do not equate the same to presumptions, much less evidence. Lest it be forgotten, the fundamental right of the accused to be informed of the nature and cause of the accusation is the gateway to a valid criminal prosecution.

I accordingly CONCUR with the ponencia.

[1] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (R.A.) 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," approved on 17 June 1992; R.A. No. 9262. "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on 8 March 2004; and Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004.

[2] Record, pp. 1-2.

[3] CA rollo, pp. 13-14.

[4] Id. at 15-16.

[5] Id. at 17-37.

[6] Rollo, pp. 2-11.

[7] Ponencia, p. 13.

[8] *People v. Rapiz*, G.R. No. 240662, 16 September 2020.

[9] CA rollo, pp. 15-16.

[10] *People v. Villacampa*, 823 Phil. 70.

[11] Id. at 9-10.

[12] Records, pp. 1-2.

[13] CA rollo, pp. 13-14.

[14] 808 Phil. 889, 912-913.

[15] G.R. No. 224597, 29 July 2019.

[16] Id.

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