

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN BARRERA Y GELVEZ, ACCUSED-APPELLANT.

G.R. No. 230549. December 01, 2020

Ponente: GAERLAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-230549/>

GAERLAN, J.:

Courts, in criminal cases, must delicately carry the scales of justice to arrive at a three-way balance with respect to the interest of the State to maintain an effective system of deterrence; to provide adequate retribution to the victim; and with utmost regard to the innate value of human liberty and the constitutional rights of the accused.[1] Hence, a determination of guilt does not automatically title the law against the person convicted. On the contrary, in case of ambiguity, it is the Court's duty to apply and interpret criminal law in favor of the defendant. As in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice lean towards the former.[2]

This resolves the appeal pursuant to Section 13(c), Rule 124 of the Rules of Court as amended, from the Decision[3] dated September 30, 2016, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07488. The CA affirmed the Decision of the Regional Trial Court (RTC) of Calamba City, Branch 34, finding the accused-appellant Glenn Barrera y Gelvez guilty beyond reasonable doubt of the crime of robbery with rape in Criminal Case No. 22085-2014-C.

The Antecedent Facts

The accused-appellant was charged with the crime of robbery with rape by virtue of an Information dated February 4, 2013, the accusatory portion of which reads:

That on or about 5:30 a.m. of 02 February 2013 at XXX,[4] Calamba City and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain by means of force upon things, did then and there willfully, unlawfully and feloniously entered the house of the private complainant and once inside, take, steal one (1) portable DVD worth Php2,500 and one (1) TCL 21 inches television, owned by BBB, to the damage and prejudice of the latter.

That on occasion thereof, the said accused, with lewd design, sexually assaulted AAA, a seven (7) year old minor, against her will, by pulling down her shorts and inserting his tongue inside the vagina of the said minor, to the damage and prejudice of the minor.

CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant, assisted by counsel, entered a plea of not guilty to the offense charged.[6]

After pre-trial, trial on the merits ensued.

The prosecution presented as witnesses: the minor offended party, AAA, and her father, BBB. Their testimonies tend to establish the following facts:

In the early morning of February 2, 2013, accused-appellant broke into the house occupied by BBB, his wife CCC, and their seven-year old daughter AAA. Accused-appellant gained entry by removing one of the jalousies of a window, through which he was able to turn the doorknob and enter the house.[7]

Once inside, the accused-appellant took a DVD player worth P2,500.00 and a television set. He then proceeded to the second floor of the house where AAA was sleeping.[8]

The accused-appellant then approached AAA, took off her shorts and licked and inserted his tongue in her vagina.[9] This awakened AAA who then shouted to CCC, "Mommy hinubadan po ako ng short at dinilaan ang pepe ko." [10] CCC, hearing the noise, got up from sleep and started to wake BBB by shouting at him. BBB then saw the accused-appellant still inside the house and carrying their DVD player. The accused-appellant tried to escape but BBB and CCC chased after him. The commotion woke their relatives who live in the same compound and proceeded to help the couple catch the accused-appellant. In the process, the accused-appellant dropped the DVD player. The accused-appellant was eventually apprehended by BBB, who then sought the aid of the barangay tanod. Thereafter, accused-appellant was turned over to the police.[11]

For its part, the defense presented the accused-appellant and his neighbor and sister-in-law, one Rachelle Magsino (Rachelle).

The accused-appellant offered the defense of denial. He claims that on February 3, 2013, at around 5:00 a.m., as he was on his way to the seashore to help his father, he was approached by the barangay officials who brought him to the Municipal Hall. Therein, he was informed that he was being charged with robbery with rape and was to be investigated. The accused-appellant claims that he is familiar with the faces of AAA, BBB, and CCC but cannot identify them by their names. Finally, he denies that he committed the acts complained of.[12]

Rachelle testified that at around 5:00 a.m. of the day of the incident she saw the accused-appellant having breakfast in his house. After some time, Rachelle again saw the accused-appellant head to the sea where his father was waiting. Thereafter, Rachelle saw the accused-appellant being arrested by the barangay tanods. Rachelle admitted that she did not know what happened from the time the accused left his house up to the time he went towards the sea.[13]

On November 20, 2014, the RTC rendered its Decision,[14] ruling as follows:

WHEREFORE, foregoing premises considered, JUDGMENT is hereby rendered finding accused GLENN BARRERA y GELVEZ GUILTY beyond reasonable doubt of the crime of Robbery with Rape under Article 293 in relation to Article 294 of the Revised Penal Code and hereby imposes upon him the penalty of reclusion perpetua.

Moreover, accused GLENN BARRERA y GELVEZ is, likewise, ORDERED to PAY private complainant AAA the amount of P50,000.00 as civil damages ex delicto, P50,000.00 as moral damages and P30,000.00 as exemplary damages. The total monetary awards shall earn 6% interest per annum from the finality of this Decision until fully paid.

SO ORDERED.[15]

The RTC held that there is an undeniable positive identification of the accused-appellant as the person who entered BBB's house and took their television and DVD player.[16] Further, the RTC found AAA's testimony credible and sufficient to establish the fact that she was sexually assaulted by the accused-appellant.[17]

The accused-appellant filed an appeal before the CA, which rendered the herein assailed Decision,[18] dated September 30, 2016, affirming the RTC Decision, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, the appeal is DENIED. The assailed Decision of the RTC of Calamba City, Branch 34, in Criminal Case No. 22085-2014-C, is hereby AFFIRMED with MODIFICATION in that accused-appellant shall not be eligible for parole pursuant to Republic Act No. 9346 and the awards of civil indemnity and moral damages are each increased to P75,000.00.

SO ORDERED.[19]

In this appeal, both parties manifested that they would no longer submit supplemental briefs considering that they had already exhaustively discussed the issues in their briefs before the CA.[20]

In the main, the accused-appellant assails the judgment of conviction on the ground that the testimonies upon which they are based are "incongruent and improbable" and as such should not be given weight and credence.[21]

Ruling of the Court

The appeal is not meritorious. The accused-appellant's conviction must stand, albeit for two separate offenses of robbery and sexual assault.

The Court affirms, as there is no compelling reason to deviate from the common factual findings of the RTC and the CA.

It is settled that questions on credibility of witnesses are generally left for the trial court to determine as it had the unique opportunity to observe the witness' deportment and demeanor on the witness stand. The trial court's evaluation is accorded the highest respect and will not be disturbed on appeal in the absence of any showing that significant facts have been overlooked or disregarded, which could have otherwise affected the outcome of the case. This rule is more stringently observed when the assessment and conclusion of the RTC is concurred in by the CA.[22]

In this case, both the RTC and the CA found the testimonies of AAA and BBB to be trustworthy and sufficient to establish the guilt of the accused-appellant beyond reasonable doubt. The Court sees no reason to depart from such finding.

AAA was merely seven years of age at the time the crime was committed. She was eight years old when she testified before the court. Nonetheless, AAA was clear, straightforward, and unwavering in relating to the court what happened to her and in identifying the accused as the perpetrator of the offense. During cross-examination, her testimony remained consistent and un rebutted.[23] Thus, the RTC and the CA did not err in giving her testimony full faith and credit.

Jurisprudence recognized that "[y]outh and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true." [24]

The accused-appellant's defense of denial and alibi, in the absence of clear and convincing proof to substantiate the same, will not stand against the categorical statement and positive identification of the prosecution witnesses.[25]

Notably, the accused-appellant failed to make account of his whereabouts during that period after he left the house and prior to the time he went to the seashore to help his father and was captured by the barangay officials.[26] Considering the proximity of these places to the scene of the crime, the accused-appellant was not able to prove that "it is impossible for him to be somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime." [27] Since there is a chance for the accused-appellant

to be present at the crime scene, his defense of alibi must fail.[28]

The accused-appellant should be convicted of two separate crimes of robbery and sexual assault.

While the Court affirms and adopts the factual findings of the RTC and the CA, it however differs with respect to the crime committed by the accused-appellant. As aptly pointed out by Justice Rosmari D. Carandang during the deliberations of this case, the accused-appellant should be convicted of two separate crimes, i.e., robbery and sexual assault under Article 266-B of the Revised Penal Code (RPC).

The legislature intended to maintain the dichotomy between rape through carnal knowledge and sexual assault; the former should be treated more severely than the latter.

