

## ALBERTO GRANTON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 226045. October 10, 2018*

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### CAGUIOA, J:

This is an appeal by certiorari[1] (Petition) filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 30, 2015 and Resolution[3] dated June 24, 2016 in CA-G.R. CR No. 02316 of the Court of Appeals (CA), Eighteenth (18[th]) Division and Special Former Eighteenth (18[th]) Division, respectively, which found herein petitioner Alberto Granton (Alberto) liable for two (2) counts of Rape through Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code (RPC).

#### Factual Antecedents

On December 23, 2009, two (2) separate Informations for Rape through Sexual Assault were filed against Alberto, which read as follows:

Criminal Case No. 5158

That on or about [the] 18[th] day of September 2009 in the [xxx][4] Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, by force, threat and intimidation did then and there, willfully, unlawfully and feloniously inserted his finger inside the genital of two (2) year old CCC without the latter's consent and against her will.

CONTRARY TO LAW.[5]

Criminal Case No. 5159

That on or about [the] 22[nd] day of September 2009 in the [xxx] Province of Leyte, Philippines and within the jurisdiction of the Honorable Court, the said accused, by force, threat and intimidation did then and there, willfully, unlawfully and feloniously inserted his finger inside the genital of two (2) year old CCC without the latter's consent and against her will.

CONTRARY TO LAW.[6]

The CA summarized the evidence of the prosecution as follows:

On 18 September 2009, at around 5:00 o'clock in the afternoon, NNN was cleaning the house when she noticed blood in the undergarments of CCC, the two (2)-year old daughter of MMM and FFF. The undergarments had two blood stains - one was already brown but the other is still fresh and red. At first, she thought CCC was suffering from a Urinary Tract Infection (UTI).

The following day, 19 September 2009, when NNN was about to do the laundry, once again, she saw one of CCC's undergarments stained with blood.

The day after, or on 20 September 2009, NNN noticed another of CCC's undergarments with blood stains on it. It was then that she started having misgivings whether it was really UTI that had been causing all these blood

stains. Thus, she suspected CCC to have been playing with her vagina.

On 22 September 2009, NNN asked CCC if she was "touched" by her "Tito Ambet" (referring to appellant). She suspected appellant to have something to do with the blood stains found on the undergarments because of his close familiarity with the child - appellant being a distant relative of FFF and hired by the latter to feed his flock of fighting cocks on several occasions. Appellant likewise resides in the house of spouses FFF-MMM and at times he was free to hug and touch the child. CCC answered "yes", and demonstrated a push-and-pull movement of her index finger. NNN likewise asked SSS, the elder sister of CCC, if she had seen appellant touching the genitalia of her younger sister. SSS answered in the affirmative.

On the evening of that day, NNN told the spouses FFF-MMM about what appellant had done to their child. She likewise showed them the two undergarments with blood stains. The spouses then asked CCC whether NNN's accusations were true and the child confirmed the same. MMM broke down in tears while FFF was unable to say a word.

CCC was then brought to the municipal hospital for physical examination. Thereafter, spouses FFF-MMM brought her to the Women and Children Protection Desk of the Philippine National Police (PNP) in Leyte, where a police blotter of the incident was made.[7]

Meanwhile, the evidence for the defense was presented by the CA to wit:

To exculpate himself from liability, appellant advanced denial and alibi as his defense.

Appellant's evidence disclosed that he works as the personal driver of the Lim Family in Leyte. His job involved ferrying the Lim children to school using his employer's motorcycle. He works casually, upon FFF's request, by feeding FFF's fighting cocks or washing the latter's vehicle, usually on Saturdays.

From 18 September to 24 September 2009, appellant was at the house of Arturo Cadano (Arturo), the father of his common-law wife, Mary Jane Enriquez (Mary Jane), to ask the latter's hand in marriage. He said that Arturo wanted him to stay thereat for several days so that they could have enough time to know each other. He denied having sexually molested CCC.[8]

When arraigned, Alberto entered a plea of "not guilty." [9] Trial on the merits thereafter ensued.

During trial, the prosecution presented the testimonies of the victim, CCC, who was already four (4) years old when she testified[10]; NNN, the housekeeper of the victim's family; MMM, the victim's mother; Dr. Maribeth R. Aguilar, the medico-legal officer who physically examined the victim; and SP02 Evelyn Bernal. The defense presented the testimonies of Arturo Cadano (Arturo), father of Alberto's common-law wife; Mary Jane Enriquez (Mary Jane), Alberto's common-law wife; and Alberto himself.[11]

#### Ruling of the RTC

In a Decision[12] dated October 22, 2013, the Regional Trial Court of Carigara, Leyte, Branch 13 (RTC), convicted Alberto of two (2) counts of Rape through Sexual Assault under paragraph 2, Article 266-A of the RPC, as amended:

