

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. XXX (G.R. No. 260860), ACCUSED-APPELLANT.

G.R. No. 260860, November 11, 2025

Ponente: ROSARIO, J.

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ROSARIO, J.:

When the accused is convicted of a lesser offense and appeals the same, the constitutional safeguard against double jeopardy is waived both as to the conviction for the lesser offense and as to the implied acquittal of the original charge, and the entire case is thrown open to the review of the appellate court.

This is an ordinary appeal[1] of the Court of Appeals' (CA) Decision,[2] which affirmed the Regional Trial Court's (RTC) Joint Judgment[3] convicting XXX of statutory rape under Article 266-A, paragraph 1(d), and acts of lasciviousness under Article 336, of the Revised Penal Code, in relation to Section 5(b), of Republic Act No. 7610.[4]

I

XXX was charged with two counts of qualified rape under two Informations, the accusatory portions of which read:

[Criminal Case No. 17-0678]

That on or about the 5[th] day of July 2017, in xxxxxxxxxxxxxxxxx,[5] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of the complainant [AAA,] [11] years old[,] with lewd design and by means of force, threat[,] and intimidation did then and there willfully, unlawfully[,] and feloniously have carnal knowledge with complainant [AAA], [11] years old, against her will and consent by inserting his penis into her vagina, thereby subjecting the child to acts of sexual abuse and the acts complained of debase[d], demean[ed] and degrade[d] the intrinsic worth and dignity of the child as a human being and are prejudicial to her normal growth and development.

CONTRARY TO LAW.[6]

[Criminal Case No. 17-0904]

That [on] or about the year 2015, in xxxxxxxxxxxxxxxxx, Philippines and within the jurisdiction of this Honorable Court, the [abovenamed] accused, being the stepfather of the complainant [AAA,] [nine] years old[,] with lewd design and by means of force, threat[,] and intimidation did then and there willfully, unlawfully[,] and feloniously have carnal knowledge with complainant [AAA,] nine years old, against her will and consent by inserting his penis into her vagina, thereby subjecting the child to acts of sexual abuse and the acts complained of debase[d], demean[ed] and degrade[d] the intrinsic worth and dignity of the child as a human being and are prejudicial to her normal growth and development.

CONTRARY TO LAW.[7]

Upon arraignment, XXX pleaded not guilty to both charges. Thereafter, trial on the merits ensued.

The CA summarized the facts as follows:

[AAA] was [11] years old when she first took the witness stand, having been born on March 7, 2006. . . . Her parents. . . separated when she and [her] elder brother were still young. Later, [her mother] and [XXX] cohabited and begot a daughter. . . [Her mother] became an Overseas Filipino Worker based in Qatar. As such, the care of. . . [AAA], fell upon [XXX]. Because of this, [AAA] considered [XXX] to be her father, even calling him Papa.

Despite the father-daughter relationship between them, [XXX] raped [AAA] several times. She, however, was only able to relate the first and last instances of such rapes.

[XXX] raped [AAA] for the first time sometime in June 2015, when she was only [nine] years old. . . She was lying on the bed when [XXX] entered her room. He forcibly removed her shorts and underwear before removing his own undergarments. He went on top of her, touched his penis, and inserted it into her vagina. She felt pain so she tried to stop him but failed to do so. A white substance emitted from his penis which he wiped off. He then redressed and left the room.

The last time [XXX] raped [AAA] was on July 5, 2017, when she was [11] years old. . . . [W]hile she was. . . watching television, [XXX] invited [her] to go with him to her bedroom so that he could give her a massage. . . . After the hilot, . . . [XXX] then removed her shorts and underwear. . . He went on top of her and inserted his penis into her vagina, which caused her pain. He made a pumping motion until a white fluid came out. He then used a shirt to wipe her vagina.

[AAA] felt so afraid of [XXX] that she did not inform other people of the abuse she suffered from his hands. She also could not tell her mother because the latter was in Qatar. . . . [XXX] would warn her that if she tells her mother of what happened, he would be sent to jail.

On July 6, 2017, a day after [AAA] was last raped by [XXX], her mother. . . returned to the Philippines. [On] July 7, 2017, [AAA]. . . finally told a teacher that [XXX] raped her several times. The teacher immediately called [AAA's mother]. . . When [AAA's mother] arrived at the school, [AAA] recounted to her mother what she had suffered. . . [Her mother] immediately took [AAA] to the police to report the incident where she underwent a medical examination.