The crime of robbery with rape is a special complex crime penalized by Article 294 of the RPC, as amended by Section 9 of Republic Act (R.A.) No. 7659. For a successful prosecution of the said crime, the following elements must be established beyond reasonable doubt: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with intent to gain or animus lucrandi; and d) the robbery is accompanied by rape.[29] In robbery with rape, the true intent of the accused must be to take, with intent to gain, the property of another; rape must be committed only as an accompanying crime. Article 294 does not distinguish when rape must be committed, for as long as it is contemporaneous with the commission of robbery.[30]

With the amendment introduced by R.A. No. 7659 on December 13, 1993, the penalty of reclusion perpetua to death was imposed for the special complex crime of robbery with rape owing to its inherent atrocity and perversity.[31] The penalty for the crime of rape was similarly amended under Section 11 of the same Act by imposing the penalty of death when Rape is attended by certain circumstances.[32] Even so, the definition of rape under Article 335 of the RPC and as a component of the special complex crime of robbery with rape, remained unchanged, viz.:

Section 11. Article 335 of the same Code is hereby amended to read as follows:

Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

x x x x

In choosing to impose the penalty of death for certain heinous crimes, the legislature acted within the purview of crimes as they are defined at the time of the passage of R.A. No. 7659. To be more specific, in the special complex crime of robbery with rape, the legislature evaluated the gravity of the offense and formulated its decision as to the depravity of the offenses based on the definition of the component crimes at that point in time: robbery as defined under Article 293 of the RPC, and rape as defined under then Article 335 (now Article 266-A(1) of the RPC, herein forequoted.

On October 22, 1997, R.A. No. 8353 otherwise known as the "Anti- Rape Law of 1997" took effect. It expanded

the traditional definition of rape to include acts of sexual assault also referred to as "gender-free rape" or "object rape." Thus, there are now two modes in which rape may be committed, viz.:

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; and

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

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.[33] (Emphasis supplied)

The expansion of the definition of the crime of rape by including acts of sexual assault notwithstanding, it is evident that R.A. No. 8353 does not view the two modes of commission on an equal footing. The distinction between rape committed through sexual intercourse (first mode) on the one hand and sexual assault (second mode) on the other is exhibited by the penalty which the legislature determined appropriate to impose. R.A. No. 8353 punishes rape through the first mode more severely as depending on the attendance of circumstances, it provides for the penalty within the range of reclusion perpetua to death; whereas, rape under the second mode is generally punishable with penalty ranging from prision mayor to reclusion temporal, save for instances where homicide attended its commission, then penalty of reclusion perpetua is imposed. Article 266-B of the RPC as amended by R.A. No. 8353, reads:

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

- 4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;
- 5) When the victim is a child below seven (7) years old;
- 6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;
- 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;
- 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;
- 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and
- 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

The imposition of a more severe penalty for rape through sexual intercourse shows that the legislature found such mode of commission more appalling than the other thus warranting a more severe punishment as a form of chastisement and deterrence.

The distinction between the two modes - the traditional concept of rape and sexual assault, has been exhaustively and judiciously discussed in the landmark case of *People v. Tulagan*.^[34] The case highlighted that R.A. No. 8353 merely upgraded Rape from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) for facility in prosecution; and reclassified specific acts constituting "acts of lasciviousness" as a distinct crime of "sexual assault." The Court, speaking through then Associate Justice, now Chief Justice, Diosdado M. Peralta, elucidated:

Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punished under Article 336 of the RPC, but were transferred as a separate crime of "sexual assault" under paragraph 2, Article 266-A of the RPC. Committed by "inserting penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" against the victim's will, "sexual assault" has also been called "gender-free rape" or "object rape." However, the term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without

her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married. The dichotomy between rape and sexual assault can be gathered from the deliberation of the House of Representatives on the Bill entitled "An Act to Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault:"

INTERPELLATION OF MR. [ERASMO B.] DAMASING:

X X X X

Pointing out his other concerns on the measure, specifically regarding the proposed amendment to the Revised Penal Code making rape gender-free, Mr. Damasing asked how carnal knowledge could be committed in case the sexual act involved persons of the same sex or involves unconventional sexual acts.

Mr. [Sergio A. F.] Apostol replied that the Bill is divided into two classifications: rape and sexual assault. The Committee, he explained, defines rape as carnal knowledge by a person with the opposite sex, while sexual assault is defined as gender-free, meaning it is immaterial whether the person committing the sexual act is a man or a woman or of the same sex as the victim.

Subsequently, Mr. Damasing adverted to Section 1 which seeks to amend Article 335 of the Revised Penal Code as amended by RA No. 7659, which is amended in the Bill as follows: "Rape is committed by having carnal knowledge of a person of the opposite sex under the following circumstances." He then inquired whether it is the Committee's intent to make rape gender-free, either by a man against a woman, by a woman against a man, by man against a man, or by a woman against a woman. He then pointed out that the Committee's proposed amendment is vague as presented in the Bill, unlike the Senate version which specifically defines in what instances the crime of rape can be committed by a man or by the opposite sex.

Mr. Apostol replied that under the Bill "carnal knowledge" presupposes that the offender is of the opposite sex as the victim. If they are of the same sex, as what Mr. Damasing has specifically illustrated, such act cannot be considered rape - it is sexual assault.

Mr. Damasing, at this point, explained that the Committee's definition of carnal knowledge should be specific since the phrase "be a person of the opposite sex" connotes that carnal knowledge can be committed by a person, who can be either a man or a woman and hence not necessarily of the opposite sex but may be of the same sex.

Mr. Apostol pointed out that the measure explicitly used the phrase "carnal knowledge of a person of the opposite sex" to define that the abuser and the victim are of the opposite sex; a man cannot commit rape against another man or a woman against another woman. He pointed out that the Senate version uses the phrase carnal knowledge with a woman.

While he acknowledged Mr. Apostol's points, Mr. Damasing reiterated that the specific provisions need to be clarified further to avoid confusion, since, earlier in the interpellation Mr. Apostol admitted that being gender-free, rape can be committed under four situations or by persons of the same sex. Whereupon, Mr. Damasing read the specific provisions of the Senate version of the measure.

In his rejoinder, Mr. Apostol reiterated his previous contention that the Bill has provided for specific and distinct definitions regarding rape and sexual assault to differentiate that rape cannot be totally gender-free as it must be committed by a person against someone of the opposite sex.

With regard to Mr. Damasing's query on criminal sexual acts involving persons of the same sex, Mr. Apostol

replied that Section 2, Article 266(b) of the measure on sexual assault applies to this particular provision.

Mr. Damasing, at this point, inquired on the particular page where Section 2 is located.

SUSPENSION OF SESSION

x x x x

INTERPELLATION OF MR. DAMASING

(Continuation)

Upon resumption of session, Mr. Apostol further expounded on Sections 1 and 2 of the bill and differentiated rape from sexual assault. Mr. Apostol pointed out that the main difference between the aforementioned sections is that carnal knowledge or rape, under Section 1, is always with the opposite sex. Under Section 2, on sexual assault, he explained that such assault may be on the genitalia, the mouth, or the anus; it can be done by a man against a woman, a man against a man, a woman against a woman or a woman against a man.

Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased the penalty thereof from prision correccional to prision mayor. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party.[35] (Citations omitted and emphasis supplied)

From the foregoing discussion, it can be inferred that it was never the intention of the legislature to redefine the traditional concept of rape. R.A. No. 8353 merely expanded the crime by including another mode in which the crime of rape may be committed. Simply, the legislature only found it fit to categorize acts previously classified and punished as "Acts of Lasciviousness" as the second mode of committing the crime of rape, that is, through sexual assault. In doing so, legislative intent is clear in that while encompassed in the definition of rape, sexual assault should be treated less severely than rape through carnal knowledge. In the exercise of its discretion and wisdom, the legislature resolved that a more severe penalty should be imposed when rape is committed through sexual intercourse owing to the fact that it may lead to unwanted procreation, an outcome not possible nor present in sexual assault.

Inasmuch as the intent of a law is a vital component and the essence of the law itself,[36] the clear legislative intent to maintain the dichotomy between the two modes of commission of rape, in terms of penalty, must be carried out.

In the same vein, following legislative intent in the passage of R.A. No. 7659, the penalty of reclusion perpetua to death for the special complex crime of robbery and rape should be limited to instances when rape is accomplished through sexual intercourse or "organ penetration." The penalty should not be unduly extended to cover sexual assault considering that the acts punishable under such mode were not yet recognized as "Rape" but as "Acts of Lasciviousness" at the time the severe penalty of death was imposed. All the more, to repeat for the sake of emphasis, as even after the inclusion of sexual assault in the definition of rape by R.A. No. 8353, Congress deliberations show that the law never intended to redefine the traditional concept of rape. Rather, the law merely expanded the definition of the crime of rape, with the intent of maintaining the existing distinction between the two modes of commission.

The criminalization of an act cannot be based on mere inferences.