WHEREFORE, premises considered, this court, finding accused ALBERTO GRANTON, GUILTY beyond reasonable doubt of the crime of Sexual Assault under par. 2 of Art. 266-A of the Revised Penal Code as amended by Rep. Act [N]o. 8353 otherwise known as the Anti-Rape Law of 1997, committed as charged in the Information respectively under Criminal Case [N]os. 5158 and 5159, hereby sentenced to suffer an indeterminate sentence of TWELVE (12) YEARS maximum of prision mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTH[S] medium period of RECLUSION TEMPORAL as the maximum in Criminal Case [N]o. 5158, and likewise to suffer the same sentence of imprisonment of TWELVE (12) YEARS maximum of prision mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of

medium period of Reclusion Temporal as maximum in Criminal Case [N]o. 5159.

Further, ordering accused Alberto Granton to pay to minor victim in each count of [R]ape by [S]exual Assault, the amount of Fifty Thousand Pesos (Php 50,000.00) as civil indemnity; the amount of Fifty Thousand Pesos (Php 50,000.00) as moral damages, and exemplary damages in the amount of Thirty Thousand (Php 30,000.00) Pesos, and to pay the costs.[13]

On whether Alberto committed sexual assault against CCC on the dates specified in the Informations, the RTC relied on the testimony of CCC that Alberto inserted his finger in her vagina while they were watching TV but noted that she could not remember how many times he did it but that she was certain that it happened more than once. CCC testified that she felt pain and that blood flowed out from her vagina, but she could not determine for certain when it happened.[14] The RTC also considered that the testimony of CCC was corroborated by the medical findings of a physician who testified that there was a superficial abrasion in the labia majora, redness of the left labia minora, and healed laceration of the hymen at 9:00 o'clock position. The doctor conducted her medical examination on September 23, 2009.[15] At the time of the examination, the vaginal laceration had already healed, so the injury could have happened three (3) to seven (7) days before,[16] which is consistent with the dates alleged in the Informations. For the RTC, although CCC failed to exactly state when the two acts of sexual assault happened, her direct testimony and that of the medical officer were sufficient because the exact time of the commission of the crime of rape is not a material ingredient of the crime.[17]

The RTC likewise believed the testimonies of NNN and MMM on the discovery of the bloody underwear by NNN and the subsequent reporting of MMM and FFF to the police of what happened to their daughter.[18]

Anent Alberto's defense, the RTC ruled that his defense of alibi was not believable. The petitioner admitted that the house of Arturo was near the house of CCC. The evidence also showed that Alberto and Mary Jane only stayed in the house of Arturo on September 22, 2009, which is contrary to Alberto's representations that he had stayed there from September 18 to 24, 2009.[19] Thus, for the RTC, it was not physically impossible for Alberto to be physically present at the house of CCC.[20] The RTC also ruled that the defense did not adduce any evidence that would show that any of the prosecution witnesses was prompted by ill motive when they testified against him. The absence of such proof shows that no such motive exists and that such testimonies were worthy of full faith and credit.[21]

Unsatisfied, Alberto appealed to the CA. Alberto argued that the findings in the medical certificate were not conclusive to establish that they were caused by him through sexual assault.[22] He also questioned the credibility of the testimony of CCC allegedly because she did not even cry in pain or shout for help during the incidents. According to Alberto, this reaction made the sexual assault improbable because CCC herself testified that NNN was around the house and that her parents were in the adjacent room.[23]

#### Ruling of the CA

In a Decision[24] dated September 30, 2015, the CA affirmed the RTC's conviction of Alberto and found him guilty beyond reasonable doubt for the acts charged.

The CA, however, modified the penalty imposed in accordance with Article III, Section 5(b) of Republic Act (R.A.) No. 7610,[25] which imposes a penalty of reclusion temporal in its medium period when the lascivious conduct is committed against a victim who is under twelve (12) years old.[26] The indeterminate sentence was therefore modified to 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. Thus:

WHEREFORE, the foregoing premises considered, the Decision dated 22 October 2013 of Branch 13,

Regional Trial Court (RTC) of Leyte in Criminal Case Nos. 5158 and 5159 is hereby AFFIRMED with the following MODIFICATIONS:

(a) Accused-Appellant Alberto Granton is 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 for each count of rape;

(b) Accused-Appellant is hereby ORDERED to pay the victim the following amounts for each count of rape: Php 30,000.00 as civil indemnity; Php 30,000.00 as moral damages; and Php 30,000.00 as exemplary damages.

(c) All monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[27]

A motion for reconsideration was filed by Alberto, which was denied by the CA in a Resolution[28] dated June 24, 2016 for lack of merit.

Hence, this Petition.