Medico-Legal Officer [Police Chief Inspector Reah Cornelio (PCINSP Cornelio)] conducted a physical and genital examination of [AAA] and found erythema or redness on the peri-hymenal region and clear evidence of blunt penetrating trauma to the hymen, which may have been caused by a finger, an erect penis, or any object which is not sharp. She also found the presence of shallow healed lacerations at 4, 7, and 8 o'clock positions on the peri-hymenal region. She further explained that laceration on the hymen would not heal for [one] to [three] days but would take less than [two] weeks.

. . . .

[XXX] admitted that he and [AAA's mother]. . . were live-in partners but he could not have raped [AAA] because he considered her as his own daughter. While [AAA's mother] was abroad, [XXX] was the one who took care of [AAA].

[XXX] denied having raped [AAA] in 2015. During that year, he was employed at the Metro Index Garment in Parañaque City. He religiously reported for work everyday. He thus had no opportunity to rape [AAA] during the day as she had claimed. With regard to the July 5, 2017 incident, he was not in xxxxxxxxxxxx. . . [H]e left for Daet, Camarines Norte on July 3, 2017 for his work. . . . He only returned to xxxxxxxxxxxx on July 6, 2017 where he was immediately arrested by barangay personnel.

[XXX] further alleged that the instant cases were instigated by [AAA's mother] who was only making stories about him so that she could be with her new boyfriend. She wanted him to be jailed because he refused to break up with her for the sake of their daughter.

[XXX]'s brother. . . testified that sometime in 2015, [XXX] began working for Aim Global. Because of this, [XXX] often went out of town. [His brother] also knows that [XXX] went to Daet, Camarines Sur sometime in July 2017 for Aim Global where he stayed for [one] week.[8] (Emphasis in the original)

In its Joint Judgment, the RTC found XXX guilty of statutory rape with regard to the second rape incident on July 5, 2017. It gave full credence to AAA's clear and straightforward testimony that XXX forcibly inserted his penis into her vagina and that it entered slightly. However, the prosecution was not able to prove the qualifying circumstance of relationship since there was no proof that XXX is married to AAA's mother. Anent the first rape incident in June 2015, the RTC found XXX guilty only of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610 since there was no penile penetration. The dispositive portion reads:

WHEREFORE, premises considered, accused XXX is hereby declared:

1. GUILTY beyond reasonable doubt of Statutory Rape. . . in Criminal Case No. 17-0678. He is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay the victim. . . civil indemnity, moral damages[,] and exemplary damages each in the amount of [PHP] 75,000.00. . . subject to interest at the rate of [6% per annum] from the date of finality of this Judgment until fully paid.
2. GUILTY beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the [Revised Penal Code] in relation to Section 5(b) of [Republic Act] No. 7610 in Criminal Case No. 17-0904. He is sentenced to suffer an indeterminate penalty of 12 years and [one] day [of reclusion temporal], as minimum[,] to 15 years, [six] months and 20 days of [reclusion temporal], as maximum. He is further ordered to pay the victim. . . civil indemnity, moral damages[,] and exemplary damages each in the amount of [PHP] 50,000.00. . . subject to interest at the rate of [6% per annum] from the date of finality of this Decision until fully paid.

SO ORDERED.[9] (Emphasis in the original)

Aggrieved, XXX appealed before the CA and filed his Brief,[10] arguing that the trial court erred in convicting him of acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610 despite the defective Information, the incredible and inconsistent testimony of AAA, and failure of the prosecution to prove all the elements of statutory rape and acts of lasciviousness.[11] He avers that pursuant to *People v. Ladrillo*,[12] failure of the prosecution to allege with particularity the date of the commission of the offense deprives the accused of the right to intelligently prepare for his defense.[13] He claims that AAA cannot be considered a competent child witness having testified when she was only 11 and 12 years old. Further, her memory failed her when asked regarding the incidents and she also did not resist, shout, or even cry for help.[14]

The People, through the Office of the Solicitor General (OSG), likewise filed their Brief,[15] contending that in rape cases, the material fact or circumstance that has to be alleged in the Information is the occurrence of the rape, not the date or time of its commission since it is not an essential ingredient thereof. Thus, the allegation "in or about the year 2015" does not affect the outcome of the case and is sufficient to apprise XXX of the rape charges because the essential elements of rape were sufficiently alleged in the Information. More importantly, the trial court rightfully gave more credence to the testimony of the prosecution witnesses, particularly AAA, who positively identified XXX as the perpetrator of the rape and consistently narrated the incidents in all their material points.[16]

The CA subsequently denied the appeal and affirmed the Joint Judgment of the RTC.[17] Hence, this appeal.