A law is tested by its purposes and results. In seeking the meaning of the law, the first concern is legislative intent. In determining such intent, the law should never be interpreted in such a way as to cause injustice.[37] As "[a]n indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice." [38] In the performance of its duty, courts should therefore interpret the law in harmony with the dictates of justice.[39]

The Court cannot simply presume that with the passage of R.A. No. 8353, rape as a component of the special complex crime of robbery with rape includes sexual assault. With respect to penal statutes, the Court cannot rest on mere deductions.[40] Likewise, "it is not enough to say that the legislature intended to make a certain act an offense." [41] The penal statute must clearly and specifically express that intent. In order for an accused to be convicted under a penal statute, the latter must definitively encompass and declare as criminal the accused's act prior to its commission.[42] "Whatever is not plainly within the provisions of a penal statute should be regarded as without its intentment." [43]

In the case at bar, R.A. No. 7659, insofar as it imposes the penalty of reclusion perpetua to death for the special complex crime of robbery with rape, is bereft of any statement to suggest that it contemplates any and all forms of rape which may subsequently be defined. Thus, the law which imposes a harsher penalty should not be extended to include sexual assault, which was recognized as rape only after its passage.

Furthermore, it is a fundamental rule in criminal law that any ambiguity shall be always construed strictly against the State and in favor of the accused.[44] Penal laws "are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies." [45] Consequently, the interpretation of penal statutes is subjected to a strict and careful scrutiny in order to safeguard the rights of the accused. When confronted with two reasonable and contradictory interpretations, that which favors the accused is always preferred.[46]

In view of the foregoing principles therefore, the more reasonable interpretation is that when Sexual Assault under Article 266-A paragraph 2 of the RPC accompanied the robbery, the accused should not be punished of the special complex crime of robbery with rape but that of two separate and distinct crimes, as it would be more favorable to the accused.

The conviction of the accused-appellant of two separate offenses does not violate his right to information.

The Constitution guarantees the right of an accused in a criminal prosecution to be informed of the nature and cause of accusation against him.[47] Flowing from the said right, it is required that every element of the offense charged must be alleged in the Complaint or Information, to afford the accused an opportunity to adequately prepare his defense. Consequently, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the Information.[48]

The nature of the offense charged is judged on the basis of the recital of facts in the Complaint or Information, without regard to the caption or the specification of the law alleged to have been violated.[49] In this case, the recital of facts in the Information presents no obstacle in convicting the accused-appellant of two distinct crimes of robbery and sexual assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610. The Information contains a complete recital of the elements of each of the said offenses.

The right of the accused to information is also the basis for the rule that a Complaint or Information, to be valid, must charge only one offense.[50] Failure to comply with this rule is a ground for quashing the duplicitous

Complaint or Information. However, the accused must raise the defect in a motion to quash before arraignment, otherwise the defect is deemed waived.[51] In this case, the accused-appellant entered a plea of not guilty without moving for the quashal of the Information, hence, he is deemed to have waived his right to question the same.

The accused-appellant equally failed to object to the duplicitous information during trial. As a result, the court may convict the accused-appellant of as many offenses as charged and proved during trial, and impose upon him the penalty for each offense.[52]

The Court finds that the facts as alleged and proven establish that robbery was committed by the use of force upon things as defined and penalized under Article 299(a) 1 of the RPC. The elements[53] of the said crime was established through the common factual findings of the RTC and the CA, which the Court approves and adopts:

[T]here is thus an undeniable positive identification of the accused as the person who entered private complainant [BBB's] house, and brought out the television set and the DVD player. And the four elements constituting the crime of Robbery with Force Upon Things are duly proven. The second element of the taking of personal properties was testified to and duly established by private complainant [BBB] whose television set and DVD player were taken by the accused. The first element of intent to gain or animus lucrandi is presumed from the fact of the loss of the personal belongings of private complainant. And there can be no dispute or quibble that the two items taken, which were both recovered, are personal properties, thus the third element is likewise proven.

Lastly, the fourth element of the use of force upon things is very clear as testified to by the private complainant [BBB] of the destruction of their window jalousies in order to reach the doorknob of his house and to gain entry into private complainant [BBB's] house. x x x

It is thus clear that by destroying the jalousies of the window to reach the doorknob of the door to gain ingress or entry into private complainant [BBB's] house, the fourth element of the crime charged is duly proven.[54]

Similarly, the prosecution proved beyond reasonable doubt all the elements of the crime of Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610. The RTC explained:

Moreover, from the testimony of private complainant [AAA], x x x, rape by sexual assault was committed by the accused. x x x [S]he categorically testified that the accused licked and inserted his tongue inside her vagina, During the incident complained of private complainant [AAA] was only 7 years old as duly proven by her Certificate of Live Birth.[55]

The apparent inconsistencies in the narration of facts relative to the specific sexual acts performed by the accused-appellant does not affect the nature and character of the crime committed. Herein, the Information alleged that the accused-appellant "inserted his tongue" inside AAA's vagina;[56] the CA Decision narrated that the accused-appellant "licked her vagina;"[57] while the RTC concluded that the accused-appellant "licked and inserted his tongue" inside AAA's vagina.[58]

As aforementioned early on in this Decision, the Court sees no reason to depart from the factual findings of the RTC that the accused-appellant committed acts of Sexual Assault against AAA by licking and inserting his tongue inside her vagina. Knowing to its unique position to observe directly the demeanor of witnesses, the trial court's evaluation of the testimony of witnesses is accorded the highest respect by the Court, more so, when as in this case, the CA made a similar conclusion. Despite the apparent inconsistencies in the language employed, the CA Decision was clear in that it is affirming the factual findings of the trial court. There should be no obstacle in convicting the accused-appellant of the crime of Sexual Assault. The difference as to the terminologies used by the RTC and the CA is understandable. In her testimony, AAA stated ".. sa paggising ko po ay dinidilaan ang pepe ko.." While literally translated, "dilaan" means to "lick" the Court must consider that the witness is a child of

tender years. AAA was merely seven years of age at the time the crime was committed; and eight years old when she testified in court. As such, she cannot be expected to describe with such particularity the sexual act committed. Verily, the trial court, observing the demeanor of the witnesses first hand, is in a better position than the appellate court to evaluate the testimonial evidence properly^[59] and draw conclusions from them.

The separation of the charge into two distinct offenses finds further justification as the same is more favorable to the accused-appellant.

Under Article 294 of the RPC, the special complex crime of robbery with rape is penalized by reclusion perpetua to death. Pursuant to Article 63(1) of the same Code, when the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the deed is attended by an aggravating circumstance. With the presence of the aggravating circumstance of dwelling in this case, the penalty would be death, the higher among the two individual penalties prescribed. Consequently, had the conviction be for the special complex crime of robbery with rape, the penalty would be "reclusion perpetua without eligibility for parole" as directed by R.A. No. 9346 and A.M. No. 15-08-02-SC.

In contrast, the prosecution and conviction for two separate offenses, even if taken together would yield a lower penalty.

The penalty for robbery by the use of force upon things as defined under Article 299(a) 2 of the RPC as amended by R.A. No. 10951,^[60] depends upon the value of the property taken and whether or not the offender carry arms, viz.:

ART. 299. Robbery in an inhabited house or public building or edifice devoted to worship. - Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal, if the value of the property taken shall exceed Fifty thousand pesos (P50,000), and if -

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

x x x x

2. By breaking any wall, roof, or floor or breaking any door or window.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (P50,000), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (P50,000).

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (P50,000), they shall suffer the penalty prescribed in the two (2) next preceding paragraphs, in its minimum period.

x x x x^[61] (Emphasis supplied)

Herein, the information alleged that the accused-appellant took "one (1) portable DVD worth P2,500.00 and one (1) TCL 21 inches television."^[62] The Court finds such allegation insufficient to prove the amount of the property taken for the purpose of fixing the penalty imposable against the accused-appellant. The prosecution

must prove such value by an independent and reliable estimate.[63] An uncorroborated estimate is not enough.[64] The prosecution failed on this score. In the absence of factual and legal bases, jurisprudence instructs that the Court may either apply the minimum penalty or fix the value of the property taken based on the attendant circumstances of the case.[65]

In the exercise of such discretion, the Court hereby imposes upon the accused-appellant the minimum penalty under Article 299 of the RPC, as warranted by the circumstances, i.e., prision mayor minimum.

In the crime of robbery by the use of force upon things, the breaking of the jalousies in BBB's house is a means of committing the crime and as such can no longer be considered to increase the penalty.[66] Similarly, with the separation of the crimes committed and the crime of robbery established is with the use of force upon things, the aggravating circumstance of dwelling can no longer be considered as it is inherent in the offense.[67]

Applying the Indeterminate Sentence Law (ISL), there being no attendant mitigating or aggravating circumstance, the maximum penalty shall be within the medium period of prision mayor minimum or 6 years, 8 months and 1 day to 7 years and 4 months.[68] The minimum penalty on the other hand shall be anywhere within the range of prision correccional in its maximum period or 4 years, 2 months and 1 day to 6 years, the penalty next lower in degree to prision mayor minimum.[69]

With this, for the crime of robbery, the Court imposes upon the accused-appellant the indeterminate penalty of 6 years of prision correccional as minimum and 7 years and 4 months of prision mayor as maximum.