Public respondent, through the Office of the Solicitor General, filed its Comment[29] dated June 29, 2017. In lieu of a reply, Alberto filed a Manifestation[30] dated December 6, 2017, reiterating the arguments in his Petition.

Issue

Whether the CA committed reversible error in finding Alberto guilty beyond reasonable doubt for two (2) counts of Rape through Sexual Assault.

The Court's Ruling

The Petition is denied.

In his Petition, Alberto raises the following arguments in contesting his conviction: (i) that the findings in the medical certificate do not strengthen the alleged commission of rape,[31] and (ii) the improbable testimony of CCC casts doubt on her credibility as a witness.[32]

The Court notes at the outset that Alberto's Petition relies on issues that are factual in nature, as he questions in particular the RTC and CA's appreciation of the evidence as well as the credibility of the testimony of the victim, CCC.[33]

As a rule, issues dealing with the sufficiency of the evidence and the relative weight accorded to it by the RTC cannot be raised in an appeal by certiorari, which is confined to questions of law. Questions that are purely factual and evidentiary and which require a re-evaluation and recalibration of the evidence are outside the scope of the Court's discretionary appellate jurisdiction under Rule 45. Moreover, it is settled that in assessing the credibility of witnesses, the Court will not disturb the findings of the trial court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the results of the case.[34] While questions of fact have been entertained by the Court in exceptional circumstances, Alberto herein failed to specify or demonstrate how the instant case falls within the allowable exceptions.

Be that as it may, even if the foregoing rule were to be relaxed and after a careful study of the submissions of the parties, the Court finds no error committed by the CA in convicting Alberto for the subject crimes.

The elements of Rape by Sexual Assault are as follows:

(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 and 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.[35] (Emphasis supplied)

The foregoing elements as described in the Information were sufficiently established by the evidence of the prosecution, i.e., that Alberto inserted his finger in the genital area of CCC, who was then under twelve (12) years of age.

As a rule, the testimonies of child-victims are given full weight and credit. The Court finds no cogent reason to doubt the testimony of CCC relative to her defilement by Alberto, as such testimony was delivered in a clear, consistent, straightforward, and spontaneous manner.[36] Meanwhile, on the issue of the medical certificate, assuming that Alberto was correct and that it is not to be given any weight, the CA correctly ruled that the medical certificate was only corroborative and not indispensable to obtaining a conviction.[37]

Further, as to the circumstances under which the sexual assault happened, it is a known fact that there is no standard rational reaction to an irrational or traumatic experience; Alberto cannot dictate upon CCC a certain type of behavior as people are known to react differently to similar situations. Thus, regardless of whether CCC cried or shouted for help, the CA was correct in ruling that this did not diminish the established fact that Alberto, in more than one occasion, inserted his finger into CCC's vagina who was then only two (2) years of age.[38]

Proceeding from the foregoing, the Court thus adopts the following pronouncements of the CA:

After a circumspect perusal of the pieces of evidence adduced by the parties before the court a quo, We find that the prosecution successfully proved appellant's guilt beyond reasonable doubt.

The clear, consistent, straightforward, and spontaneous testimony of CCC established that appellant inserted his index finger into her vagina on more than one occasion. Pertinent portion of her testimony states:

Q

Is it not a fact that while you are watching Television that your Titio (sic) Ambit will hold your vagina and inserted (sic) his finger into it?

A

Yes, sir.

Q

Do you recall how many times your Tito Ambit done it?

A

I cannot recall anymore how many times.

Q

But, would it be more than once?

A

Yes, sir.

Q

Is it not a fact that you would feel pain every time your Tito Ambit would insert his finger into your vagina?

A

Yes, sir.

Q

Did blood flow from your vagina when your Tito Ambit inserted his finger into it?

A

Yes, sir.

Q

Is your Tito Ambit around in the courtroom today?

A

Yes, sir.

Q

Will you please point him out in the courtroom?

A

There. Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Alberto Granton.

x x x x

Q

And is it not a fact that your father is the cousin of your Tito Ambit?

A

Yes, ma'am.

Q

That is why you call him Tito Ambit?

A

Yes, sir.

x x x x

Indeed, in order to obtain a conviction for rape by sexual assault, it is essential for the prosecution to establish the elements that constitute such crime. Article 266-A, paragraph 2 of the Revised Penal Code explicitly provides that the gravamen of the crime of rape by sexual assault which is the insertion of the penis into another x x x person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice. In the instant case, this element is clearly present when CCC straightforwardly testified in court that appellant inserted his index finger in her vagina.

Settled is the rule that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been sexually violated, she says in effect all that is necessary to show that rape was indeed committed. x x x

x x x x

There is likewise no legal mooring to appellant's contention that the medical certificate should not have been given credence since it does not establish with conclusiveness his culpability.