In his Manifestation,[18] accused-appellant adopted his appellate brief in lieu of filing a supplemental brief. The OSG, on the other hand, filed a Supplemental Brief,[19] where it argued that the factual findings of the trial court should be considered final and conclusive since the CA affirmed the same.[20]

II

The appeal is bereft of merit.

We first resolve whether the Information in Criminal Case No. 17-0904 violated accused-appellant's right to be informed of the nature and cause of the accusation against him when it alleged that the rape occurred "in or about the year 2015." Accused-appellant claimed that it placed an unfair and unreasonable burden upon him to recall his activities every single day in the whole year of 2015 to prove that he could not have raped private complainant.[21]

Since private complainant's Malaya at Kusang Loob na Salaysay[22] mentioned the date of the incident as June 2015, this Court finds it inexcusable that the State failed to allege the date of commission as "in or about June 2015" instead of "on or about the year 2015." In *Ladrillo*,[23] We ruled that the allegation that a crime was committed in or about a particular year encompasses not only the 12 months of said year, but includes immediately prior and subsequent years, for which the accused must account for their whereabouts. Hence, failure of the prosecution to allege with particularity the date of the commission of the offense deprives the accused of their right to intelligently prepare their defense and convincingly refute the charges.[24]

We are aware that in a catena of cases, the Court found allegations of the date of commission of the crime as sufficiently compliant with Rule 110, Section 11[25] of the Rules of Court even if they encompassed a period of at least one year. In *People v. Magbanua*,[26] the Court held that the allegation "[sometime in] the year 1991 and the days thereafter," restricted the period of commission only to the year 1991 and a limited number of days following 1991.[27] In *People v. Santos*,[28] the Court ruled that the allegation "on or about and sometime in the year 1988" referred to a definite year, i.e., 1988.[29] The period would have certainly been wider than one year had the allegation been "on or about or sometime in the year 1988." In *People v. Gianan*,[30] while the Information alleged that rapes were committed "sometime in November 1995, and some occasions prior and/or subsequent thereto,"[31] the Court affirmed the accused's conviction for five rapes: two in December 1992, one in March 1993, one in April 1993, and one in November 1995.[32] In differentiating said case from *Ladrillo*, the Court held that in *Ladrillo*, there was need for a more definite allegation as to the time of the commission of the rape since during the alleged year of 1992, the accused was not yet residing in the town. In addition, the victim could not recall the month or year she was raped.[33] In *Gianan*, however, the Court found the accused's denial and alibi so general that it cannot be said that his defense hinged on the date of the commission of the rapes. Further, the victim was unwavering in her claim that her father raped her in December 1992, March and April 1993, and November 1995.[34]

Like in the present case, if indeed the victim in *Gianan* remembered that she was raped in particular months in 1992, 1993, and 1995, it is highly peculiar that the prosecution charged him only in a single information for multiple rapes allegedly committed "sometime in November 1995, and some occasions prior and/or subsequent thereto," instead of multiple informations individually stating the different dates of commission. Unfortunately, as the Court in *Gianan* observed, the accused was deemed to have waived his objection for failure to timely move for the quashal of the information on the ground that it charged more than one offense.[35] Neither did the accused file a motion for bill of particulars or for the quashal of the information on the ground that it did not conform substantially to the prescribed form.[36]

In *United States v. Dichao*,[37] the Court, in sustaining a demurrer to an information, found the allegation that a crime was committed "on or about and during the interval between [October 1910 and August 1912]"[38] to be so indefinite and uncertain that it does not give the accused the information required by law, to wit:

To allege in an information that the accused committed rape on a certain girl between [October 1910 and August 1912], is too indefinite to give the accused an opportunity to prepare his defense, and that

indefiniteness is not cured by setting out the date when a child was born as a result of such crime. Section 7 of the Code of Criminal Procedure does not warrant such pleading. Its purpose is to permit the allegation of a date of the commission of the crime as near to the actual date as the information of the prosecuting officer will permit, and when that has been done any date may be proved which does not surprise and substantially prejudice the defense. It does not authorize the total omission of a date or such an indefinite allegation with reference thereto as amounts to the same thing.[39]

Certainly, if the allegation "on or about and during the interval between October 1910 and August 1912," which comprises 22 months, is already too indefinite and uncertain, then all the more indefinite and uncertain are the allegations "on or about the year 1992" in *Ladrillo*, and "on or about the year 2015" in the present case, which cover not only the alleged year, but also the immediately prior and subsequent years, thus encompassing 36 months.

True, this Court held in *People v. Cantomayor*[40] that "the time of the commission of the crime assumes importance only when it creates serious doubts as to the commission of the rape or the sufficiency of the evidence[.]"[41] Further, in *Gianan*, the Court opined that "even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during the trial." [42] However, an information's validity cannot be determined based on the evidence presented in a case. The information being the starting point of the judicial stage of every criminal prosecution, its sufficiency must necessarily be adjudged standing alone, without reference to any future presentation of evidence.

Strictly speaking, any defect in the information is not cured by evidence presented during trial. The defective information is only either quashed, directed to be amended, or waived. Once the accused traverses the door of arraignment without asserting a ground to quash the information, the accused waives any objection, subject to few exceptions.[43] By not moving to quash the information or for a bill of particulars in Criminal Case No. 17-0904 prior to arraignment, accused-appellant in effect said that the Information sufficiently apprised him of the nature and cause of the accusation against him, such that there is nothing left to "cure." While the allegation of the date as "on or about the year 2015" may render the Information susceptible to a motion for bill of particulars, or a motion to quash on the ground that it does not conform substantially to the prescribed form,[44] such ground is not one of the four nonwaivable grounds under Rule 117, Section 9 of the Rules of Court. Consequently, it is too late in the day to raise the same on appeal.

III

Accused-appellant makes much ado of the fact that there were instances in private complainant's testimony where she failed to give any response, particularly when she was asked how long he inserted his penis.[45] He likewise brings attention to the alleged inconsistencies in her testimony, particularly when she was questioned on whether he was able to penetrate her.

As regards the 2015 incident, the private complainant testified that accused-appellant was not able to insert his penis into her vagina:

Q:

Base dito sa Salaysay mo noong 2015. . . may sinabi ka dito na: Tapos pilit niyang ipinasok ang ari niya sa pepe ko pero hindi niya maipasok, Tapos po noon merong lumabas na puting parang tubig. So ang tanong, hindi niya naipasok ang ari niya sa ari mo?

A:

Opo.

....

Q:

Naipasok ba ni Papa ang ari niya sa ari mo?

A:

Hindi po.[46] (Emphasis supplied)

However, on redirect examination, she claimed that she got hurt because accused-appellant was pushing his penis into her, to wit:

Q:

Ano bang ibig mong sabihin noong sinabi mong hindi niya naipasok? Ang ibig bang sabihin noon nakadikit lang o tinutulak niya?

A:

Tinutulak niya po.

Q:

Sa loob? Yun ba yung dahilan kung bakit ka nasasaktan?

A:

Opo.[47] (Emphasis supplied)

On re-cross-examination, she affirmed that when she testified that accused-appellant inserted his penis, she was referring to the 2017 incident:

Q:

Yung sinabi mong ipinasok, ito yung sa pangalawang pagkakataon lang, hind isa una?

A:

Opo.[48]

When asked again about the 2017 incident, private complainant narrated that accused-appellant's penis slightly entered her vagina and that white fluid later came out of it:

Q:

Okay, now, do you remember where you were on July 5, 2017?

A:

Yes, sir.

....

Q:

And what did he do next?

A:

He inserted his penis [into] my vagina, sir.

....

Q:

Can you please clarify? If the penis has entered your vagina?

A:

Konti po.

Q:

Konti? Konti, right?

A:

Yes, sir

Q:

And for how many minutes was the penis of your step-father inserted into your vagina?

A:

Quite long, sir.

....

Q:

Was he pumping? Moving? Gumagalaw ba siya?

A:

Yes, sir.

....

Q:

Now, what happen[ed] next after that?