On the amount of civil liability, it is clear that no actual damages can be awarded as the television set and DVD player that were stolen were eventually recovered.[70]

With respect to the crime of sexual assault under Article 266-A(2) of the RPC in relation to Section 5b of R.A. No. 7610 committed against AAA, 7 years of age, guided by the Court's ruling in the case of *People v. Tulagan*,^[71] the penalty shall be reclusion temporal in its medium period.

In view of the separation of the crimes, the aggravating circumstance of dwelling having been properly alleged in the Information must still be appreciated. While dwelling cannot be considered in the crime of robbery, the Court deems it proper to consider the same in determining the penalty of sexual assault, the same having been proven during trial. When the crime of rape through sexual assault is committed in the dwelling of the offended party, and the latter has not given any provocation, dwelling may be appreciated as an aggravating circumstance.^[72]

The presence of the aggravating circumstance of dwelling warrants the imposition of the penalty prescribed in its maximum period.^[73] Hence, applying the ISL, the maximum term shall be anywhere within the maximum period of reclusion temporal medium or 16 years, 5 months and 10 days to 17 years and 4 months. The minimum penalty, on the other hand, shall be one degree lower of reclusion temporal in its medium period or reclusion temporal in its minimum period. The minimum term of the indeterminate sentence should therefore be within the range of 12 years and 1 day to 14 years and 8 months.^[74]

For the crime of sexual assault under Article 266-A(2) of the RPC in relation to Section 5b of R.A. No. 7610, the Court hereby imposes upon the accused appellant the indeterminate prison term of 14 years and 8 months of reclusion temporal as minimum to 17 years, 4 months of reclusion temporal as maximum.

In accordance with recent jurisprudence, the accused-appellant is also liable to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as exemplary damages, and P50,000.00 as moral damages.^[75] All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.^[76]

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED. Accordingly, the Decision dated September 30, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07488 is hereby AFFIRMED with MODIFICATION, as follows:

- The accused-appellant Glenn Barrera y Gelvez is hereby found GUILTY of the crime of robbery by the use of force upon things, defined and penalized by Article 299 of the Revised Penal Code, as amended by Republic Act No. 10951. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years of prison correccional as minimum and seven (7) years and four (4) months of prison mayor as maximum.

- The accused-appellant Glenn Barrera y Gelvez is also found GUILTY of the crime of sexual assault under Article 266-A(2) of the Revised Penal Code in relation to Section 5b of Republic Act No. 7610. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of fourteen (14) years and eight (8) months of reclusion temporal as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. In addition, in accordance with recent jurisprudence,[77] accused-appellant is ordered to PAY the private complainant AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as exemplary damages, and P50,000.00 as moral damages.

All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.[78]

SO ORDERED.

Peralta, C. J., Gesmundo, Hernando, Carandang, Lazaro-Javier, Zalameda, M. Lopez, and Rosario, JJ., concur.

Perlas-Bernabe, Leonen, and Delos Santos, JJ., on official leave.

Caguioa, J., See Concurring and Dissenting Opinion.

Inting, J., No part.

[1] Cf. *Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

[2] *People v. Lacson*, 448 Phil. 317, 463 (2003).

[3] Rollo, pp. 2-10; penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla (now a retired Member of this Court), 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 initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]), and A.M. No. 04-11-09-SC dated September 19, 2006.

[5] Rollo, p. 3.

[6] *Id.*

[7] CA rollo p. 64.

[8] *Id.* at 64-65.

[9] *Id.*

[10] *Id.* at 65.

[11] *Id.*

- [12] Id. at 66.
- [13] Id. at 66-67.
- [14] Id. at 63-73; rendered by Judge Maria Florencia B. Formes-Baculo.
- [15] Id. at 73.
- [16] Id. at 69.
- [17] Id. at 71.
- [18] Id. at 2-10.
- [19] Id. at 9-10.
- [20] Id. at 27-29; 18-20.
- [21] CA rollo, p. 55.
- [22] *People v. Banzuela*, 723 Phil. 797, 814 (2013).
- [23] Id. at 71.
- [24] *People v. Pareja*, 724 Phil. 759, 780 (2014) citing *People v. Perez*, 595 Phil. 1232, 1251-1252 (2008).
- [25] *People v. Banzuela*, supra note 22.
- [26] Rollo p. 8.
- [27] *People v. Evangelio, et al.*, 672 Phil. 229, 245 (2011).
- [28] Id.
- [29] *People v. Romobio*, 820 Phil. 168, 183-184 (2017).
- [30] Id. at 184-185.
- [31] REPUBLIC ACT No. 7659, Sec. 9.
- [32] Article 335. x x x

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent,

guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

2. when the victim is under the custody of the police or military authorities.
3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. when the victim is a religious or a child below seven (7) years old.
5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

[33] REPUBLIC ACT No. 8353, Sec. 2.

[34] G.R. No. 227363, March 12, 2019.

[35] Id.

[36] *Eugenio v. Exec. Sec. Drilon*, 322 Phil. 112, 117 (1996), citing Vol. II, Sutherland, STATUTORY CONSTRUCTION, pp. 693-695.

[37] *Alonzo v. Intermediate Appellate Court*, 234 Phil. 267, 276 (1987).

[38] Id.

[39] Id.

[40] *People v. PO1 Sullano*, 827 Phil. 613, 625-626 (2018).

[41] Id. at 623.

[42] *People v. PO1 Sullano*, supra at 625.

[43] Id., citing *Centeno v. Judge Villalon-Pornillos*, 306 Phil. 219, 230-231 (1994).

[44] *People v. PO1 Sullano*, supra.

[45] *Centeno v. Judge Villalon-Pornillos*, supra.

[46] Id.

[47] 1987 CONSTITUTION, Article III, Section 14(2).

[48] *Canceran v. People*, 762 Phil. 558, 568 (2015).

[49] Id. at 568-569.

[50] RULES OF COURT, Rule 110, Section 13; *People, et al. v. Court of Appeals, et al.*, 755 Phil. 80, 116-117 (2015).

[51] RULES OF COURT, Rule 117, Section 9.

[52] RULES OF COURT, Rule 120, Section 3.

[53] (1) that there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with animus lucrandi; and (4) the taking is with violence against or intimidation of persons or force upon things. [Consulta v. People, 598 Phil. 464, 471 (2009).]

[54] CA rollo pp. 69-70.

[55] Id. at 70.

[56] Rollo p. 3

[57] Id. at 4.

[58] CA rollo p. 70.

[59] People v. Perez, 595 Phil. 1232, 1251 (2008).

[60] An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, Republic Act No. 10951, August 29, 2017.

SECTION 100. Retroactive Effect. - This Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment.

[61] REPUBLIC ACT NO. 10951, Section 79.

[62] Rollo p. 3.

[63] Cf. Viray v. People, 720 Phil. 841, 848 (2013).

[64] People v. Anabe, 644 Phil. 261, 280-281 (2010), citing Merida v. People, 577 Phil. 243, 258-259 (2008).

[65] People v. Anabe, id.

[66] REVISED PENAL CODE, Article 62, as amended.

[67] People v. Cabatlao, 195 Phil. 211, 223 (1981).

[68] REVISED PENAL CODE, Article 64(1).

[69] INDETERMINATE SENTENCE LAW, Section 1.

[70] Rollo p. 73.

[71] G.R. No. 227363, March 12, 2019.

[72] People v. Gayeta, 594 Phil. 636, 648-649 (2008). See People v. Padilla, 312 Phil. 721, 737 (1995), where the Court ruled that dwelling is an aggravating circumstance in rape.

[73] REVISED PENAL CODE, Article 64 (3).

[74] REVISED PENAL CODE, Article 64(1), People v. Tulagan, supra note 34; Quimvel v. People, 808 Phil. 889, 936-937 (2017).

[75] People v. Tulagan, id.

[76] Nacar v. Gallery Frames, 716 Phil. 267 (2013).

[77] People v. Tulagan, supra note 34.

[78] Nacar v. Gallery Frames, supra note 76.

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur in the result - that the accused Glenn Barrera y Gelvez (the accused) should stand criminally liable for the two distinct crimes of Robbery with force upon things under Article 299(A)(2) and Sexual Assault under Article 266-A(2) of the Revised Penal Code (RPC). I disagree, however, with the rationalizations of the ponencia.

Brief review of the facts

The accused was charged under an Information dated February 4, 2013, the accusatory portion of which reads:

That on or about 5:30 a.m. of 02 February 2013 at XXX, Calamba City and within the jurisdiction of the Honorable Court, the above-named accused, with intent to gain by means of force upon things, did then and there willfully, unlawfully and feloniously entered the house of the private complainant and once inside, take, steal one (1) portable DVD worth Php2,500 and one (1) TCL 21 inches television, owned by BBB, to the damage and prejudice of the latter.