Even granting that appellant was correct in saying that the medical certificate did not establish his guilt with reasonable certainty, it is noteworthy that expert testimony is merely corroborative in character and not essential to conviction since an accused can still be convicted of rape on the basis of the sole testimony of the private complainant. In other words, the medico-legal officer's testimony cannot be considered to possess comparative weight to that of the victim's assertions of rape and, thus, can be disregarded without affecting the finding of guilt imposed upon the appellant.[39] (Emphasis supplied)

On a different matter, the Court modifies the nomenclature of the offense committed following its recent ruling in *People v. Macapagal*.<sup>[40]</sup> Therein, the original conviction for Rape through Sexual Assault under paragraph 2, Article 266-A of the RPC was modified to Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610:

After a careful review of the records, the Court finds no reason to reverse the RTC's judgment of conviction, but a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed, are in order.

In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336 of the RPC, in relation to Section [5](b), Art. III of R.A. No. 7610 instead of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC.

In *Dimakuta v. People*, the Court stressed that in 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 Art. 266-A, paragraph 2 of the RPC, which is punishable by prision mayor, the offender should be liable for violation of Section 5 (b), Art. 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. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.

In *People v. Chingh*, the Court noted that "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.'"

In *People v. Noel Go Caoili*, the Court prescribed guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section S(b) of R.A. No. 7610, and in determining the imposable penalty. "If the victim of lascivious conduct is under twelve (12) years of age, the nomenclature of the crime should be 'Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section S(b), Article III of R.A. No. 7610' and pursuant to the second proviso thereof, the imposable penalty is reclusion temporal in its medium period." In this case, it was alleged in the information, stipulated during pre-trial and indicated in her birth certificate that BBB was 11 years old at the time of the commission of the crime charged in Criminal Case No. RTC-2003-0294.[41] (Emphasis supplied)

In this regard, the Court affirms Alberto's conviction for the acts complained of and finds him guilty of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

Finally, to conform with recent jurisprudence, the penalty of imprisonment is hereby modified to twelve (12) years and one (1) day of reclusion temporal in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of reclusion temporal in its medium period, as maximum.[42] The damages awarded by the CA are accordingly modified to Fifteen Thousand Pesos (P15,000.00) each for moral damages and exemplary damages as well as Twenty Thousand Pesos (P20,000.00) as civil indemnity.[43]

WHEREFORE, premises considered, the Petition is DENIED for lack of merit. The Decision dated September 30, 2015 of the Court of Appeals in CA-G.R. CR No. 02316 is AFFIRMED with MODIFICATION. Petitioner Alberto Granton is hereby found GUILTY beyond reasonable doubt of two (2) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610 and is sentenced to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of reclusion temporal in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of reclusion temporal in its medium period, as maximum, for each count.

Petitioner is likewise ORDERED to PAY the victim moral damages and exemplary damages in the amount of Fifteen Thousand Pesos (P15,000.00) each and Twenty Thousand Pesos (P20,000.00) as civil indemnity for each count committed. All damages awarded shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

**SO ORDERED.**

Carpio, Senior Associate Justice, (Chairperson), Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.  
J. Reyes, Jr.,[\*] J., on wellness leave.

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[\*] Designated additional Member per Special Order No. 2587 dated August 28, 2018; on wellness leave.

[1] Rollo, pp. 15-36.

[2] Id. at 86-102. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.

[3] Id. at 110-112. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi concurring.

[4] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[5] Rollo, pp. 87-88.

[6] Id. at 88.

[7] Id. at 89-90.

[8] Id. at 90.

[9] Id. at 88.

[10] Id. at 59.

[11] Id. at 88-89.

[12] Id. at 54-71. Penned by Presiding Judge Emelinda R. Maquilan.

[13] Id. at 70-71.

[14] Id. at 64.

[15] Id. at 65.

[16] Id.

[17] Id. at 69.

[18] Id. at 65-66.

[19] Id. at 62, 69-70.

[20] Id. at 70.

[21] Id. at 68-69.

[22] Id. at 93.

[23] Id.

[24] Id. at 86-102.

[25] SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT.

[26] Rollo, p. 99.

[27] Id. at 100-101.

[28] Id. at 110-112.

[29] Id. at 131-145.

[30] Id. at 148-150.

[31] See id. at 32-33, 49.

[32] See id. at 28-31, 50.

[33] See id. at 27-34, 48-52.

[34] *Nerpio v. People*, 555 Phil. 87, 92 (2007).

[35] *People v. Soria*, 698 Phil. 676, 693-694 (2012).

[36] Rollo, p. 94.

[37] Id. at 97.

[38] See id. at 98.

[39] Id. at 94-97.

[40] G.R. No. 218574, November 22, 2017.

[41] Id. at 7-9.

[42] *Quimvel v. People*, G.R. No. 214497, April 18, 2017, 823 SCRA 192, 251-252.

[43] See id. at 252.

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