A:

He wiped my vagina with a dirty shirt, sir.

Q:

Why did he wiped [sic] your vagina with a dirty shirt?

A:

Because a white fluid came out, sir.

Q:

Where did this white fluid [come] out?

A:

From his penis, sir.[49] (Emphasis supplied)

When the court sought clarification, private complainant testified that accused-appellant made efforts to penetrate her during both the 2015 and 2017 incidents, but that he was not able to insert his penis:

COURT:

Q:

So your last question is ? Para lang maintindihan niya, Ang tanong sa 'yo ni Atty. is, 'yung 2017 lang na pangyayari, noon lang niya pinilit na ipasok sa pepe mo? Noong 2017 ba 'yon? Noon lang niya pinilit. Pero noong 2015 hindi niya pinilit ipasok?

A:

Opo.

Q:

Alin sa dalawa? Noon 2015 ba pinilit rin ba ng Papa mo na ipasok yung ari niya sa pepe mo? 2015 o 2017? O pareho?

A:

Pareho po.

. . . .

Q:

So pareho niyang pinilit?

A:

Opo.

Q:

Pero hindi naipasok?

A:

Opo.[50] (Emphasis supplied)

Even assuming that there were inconsistencies in private complainant's testimony, instead of diminishing her credibility, such variance on minor details has the net effect of bolstering the truthfulness of her accusations. We have constantly declared that discrepancies and inconsistencies in the testimony of a witness referring to minor details and not in actuality touching upon the central fact of the crime, do not impair the credibility of the witness because they discount the possibility of rehearsed testimony.[51] Further, youth and immaturity are generally badges of truth and sincerity. No sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts, and subject herself to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done.[52]

More importantly, the abovequoted portions of private complainant's testimony cannot be taken in isolation. The rest of her testimony reveals that during both the 2015 and 2017 incidents, she was physically hurt because

accused-appellant made efforts to penetrate her, to wit:

Pros. Bañares:

This

is the June 2015 incident, when she was [nine] years old, Your Honor.

....

Q:

... Pagkatapos niyang hawakan yung ari [niya], ano yung sumunod niyang ginawa?

A:

Pinasok niya po sa pepe ko.

....

Q:

... Sabi mo kanina ipinasok niya yung ari nya sa pepe mo, papano ba? Gawin mo nga. Ipakita mo sa amin.

A:

.....

Q:

For the record, Your Honor, when the private complainant was asked what she means by " ipinasok niya ang ari [niya] sa pepe ko", she placed the penis of the male anatomical doll inside the vagina of the female child anatomical doll. Mga gaano katagal niya ipinasok yung ari nya sa pepe mo?

A:

Saglit lang po.

....

Q:

Nasaklan ka ba o hindi?

A:

Nasaktan po.

Q:

Hindi mo ba siya pinigilan o pinigilan mo siya?

A:

Pinigilan po.

....

Q:

Noong July 5, 2017, naaalala mo ba kung nasan ka non?

A:

Opo.

....

Q:

... Pagkatapos niyang pumatong, anong ginawa niya?

A:

Dinikit niya po yung ari niya sa pepe ko.

....

Q:

... Pwede mo bang ipakita kung ano ang ginawa ni Papa mo doon sa ari niya at pepe mo?

A:

Pinilit niya pong ipasok.

....

Q:

For the record, Your Honor, when asked, the private complainant demonstrated the accused – which she said, "pinilit ipasok ang ari niya sa pepe ko." She demonstrated the penis of the male anatomical doll while entering the vagina of the female child anatomical doll. Gaano katagal niyang pinilit ipasok ang ari niya sa pepe mo?

A:

.....

....

Q:

Tapos non, anong ginawa niya?

A:

Ayun po, lumabas na po yung kulay puting tubig. Pinunasan niya po ulit nung labahan na damit.

....

Q:

Hindi mo ba pinigilan yung Papa mo noong pinapasok niya yung ari niya sa pepe mo?

A:

Pinigilan ko po.

....

Q:

Umiiyak ka ba non o hindi?

A:

Paluha na po.

Q:

Nasaktan ka ba o hindi?

A:

Nasaktan po.

....

Q:

Anong sabi ng Papa mo noong pinipigilan mo siya?"