That on occasion thereof, the said accused, with lewd design, sexually assaulted AAA, a seven (7) year old minor, against her will, by pulling down her short and inserting his tongue inside the vagina of the said minor, to the damage and prejudice of the minor.

CONTRARY TO LAW.[1] (Emphasis supplied)

It was established during the course of the trial that in the early morning of February 2, 2013, the accused, by removing one of the jalousies of a window, broke into the house where BBB,[2] his wife CCC,[3] and their seven-year-old daughter AAA[4] were residing.[5] Once inside, the accused took a DVD player and a television set.

Thereafter, the accused managed to find AAA, who was then sleeping on the second floor, and violated her by taking off her shorts, licked her private parts and inserted his tongue.[6] After the ordeal, AAA yelled which roused CCC and BBB. The attempted escape of the accused was foiled by BBB and CCC with the help of their relatives living in the same compound. BBB sought the aid of the Barangay Tanod and the accused was turned over to the police.[7]

After trial, the trial court held the accused guilty of the special complex crime of Robbery with Rape under Article 293, in relation to Article 294, of the RPC, and imposed upon him the penalty of reclusion perpetua.[8]

On appeal, the Court of Appeals affirmed the conviction with the modification that the accused shall not be eligible for parole pursuant to Republic Act (R.A.) No. 9346[9] and the awards of civil indemnity and moral damages were each increased to P75,000.00.[10] The accused then filed the present appeal.

The ponencia holds the accused liable for two separate crimes, namely (1) "Robbery by the use of force upon things, defined and penalized by Article 299 of the RPC"[11] and (2) "Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610." [12]

As previously mentioned, I concur in the result that the accused is liable for two distinct crimes. I respectfully disagree, however, in the disquisitions of the ponencia in arriving at the said conclusion. It is my view that the present case - based on the allegations in the Information, as well as the facts proven - does not even involve the special complex crime of "Robbery with Rape" defined under Article 294 of the RPC, as amended. Accordingly, the discourse in the ponencia as to what kind of rape is included in "Robbery with Rape" is uncalled for.

The crime of Robbery and the special complex crime of Robbery with Rape

Robbery is a crime committed in one of two ways as defined under Article 293 of the RPC:

Art. 293. Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery. (Emphasis and underscoring supplied)

The elements of the crime of robbery are therefore: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi* or intent to gain; and (4) the taking is with violence against or intimidation of persons OR with force upon things.[13] "Violence against or intimidation of persons" and "force upon things" are two different modes of committing Robbery. The RPC itself even defines and deals with them separately, i.e., Articles 294-298 for Robbery through violence against or intimidation of persons and Articles 299-303 for Robbery through force upon things.

The taking by either of these two means is the gravamen of the felony. When one removes the means of commission (violence or intimidation against persons, or force upon things) from the material act of taking, the crime committed ceases to be robbery. In the commentaries of Justice Luis B. Reyes on robbery, he reiterated that there should be violence exerted to accomplish the taking. If the violence, for instance, is for a reason entirely foreign to the fact of taking, then there can be no robbery:

Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that she did not feel anything at the time her watch was snatched from her left wrist, the crime committed is not robbery but only simple theft.[14] (*Italics in the original*)

The fact that the owner of the money was tied at the time the money was taken cannot be considered as violence for the purpose of classifying the same as robbery. The offended party was tied for some hours previously for a reason entirely foreign to the act of taking money.[15]

Simply put, to qualify the crime as robbery, the violence against or intimidation of persons should have been present in the taking of personal property.[16]

From this discussion, it is important to point out that the special complex crime of Robbery with Rape is peculiar to robberies committed through violence against or intimidation of persons. The special complex crime of Robbery with Rape is defined in Article 294 (1) of the RPC, as amended by R.A. No. 7659,[17] which provides:

Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. (Emphasis and underscoring supplied)

It is worth noting that no similar provision can be found in the articles of the RPC dealing with Robbery through force upon things, i.e., Articles 299-303. Thus, as defined, to support a conviction for the special complex crime of Robbery with Rape, the following elements must be proven:

(a)

The taking of personal property is committed with violence or intimidation against persons;

(b)

The personal property taken belongs to another;

(c)

The taking is with intent to gain; and

(d)

The robbery is accompanied by rape.[18]

Application of the foregoing in the present case

Of the four elements of the special complex crime, the element that the taking of property be committed with violence or intimidation against persons is absent in the present case. The Information filed against the accused made no allegation whatsoever that the robbery itself was committed through violence or intimidation against persons. As well, the evidence of the prosecution did not establish this.

Instead, alleged in the Information and proven beyond reasonable doubt was the commission of robbery with force upon things, defined and penalized under Article 299(a)(2) of the RPC, as amended by R.A. No. 10951,[19] which provides:

Art. 299. Robbery in an inhabited house or public building or edifice devoted to worship. - Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal, if the value of the property taken shall exceed Fifty thousand pesos (Php50,000.00), and if -

(a) The malefactor shall enter the house or building in which the robbery was committed, by any of the following means:

- Through an opening not intended for entrance or egress;
- By breaking any wall, roof, or floor, or breaking any door or window;
- By using false keys, picklocks, or similar tools;
- By using any fictitious name or pretending the exercise of public authority.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (Php50,000.00), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (Php50,000.00).

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (Php50,000.00), they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period. (Emphasis supplied)

All the elements of Article 299(a)(2) of the RPC, as amended by R.A. No. 10951, concur: first, the accused entered an inhabited house where BBB and his family were residing; second, the accused entered such house by removing one of the jalousies of a window; and third, once inside the house, the accused took personal property the value of which appears to not exceed P50,000.00, i.e., "one (1) portable DVD worth PhP2,500.00 and one (1) TCL 21 inches television." [20]

Since the special complex crime of Robbery with Rape does not exist for robberies committed through force upon things, the sexual acts done by the accused to the minor AAA necessitates a separate conviction for the crime of Rape by Sexual Assault under Article 266-A (2) of the RPC.[21]

Having two separate convictions is possible in this case because the Information filed alleged the commission of two distinct crimes. Normally, the Information would be susceptible to a challenge in a motion to quash under the vice of duplicity of offenses. It appears, however, that the accused failed, before arraignment, to move for the quashal thereof.[22] This being the case, any objection to the defective Information was thereby waived and the accused may be found guilty of as many offenses as those proved during trial.[23]

The ponencia's redefinition of Rape as a component crime of the special complex crime of Robbery with Rape is obiter dicta

To my mind, the issues presented by the appeal are straightforward and the foregoing framework would have judiciously disposed of the issues therein. On the basis of the foregoing, I thus disagree with the ponencia's discussions redefining the nature of rape as a component of the special complex crime of Robbery with Rape defined under Article 294 of the RPC - - which, again, is a crime completely distinct from the crimes alleged in the Information and proven by the prosecution.

The ponencia's redefinition of the nature of rape as a component of the special complex crime of Robbery with Rape is therefore unnecessary in the resolution of the instant appeal and thus mere obiter dicta.

As previously discussed, the special complex crime of Robbery with Rape exists only in robberies committed through violence against or intimidation of persons. Verily, before the Court can even begin considering, discussing, and resolving the nature of rape as a component of the special complex crime of Robbery with Rape, it must first be established that the Robbery must have been done through violence against or intimidation on persons.

In contrast, the Information in this case did not allege - and the evidence presented did not at all prove - that there was violence or intimidation against persons to accomplish the taking of personal property. This case, therefore, clearly does not involve the special complex crime of "Robbery with Rape" because, to reiterate, it does not exist when the taking of personal property was done with force upon things, instead of through violence against or intimidation on persons. Any discussion redefining said special complex crime as being confined only to penile rape is thus inconsequential in the resolution of the appeal. Any deliberation and pronouncement on the same will be no more than an advisory opinion, mere obiter dicta at once premature and unwarranted,[24] as the established facts of this case do not bear out the need to revisit the relevant penal provisions and overturn decided cases by the Court.

Ultimately, the ponencia's discussions on pages 6 to 14 on the intent of the legislature to maintain the dichotomy between rape by carnal knowledge and rape by sexual assault and how it should be applied in the special complex crime of Robbery with Rape, is mere obiter dictum.

Indeed, "[j]usticiability demands that issues and judicial pronouncements be properly framed in relation to established facts." [25] That the liberty and freedom of an accused is at stake and that the question is of extreme importance and is certainly worth of this Court's time and attention are not enough - for the Constitution is clear that the "duty of the courts of justice [is] to settle actual controversies involving rights which are legally demandable and enforceable[;]" [26] and in the final analysis, the contours of Article 294(1) of the RPC is not part

of the actual controversy in this case because, as illustrated above, Article 299(a)(2) of the RPC is the applicable law in the given set of facts.

Given, however, that the majority has seen it proper for the ponencia to discuss the exclusion of rape by sexual assault as a component of the special complex crime of Robbery with Rape, I hereby offer a contrary view that based on the plain text and the intent of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, the special complex crime of Robbery with Rape includes Rape by Sexual Assault.

In other words, based on my review of the legal principles involved, I believe that the special complex crime of Robbery with Rape may likewise be committed even if the sexual act done by the accused constitutes Rape by Sexual Assault and not by carnal knowledge.

A.

Foremost rule in construing a statute is *verba legis*; thus, when a statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it.[27] The duty of the Court is to apply the law the way it is worded.[28] There is simply no room for statutory construction when the letter of the law is clear. Otherwise stated, a condition *sine qua non* before the court may construe or interpret a statute is that there be doubt or ambiguity in its language.[29]

At the time of the commission of the crime in 2013, Article 294(1) of the RPC, as amended, as written, was unambiguous. It states that "[t]he penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

Similarly, at the time of the commission of the crime in 2013, Rape was defined by the RPC as already including rape by sexual assault:

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 and underscoring supplied)

In 2013, it was clear that Rape may be committed by any of the following ways, namely: (1) by a man having carnal knowledge - penile penetration of the vagina - of a woman, or (2) by a man inserting his penis into another person's, whether a man's or a woman's, mouth, or (3) by any person, whether a man or a woman, who inserts any instrument or object into the genital or anal orifice of any person, whether a man or a woman.

While Rape by sexual intercourse has a heavier penalty[30] than "Rape by Sexual Assault," the law nevertheless treats both of those acts as Rape - without distinction.

To reiterate, the letter of the law, as quoted above, is clear: "Rape is committed x x x [b]y any person who x x x 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." Thus, to exclude the second paragraph of Article 266-A from the definition of "Rape" in "Robbery with Rape" would be to construe the law contrary to its express letter.

The "ambiguity" that is sought to be addressed in this case was seemingly brought about by the fact that R.A. No. 7659 which amended Article 294 of the RPC, thereby creating, among others, the special complex crime of "Robbery with Rape" - and categorizing the same as a heinous crime and imposing the death penalty - was passed earlier, or in 1993, or four years before the article on Rape was amended by R.A. No. 8353[31] in 1997. This, however, does not, I believe, give rise to any kind of ambiguity. To be sure, it is extraneous, to the letter of the law at the time of the commission of the crime.

It is worth reiterating that when a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. To do otherwise would be to engage in judicial legislation. As the Court in an early case said:

In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. However, it is equally fundamental that that legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact. An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction. To depart from the meaning expressed by the words is to alter the statute, is to legislate not to interpret.[32] (Emphasis and underscoring supplied)

B.

Even with the application of the aids of statutory construction, the Court would still arrive at the same conclusion

Even if the Court were to ascertain the legislative intent of the laws by secondary aids of construction, the conclusion remains the same that after 1997, upon the passage of R.A. No. 8353, the definition of rape under our criminal laws had purposefully been changed or expanded to include "acts of sexual assault."

B.1. The title of R.A. No. 8353 expresses the legislative intent to expand the definition of Rape

R.A. No. 8353 is titled "An Act Expanding the Definition 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." [33]

The title alone reflects the intention of the legislature to set a new definition; to consider as Rape those acts which were previously not considered as such. Part of the reason behind the enactment of the law was to move from the "traditional" concept of Rape, which is limited only to carnal knowledge or penile penetration of the vagina, to an expanded definition where other sexual acts that similarly violate the bodily autonomy of the victim are also

covered. In the Explanatory Note of one of the bills filed in the House of Representatives (House) that eventually became R.A. No. 8353, it was stated that:

The current definition of rape is inadequate inasmuch as it uses penile penetration of the vagina as the index in determining its commission. But rape law, to be reflective of the guarantee of equality found in the Constitution, must be concerned with vindicating the violated rights of a human being. It must surmount the current penile penetration-centered framework to encompass sexual violations using objects or targeting other orifices of the human body. This new approach would also end the notion that only a woman can be a rape victim.[34]

The "expanded" definition of Rape was met with opposition when it was being deliberated in the House. The members of the House were not opposed to the idea of punishing the acts that now constitute Rape by Sexual Assault. However, for the members of the House, the "traditional" definition of Rape ought to be "preserved" because (1) that has always been the case and (2) it seemed "unfair" to punish with the same gravity - with reclusion perpetua to death - both Rape by carnal knowledge and Rape by sexual assault. Some of the members of the House viewed the two crimes to be different because, especially with "object rape" and bestiality,[35] the perpetrator experiences sexual pleasure not directly, but vicariously. Advocates of the law in the House urged other members to view the crime of rape from the perspective of the victim - the physical, emotional, and psychological trauma that it brings to the victim - and not from the lens of the pleasure brought to the perpetrator. As a form of compromise, advocates of the law in the House eventually agreed to retain the "traditional" definition of Rape and to have the other acts punished as "sexual assault." Thus, the title of the bill after the second reading of the bill in the House read:

AN ACT TO AMEND ARTICLE 335[36] OF THE REVISED PENAL CODE, AS AMENDED, AND
DEFINING AND PENALIZING THE CRIME OF SEXUAL ASSAULT

The title of the House Bill above is different from what the official title of R.A. No. 8353 eventually became. The title above is reflective of the position of the House that the "traditional" definition of Rape had to be "preserved."

In stark contrast, the title of R.A. No. 8353 explicitly states that it was expanding the definition of Rape. The title was changed because Section 2 of R.A. No. 8353, amending Article 335 of the RPC into Article 266-A, treats all the acts therein as Rape, whether it be by sexual intercourse or by sexual assault.

The change in Section 2 of R.A. No. 8353 was a result of a compromise reached in the Bicameral Conference Committee (Bicam) between the two houses of Congress. In contrast with their counterparts in the House, the Senators who were present in the Bicam were adamant that the definition of Rape ought to be expanded. Influenced by developments in other areas of study, the Senators were of the view that, at its core, rape is an issue of power. It is the violation of the lack of consent to the sexual act, and the imposition of power by the perpetrator against the other person, that qualifies the act into rape. To the Senators, therefore, it should be immaterial whatever the sexual act was committed as what was being punished was the intrusion of the victim's bodily autonomy. As a form of compromise, therefore, the legislators agreed to lump together the sexual acts - both those constituting sexual intercourse and those constituting sexual assault - in one section and called it all "Rape," and then simply imposed different penalties as a concession to the members of the House in the Bicam.

Thus, the title of R.A. No. 8353 is what it is because the legislative intent, particularly of the Senate, is to treat all the sexual acts, when done with the attendant circumstances,[37] as Rape, without distinction.

B.2. The legislative deliberations reveal the intent to expand the definition of Rape

In this connection, R.A. No. 8353's title is not the only basis for saying that the intent was indeed to expand the definition of Rape. In fact, the Congressional deliberations themselves clearly reveal the said intention. In the Bicam, Senators Anna Dominique M.L. Coseteng and Leticia Ramos Shahani explained the position of the Senate in this wise:

CHAIRPERSON COSETENG. I think that for us to be able to even get to first base in this bicameral conference committee meeting, we should confine ourselves to the issues right here.

I would like to know exactly, since you brought this up, Congressman Damasing, you said several things which I took down. The mouth and the anus are not sexual organs so that you cannot call the insertion of a man's penis into a woman's mouth forcibly without her consent plus all the factors mentioned here, as rape. You don't classify as a rape. Suppose there is consent, is there pleasure, sexual pleasure obtained from the insertion of a man's penis into a woman's mouth? Is the mouth not a source of sexual pleasure when there is consent? Is the anus, for example, with consent, does the penetration of a penis into the woman's anus, is this a source of sexual pleasure when there is consent? Because the reason I think that you're saying it is not a sexual organ is because under the situation[,] you don't believe there is pleasure[.] [N]either is there pleasure, for example, when you force yourself into a woman through her vagina. But if a woman consents to inserting a man's penis into her mouth with consent, is it not a pleasurable act?

I'm only making this analogy, Congressman, because it is not the pleasure or the lack of it that determines whether or not it's a sexual organ.

HON. DAMASING. Madam?

CHAIRPERSON COSETENG. Yes, Congressman.

HON. DAMASING. When a man forces the woman to hold his organ and masturbate the organ, there's pleasure. But I don't see that as a rape. That is not rape, but there is pleasure.

x x x x

x x x So, in other words, we have to be reasonable because I for one would be the first one to defend the woman's right. But we have to be reasonable. For instance, in this version of the Senate, insertion of the finger into the anus is already rape.