A:

"Wala po.[53] (Emphasis supplied)

The trial court observed that while the defense seemingly succeeded in making private complainant affirm that accused-appellant was not able to insert his penis into her vagina during the 2015 incident, she clarified on re-direct examination that accused-appellant was pushing his penis inside her vagina, which is why she felt pain.[54] However, the trial court stopped short of holding accused-appellant liable for rape and only found him guilty of acts of lasciviousness because according to it, pain is not an element of rape and it could not speculate that there was penile penetration.[55] On this matter, the CA disagreed with the trial court and held that pain during the sexual act is an indication that there was penile penetration. In any case, the CA held that even if there was no penile penetration, jurisprudence has established that mere touching, no matter how slight of the labia or lips of the female organ by the male genital organ, even without rupture or laceration of the hymen, is sufficient to consummate rape.[56]

We must clarify however, as We did in the en banc case of *People v. Agao*,[57] that "when jurisprudence refers to 'mere touching,' it is not sufficient that the penis grazed over the pudendum or the fleshy surface of the labia majora. Instead, what jurisprudence considers as consummated rape when it describes a penis touching the vagina is the penis penetrating the cleft of the labia majora, however minimum or slight." [58] We further held that "due to the underdeveloped genitalia of child victims in the pre-puberty age, an attempt of the penis to penetrate will already be likely indicative, at the very least, of [its] introduction to the vulval cleft of the victim's vagina, with penetration considered made if it were not for the natural resistance of the victim's organ due to biological immaturity." [59] Thus, We enjoined the courts to exercise circumspection in appreciating testimonies of child rape victims, viz.:

Furthermore, as Chief Justice Alexander G. Gesmundo. . . astutely adds, the Court further reiterates the jurisprudential guideposts which provide that when the necessary genital contact is not explicitly described through the testimony of the victim, whether minor or otherwise, courts can anchor their findings and appreciation of the genital contact on other aspects that would similarly depict the occurrence and circumstance of penile penetration. These guideposts which are appreciable in all rape cases may reasonably find sharper import with respect to cases of rape involving minor victims, especially in view of the inherent limitations of the testimony of child witnesses. The courts are, therefore, enjoined to exercise circumspection in their appreciation, with the use of these surrounding or attendant circumstances which can aid the courts in their appreciation of penile penetration: (i) when the victim testifies that she felt pain in her genitals; (ii) when there is bleeding in the same; (iii) when the labia minora was observed to be gaping or has redness or otherwise

discolored; (iv) when the hymenal tags are no longer visible; or (v) when the sex organ of the victim has sustained any other type of injury.

Once the testimony of the victim and/or the above attendant circumstances reveal that the threshold genital contact occurred, the courts have sufficient basis to find for consummation.

....

Moving forward, therefore, in the specific context of trying cases of rape, the Court enjoins the courts: (i) to be circumspect in their appreciation of the entire body of evidence submitted before them, including the testimonial evidence offered by the minor victims in cases involving them; (ii) take into full account the jurisprudential guideposts which depict the nature and degree of genital contact when not explicitly described through the testimony of the victim, minor or otherwise; and (iii) particularly with respect to minor victims, give due regard to their inherent linguistic limitations as witnesses, in order to avoid demanding the highest exacting level of linguistic accuracy as they have been jurisprudentially demonstrated to have required in the past.[60] (Emphasis supplied, citations omitted)

The Concurring Opinion of Chief Justice Gesmundo in *Agao* is likewise instructive:

[W]hile a victim's testimony on the exact point of contact is ideal, to my mind, a witness—especially a child—may find it challenging to accurately point to the anatomical part of the body that the accused's penis actually touched. Beyond the unfamiliarity of a child with the parts of one's sexual organ and the correct words to use, the harrowing experience of rape may also hinder the victim from accurately recalling the precise touchpoint. Fortunately, in this case, the child witness was able to pinpoint the body part that the penis had touched. This may not hold true in all situations. For instance, in *People v. Ombreso*, the Court cautioned that when a victim "is of such age that she cannot be expected to make a distinction between partial and full penile entry, her testimony that the accused's penis did not enter her sex organ should be taken together with the rest of her testimony and not taken out of context." Moreover, in *Campuhan*, the Court acknowledged the limitations of a child witness. In said case, the child witness answered "yes" to the question of whether the penis of the accused touched her organ, but when further asked if the penis penetrated her organ, she replied "no." The Court recognized that the child "could not have been aware of the finer distinction between touching and penetration," her "vocabulary is yet as underdeveloped as her sex," and her "language is bereft of worldly sophistication." Hence, the Court looked into other circumstances to assess whether the accused "made efforts to penetrate" or "whether the penis was erect" as to consummate the crime.

On these scores, I deem it necessary to reiterate jurisprudence stating that when the necessary genital contact is not fully established, courts can anchor their findings on other aspects that could reveal the occurrence of penetration.

In *People v. Gabayron*, the witness narrated that she cried in pain as the accused tried to insert his penis. When asked to be specific on how deep the accused was able to insert the organ, the witness simply answered "I do not know, sir, how far it went, but I felt the pain." The Court held that the victim's testimony established without a doubt that the accused's organ "managed to come into contact with her vagina, enough to cause her pain." In *People v. Orande*, "the victim testified that she felt pain and her vagina bled," which the Court found to be "indisputable indications of slight penetration or, at the very least, that the penis indeed touched the labia."

In another case, the Court held that "pain could be nothing but the result of penile penetration, sufficient to constitute rape." Indeed, when the victim "[feels] pain inside her vagina," that indicates penetration. I hasten to add, however, that the absence of pain or even bleeding does not necessarily mean lack of penetration, as shown in *People v. Deliola*, where the accused tried to dispute that rape occurred based on the victim's testimony that she "felt no pain and her vagina did not bleed." The Court disagreed, and in affirming the conviction, held that it is "carnal knowledge, not pain nor bleeding, which is essential to consummate rape."

The Court recognized that it is "possible for physiological manifestations of rape, such as pain, to appear only after the incident."

To stress, where the victim did not specifically state in her testimony that the offender's penis penetrated her vagina, whether fully or partially, or that the offender's penis distinctively touched the cleft of her labia majora, there may still be a conclusion that rape was consummated based on any of the following circumstances:

- The victim's testimony showed that she felt pain in her genitals;
- Bleeding occurred in the victim's genitalia;
- The labia minora was gaping with redness;
- Discoloration in the inner lips of the vagina;
- The hymenal tags were no longer visible; or
- Injury to the sex organ of the victim.[61] (Emphasis supplied, citations omitted)

Viewed from the lens of Agao, the statements "pinilit niya pong ipasok," "tinutulak niya po," and "nasaktan po" lead Us to a belief beyond reasonable doubt that, contrary to the finding of the trial court, accused-appellant was able to consummate the rape not only in 2017, but also in 2015.

Still, the CA declared that accused-appellant could no longer be held liable for statutory rape for the 2015 incident without violating his right against double jeopardy since the trial court's finding that he was only guilty of acts of lasciviousness was practically an acquittal of statutory rape. It quotes the following portion of Our ruling in *People v. Arcega*:^[62]

The threshold issue to be resolved is whether petitioner may assail in this petition for review on certiorari the CA Decision which modified the RTC Judgment convicting respondent of attempted rape to acts of lasciviousness.

We answer in the negative.

In *People v. Balunsat*, where the CA modified the accused-appellant's conviction from attempted rape to acts of lasciviousness, we held that since the CA had already acquitted the accused of attempted rape, a review of the downgrading of the crime will violate the respondent's right against double jeopardy.

. . . .

With the CA's modification of respondent's conviction from attempted rape to acts of lasciviousness, it has already acquitted respondent of attempted rape, which is already final and unappealable. Thus, double jeopardy has already set in and petitioner is already barred from filing the present petition for review on certiorari assailing respondent's acquittal of attempted rape on such ground.^[63]

Arcega, in turn, relied on *People v. Balunsat*,^[64] which involved an appeal by the accused who was charged with three counts of statutory rape, but was convicted of two counts of rape and one count of attempted rape. The CA modified the ruling of the trial court and found him guilty of one count of statutory rape, acquitted him of the second count of rape, and found him guilty of acts of lasciviousness in lieu of attempted rape. The Court affirmed the decision of the CA and held that, it can no longer review the downgrading of the crime to acts of lasciviousness, ratiocinating as follows:

We can no longer review the "downgrading" of the crime by the appellate court without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused. In effect, the Court of Appeals already acquitted Nelson of

the charge of attempted rape, convicting him only for acts of lasciviousness, a crime with a less severe penalty. Hence, we limit ourselves to determining whether there is enough evidence to support Nelson's conviction for acts of lasciviousness.[65]