CHAIRPERSON COSETENG. Forcible.

HON. DAMASING. Yes, you call it rape. Imagine that!

x x x x

CHAIRPERSON COSETENG. In other words, why are we listening to the men talk about what they feel when the men are the criminals, the men are the violators? I don't want to say that all men are rapists, but I have yet to see a man stand up and say, "I was raped by this woman."

What I'm saying is, can we not listen to the women since the women are the victims? If the women feels (sic) that it is considered a violation and she considers it rape if a male's organ is forced into her mouth, should we not listen to the women who are the ones violated and not just say it's laughingstock because it does not fit into our traditional concepts of what rape is all about?

HON. DAMASING. Madam, it's not only the women that we are protecting in this Bill, even the men.

x x x x

HON. SHAHANI. Because I think the crime of rape is rape. I mean, we feel that if violence is done to a woman, it is rape. And it is not sexual assault. You see[,] by saying sexual assault, you lighten it. That is the

interpretation, you see. The use of violence, the use of force without her consent whether it is carnal knowledge or introduction of foreign object. The fact that there is violence in that act and that it is done against her will, for women, that is rape. I think that is, this is a fundamental difference.

CHAIRMAN SATOR. We have discussed the meaning of rape in our group. We are agreed that the real meaning of rape is committed on the reproductive organ of a woman by the reproductive organ of the man. I think that we have to distinguish the reproductive organs from those which are not. So we have to classify those which are not done to the reproductive organs as not rape. Because that has always been the meaning, wherever we go, whether in the Philippines or anywhere in the world. The crime of rape has always been other sexual organs. Because it will put an outsider to the family or to the woman. For example, she will bear a child or the woman is married, an outsider will come in into that family. So the traditional meaning has always been that way. It will really be very difficult for us to foresee that the crime of rape will include these other acts that we are describing now as sexual assault.

HON. SHAHANI. Well, I think if you might want to put it this way, the repertoire of sexual practice has been enlarged over the years. I mean, just to confine it I think to the genital parts does not reflect what scientists like Floyd have discovered. I am sure you have heard about the sexual book of Masters and Johnson. I mean, it's not just like the genitals. There are ways of violating a body of a woman. And when you say, sex, I mean I think I would agree with what Senator Coseteng says. I mean, the other parts of the body are sexually sensitive. I mean, they may not lead to pregnancy. But their manipulation can mean an assault or violation of the woman without her consent. Why do you have to always go by tradition? I mean a lot of crimes precisely have been done. Women have been violated. We could see these as violation against women.[38] (Emphasis and underscoring supplied)

Because of the differing views put forth by the Senators and the members of the House, Senator Raul Roco tried to reconcile the points by suggesting that all the acts be called Rape, in line with the position of the Senate, but, as a concession to the House, the penalties would be different:

HON. ROCO. But we may satisfy everybody already by saying that rape is committed through forced sexual intercourse, bestiality or sodomy or acts of sexual assault. Then you say this way.

x x x x

HON. ROCO. The three are all rape, then you define them separately.

x x x x

HON. ROCO. A is rape as the traditional; B is bestiality, rape as bestiality; C is rapes sexual assault. I think, pati na - lahat na should be happy.

x x x x

HON. ROXAS. The alternative, as they do this, no, where rape is the general term and then you have the specifics for each one. May be they can also do parallel what is the House construct which is sexual assault as the genus and the, and then rape and all these other, as the aggravating.

x x x x

HON. ROCO. That's why I am suggesting that one of our justifications is there was nothing to reconcile. Tugma, eh. Parang we just like to accept but we combine it under one genus. Di ba? Because, and it happens, it has happened that when your version is totally different from ours, just put them together. In other words, parang it was out of our hands. It was the way it evolved. So we just say since kami one definition lang, kayo two, we combine it and make it three. And that is realiy reconciliation. But where you are charged in court you will be charged as a violation of 266 under sexual assault. But,

HON. APOSTOL. Ang ginagawa natin, ang general classification is rape tapos ang sexual assault becomes only a part of it. Actually ang general classification nito ay sexual assault, eh. Then we go, ang particulars is rape.

HON. ROCO. Because this is an anti-rape bill. That's the reason I am suggesting, hindi ba? We did not start out with an anti-sexual assault.

HON. SHAHANI. Yes.

HON. ROCO. We wanted to upgrade the rape as a crime. So when you downgrade rape and it is component of sexual assault, parang di hindi na-achieved yung goal.

HON. [APOSTOL]. No, it's still ano, eh, you still move it up to the section which is crime against persons. You attain that. It's just what you call it, eh. But it's still moved up in the Revised Penal Code to the section that is crimes against persons. So their upgrading was attained.

HON. ROCO. No, but it is the anti-rape bill nga, eh. It is a reaction.

HON. DAMASING. No, no, if we follow your suggestion, there will be no more left for sexual assault.

HON. ROCO. No.

HON. DAMASING. Because under the Senate version, all are rape.

HON. ROCO. No, no, we're classifying this as para we reconcile. We are classifying it para naman yung justification.[39] (Emphasis and underscoring supplied)

After another meeting, the conference committee report, which reflects how R.A. No. 8353 is currently worded, was drafted. When the conference committee report was read to the rest of the members of the House for approval, Rep. Erasmo Damasing had the following clarificatory questions:

MR. DAMASING. Madam Speaker. Your Honor. I want this clarified. If one is charged under paragraph 2, will he be charged with sexual assault or he will be charged with rape?

MR. LARA. Sexual assault, Madam Speaker.

MR. DAMASING. Your Honor, if you read Article 266-A, there is no such crime denominated as sexual assault, it is all rape because at the start rape is committed by (1) and by (2). The No. 2 is only through sexual assault, but the crime is still known as rape. Look at how it is worded.

Rape, when and how committed? Rape is committed: (1), and then No. 2, this is against the House version, because the House version stated specifically that there are two ways of committing crimes which are sexually-related: rape and sexual assault. But here, it is lumped into one as rape. Is that correct, Your Honor?

MR. LARA. Madam Speaker.

MR. DAMASING. Let us not anymore try to go around.

MR. LARA. Madam Speaker, I believe that the principal concern that we must have here is that the House Panel succeeded in separating the penalties. What we should see here was the concern of the House that sexual assault must not be penalized with death penalty as the Senate version proposed. So, in the Bicameral Conference, the House Panel succeeded in separating that. Be that as it may, I think this is just a matter of lumping together. In that context, it is lumping together and calling it, generally, as rape. I would have the tendency to agree with my colleague from Cagayan de Oro City. So, probably, the Speaker was suggesting that he would coauthor with us and probably joined by the Gentleman from Cagayan de Oro City, a way to remedy this particular situation. But, probably in that context, we - the Gentleman from Cagayan de Oro City and

myself - are in agreement, Madam Speaker.

MR. DAMASING. So, Madam Speaker, Your Honor, it is therefore now clear that all sexual related crimes are now denominated as rape, regardless of the penalties. We want that clarified. Is that correct, Your Honor?

MR. LARA. Yes, with different penalties.

MR. DAMASING. Yes. To me it is regardless of the penalties. It is just that I wanted to clarify that all [sexually related] crimes are now denominated as rape, there is no such thing as sexual assault, but rape committed through sexual assault?

MR. LARA. Yes.

MR. DAMASING. Okay.[40] (Emphasis and underscoring supplied)

Another member of the House sought clarification and it was answered in the same manner:

MR. ISIDRO. Your Honor, at the time that we were discussing this during the period of amendments, this Representation submitted amendments to clarify the definition of the crime of rape in order that rape can only be committed by a man against a woman because of carnal knowledge.

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. And my amendment was carried ...

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. ... unanimously by this body. Now, I was startled to see that it came back in another form that is in paragraph 2 of Article 266-A so that rape under this definition is not confined to carnal knowledge. It includes sexual assault so that under this bill, rape can now be committed by a man against another man.

MR. APOSTOL. Under paragraph 2.

MR. ISIDRO. Yes. It can also be committed by a woman against another woman.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. It can also be committed by a woman against a man.

MR. APOSTOL. Yes, under paragraph 2.

MR. ISIDRO. Now, is this not startling in the sense that it revolutionizes the crime of rape so that for the first time in our history in this jurisdiction, a woman can now charge another woman of rape. A man can charge another man with rape. And a man can charge a woman with rape. Are we ready to accept these changes?

MR. APOSTOL. Your Honor, paragraph (2) is basically an act of sexual assault. Though it is a part, that is paragraph (2) of Section 2, Article 266-A, but this is basically sexual assault. So when we try to revolutionize rape, it is not really revolutionizing rape, it is more sexual assault.

MR. ISIDRO. Your Honor, there is no such crime of sexual assault in this bill, sexual assault is an act in this bill, not a crime.

MR. APOSTOL. Rape by sexual assault.

MR. ISIDRO. What is a crime is the crime of rape which is defined (sic). I am only referring to that particular matter, Your Honor.

MR. APOSTOL. Yes, Your Honor.

MR. ISIDRO. So that. That is why I am only asking whether we are ready to accept these changes insofar as rape is concerned.

MR. APOSTOL. Yes, Your Honor, we are ready.

MR. ISIDRO. Oh?

MR. APOSTOL. If we will approve it now, we are ready already.

MR. ISIDRO. You mean, the people will not be surprised when a woman charges another woman with rape[?]

MR. APOSTOL. Yes, in fact this is the clamor of women to make rape genderless. But since we could not accept this through your amendment that rape is genderless, we have to agree and accept your amendment on paragraph (1).

MR. ISIDRO. And a man can also charge another man with rape? And that is also the clamor of women?

MR. APOSTOL. Yes, genderless.

MR. ISIDRO. Your Honor, I do not know if these are matter[s] which according to Congressman Damasing, would be subject of future amendments when the time comes. But I feel that matters like [these] which [change] the universal definition of rape should be corrected. Because for the first time we are introducing by Filipino definition, not the universal definition, the crime of rape where it can be committed by either sex against either sex.

MR. APOSTOL. I think, Your Honor, this will be one of those to be amended by Congressman Damasing. Because Congressman Damasing does not agree that paragraph (2) be called rape, it should really be called sexual assault. That is what he was saying.[41] (Emphasis and underscoring supplied)

Despite the clarifications and reservations of the members of the House, the conference committee report was approved overall,[42] although there were some who voted to reject the report. One of those who rejected the report, Rep. Didagen Dilangalen, explained his vote:

MR. DILANGALEN. Thank you very much, Madam Speaker. I am voting against this Committee Report because while under House Bill No. 6365, the crime of sexual assault was clearly defined[.] [U]nder the Committee Report, there is no more crime of sexual assault. We only have rape committed in two ways: by a man who shall have carnal knowledge of a woman under any of the following circumstances, which means to say, the orthodox definition as provided under the Revised Penal Code, and No. 2, by any person who, under any of these circumstance mentioned in paragraph 2 hereof shall commit an act of sexual assault, etc. etc. So, for this reason, Madam Speaker, considering that what we have agreed here in the lower House has not been carried on in the Bicameral Conference Committee, I am registering my vote against this Committee Report.

Thank you very much, Madam Speaker.[43] (Emphasis and underscoring supplied)

Undoubtedly, therefore, the understanding and intent of both houses of Congress was that with the enactment of R.A. No. 8353, the definition of Rape would be expanded from the traditional definition of Rape that was limited only to penile penetration of the vagina, to the more modern definition that now includes other acts of sexual assault.

In sum, therefore, from the enactment of R.A. No. 8353 in 1997, it was the intent of our criminal laws to understand rape as a crime that may be committed in several ways.

This change in the understanding of what rape is, and what acts are included in this understanding/definition of rape was set in the law with full knowledge and understanding of all previous laws that dealt with rape - including, but not limited to, R.A. No. 7659. Accordingly, when Congress passed R.A. No. 8353 - acknowledged

to be a reaction to the clamor of women for protection from acts that were not traditionally viewed as violations of their rights simply because they do not fall under the orthodox but antiquated view that rape should involve her and her assailant's genitalia, and a recognition that as sexual practices evolve, these practices could be, and are used to further degrade or debase another human being - then it was with full knowledge that the crime of "Robbery with Rape" under R.A. No. 7659 would necessarily be understood as also including the other kinds of rape. Thus, the Court cannot ignore the same or give a construction that would render nugatory the letter, intent, and purpose underlying the radical change introduced by R.A. No. 8353.

Conclusion

In sum, while I agree in the result of the case, I submit in this Opinion that:

(1)

This is an improper case, given the factual circumstances involved, to discuss the contours of the special complex crime of Robbery with Rape, defined under Article 294(1) of the RPC, as amended. As this is a case involving a robbery through force upon things, the applicable provision of the RPC is Article 299(a)(2). For the sexual acts done against the minor victim, Article 266(a)(2) of the RPC should be applied.

(2)

In any event, the rape component of the special complex crime of Robbery with Rape includes acts constituting rape by sexual assault. This interpretation that acts constituting rape by sexual assault are nevertheless considered "Rape" is supported not just by plain reading of the letter of the RPC, as amended by R.A. No. 7659 and R.A. No. 8353, but also by the legislative intent of R.A. No. 8353 as exhibited by its title, structure, and the legislative deliberations.

Based on these premises, I vote to AFFIRM with MODIFICATION the conviction of petitioner GLENN BARRERA Y GELVEZ. Accordingly, he should be convicted of one (1) count of Robbery by the use of force upon things under Article 299 of the Revised Penal Code, as amended by R.A. No. 10951, and one (1) count of Sexual Assault under Article 266-A(2) of the Revised Penal Code in relation to Section 5(b), R.A. No. 7610.

For the ponente's consideration.

[1] Ponencia , p. 2.

[2] 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.

[3] *Id.*

[4] *Id.*

[5] Ponencia, p. 2; rollo, p. 3.

[6] Ponencia, p. 3; rollo, p. 4.

[7] Ponencia, p. 3; rollo, p. 4.

[8] Ponencia, p. 4; rollo, pp. 4-5.

[9] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, approved June 24, 2006.

[10] Ponencia, p. 4; rollo, p. 9.

[11] Ponencia, p. 22.

[12] Id.

[13] *People of the Philippines v. Mamalayan*, 420 Phil. 880, 891 (2011).

[14] REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2008 ed., p. 681, citing *People vs. Joson*, C.A., 62 O.G. 4604.

[15] REYES, LUIS B. THE REVISED PENAL CODE, BOOK TWO, 2012 ed., p. 744, citing *U.S. v. Birueda*, 4 Phil. 229 (1905).

[16] According to J. Reyes, "the violence or intimidation must be present before the taking of personal property is complete." (Id. at 662)

[17] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES, approved December 13, 1993.

[18] *People v. Bongos*, 824 Phil. 1004, 1012 (2018); *People v. Evangelio*, 672 Phil. 229, 242 (2011); *People v. Amper*, 634 Phil. 283, 291 (2010); *People v. Arellano*, 418 Phil. 479, 490 (2001).

[19] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815 KNOWN AS "THE REVISED PENAL CODE," AS AMENDED, dated August 29, 2017.

[20] Ponencia, p. 2. I note that the ponencia correctly characterized the crime committed as one of robbery with force upon things in its final disposition (id. at 17).

[21] While rape was committed on occasion of the Robbery, the former cannot be complexed with the latter as a special complex crime of Robbery with Rape under Article 294 of the RPC since, as I have pointed out earlier, the Robbery was not committed through violence or intimidation against persons. Neither out earlier, the Robbery was not committed through violence or intimidation against persons. Neither can both felonies be complexed under Article 48 of the RPC since the accused committed two separate criminal acts and Rape cannot be considered as a necessary means for committing the Robbery. As such, the accused should be held separately liable for Rape by Sexual Assault.

[22] *People v. Tamayo*, 434 Phil. 642, 655 (2002).

[23] *People v. Tano*, 387 Phil. 465, 487 (2000), citing *People v. Manalili*, 335 Phil. 652 (1998) and *People v. Bugayong*, 299 Phil. 556 (1998).

[24] See *Dee v. Harvest All Investment Limited*, 807 Phil. 572, 583 (2017):

[An obiter dictum] is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not

necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of res judicata. (Emphasis and underscoring omitted)

[25] *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, accessed at .

[26] CONSTITUTION, Art. VIII, Sec. 1. (Emphasis supplied)

[27] *Tawang Multi-purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 400 (2011).

[28] *Id.*

[29] *United Paracale Mining Co., Inc. v. Dela Rosa*, 293 Phil. 117, 123-124 (1993).

[30] Article 266-A (1) in relation to Article 266-B of the RPC.

[31] 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, or The Anti-Rape Law of 1997, September 30, 1997.

[32] *Tañada v. Yulo*, 61 Phil. 515, 518 (1935).

[33] Emphasis supplied.

[34] 8[th] paragraph, Explanatory Note of House Bill No. 2439.

[35] Forcing another person to have sex with an animal. This was an act punished under the original draft of the bill/s filed in the House.

[36] The article number of Rape under the RPC prior to the enactment of R.A. No. 8353.

[37] 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.

[38] Bicameral Conference Committee, February 19, 1997.

[39] *Id.*

[40] I RECORD, HOUSE 10[TH] CONGRESS 3[RD] SESSION 789 (September 3, 1997).

[41] *Id.* at 794-795.

[42] *Id.* at 759-798.

[43] *Id.* at 796-797.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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