Balunsat, in turn, relied on *People v. Alarcon*,[66] which involved an automatic review of the CA decision which affirmed the RTC's judgment finding the accused guilty of qualified rape in one case, but finding him guilty of acts of lasciviousness instead of rape in another. We ruled in this wise:

[T]he Court of Appeals modified the trial court's guilty verdict of appellant from rape to acts of lasciviousness. We can no longer review this aspect of the Decision without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused, as in this case. The instant case was brought to this Court by way of automatic review which is mandatory only where the penalty imposed is death, reclusion perpetua[,] or life imprisonment. The present appeal should therefore be treated as an appeal only from that aspect of the appellate court's decision finding appellant guilty of qualified rape.[67] (Emphasis supplied, citation omitted)

Alarcon, in turn, relied on Our pronouncement in *People v. Dela Torre*,[68] which involved an appeal by the prosecution. We held:

[I]n *People v. Leones*, it unmistakably declared that "[w]hile it is true that this Court is the Court of last resort, there are allegations of error committed by a lower court which we ought not to look into to uphold the right of the accused. Such is the case in an appeal by the prosecution seeking to increase the penalty imposed upon the accused for this runs afoul of the right of the accused against double jeopardy." It added: [W]here the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy and should therefore be dismissed.

This doctrine was applied as early as 1904 in *Kepner v. United States* [.]

....

The *Kepner* doctrine was clarified in a 1987 case. Speaking through Justice Isagani A. Cruz, the Court explained that an "appeal of the prosecution from a judgment of acquittal (or for the purpose of increasing the penalty imposed upon the convict) would place him in double jeopardy."

....

Being violative of the right against double jeopardy, the instant appeal filed by the prosecution cannot prosper. The rule is clear — the prosecution cannot appeal on the ground that the accused should have been given a more severe penalty.[69] (Emphasis supplied, citations omitted)

The foregoing succession of citations may be visualized as follows:ycnaj

CA

citing ->

Arcega

citing ->

Balunsat

citing ->

Alarcon
citing ->

Dela Torre

Appeal by:

Accused

State

Accused

Automatic Review

State

Going back to the CA's reliance on Arcega, the same is misplaced since unlike in the present case, it was the State that appealed. While the ruling in Arcega was correct insofar as it held that the prosecution was barred from assailing the acquittal of the accused, it was erroneous for the Court in Arcega to cite Balunsat because in the latter, it was the accused who appealed.

To recall, Balunsat pronounced that this Court can no longer review the downgrading of the crime without violating the right against double jeopardy. However, this limitation only applies to cases where the prosecution appeals. Balunsat should not have applied the limitation since there, it was the accused who appealed. Hence, the Court saw it fit to abandon the doctrine in Balunsat.[70]

For the same reason, it was error for Balunsat to rely on Alarcon and Dela Torre as precedents because said cases did not involve an appeal by the accused. Since Alarcon involved an automatic review in which the accused had no hand, the Court rightfully limited the appeal only from that aspect of the appellate court's decision finding appellant guilty of qualified rape and no longer delved into the trial court's modification of the accused's guilty verdict from rape to acts of lasciviousness. Dela Torre, on the other hand, properly held that the prosecution cannot appeal a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction. It cites *People v. Leones*,^[71] *Kepner v. United States*,^[72] and *Heirs of Rillorta v. Firme*,^[73] which likewise involved appeals by the prosecution or the victim's heirs, and not the accused.

The reason for the distinction between an appeal by the State and one by the accused was explained by the Supreme Court of the United States (SCOTUS) in the 1905 case of *Trono v. United States*,^[74] thus:

The plaintiffs in error seek a reversal of the judgment in their case on the ground that the Supreme Court of the Philippine Islands had no power to reverse the judgment of the court of first instance, and then find them guilty of a higher crime than that of which they had been convicted in that court, and of which higher crime that court had acquitted them, and they contend that such a conviction by the Supreme Court of the Islands was a violation of the act of Congress, passed July 1, 1902, 32 Stat. 691, a portion of the fifth section of that act providing that "no person for the same offense shall be twice put in jeopardy of punishment."

....

The meaning of the phrase, as used in the above-mentioned act of Congress, was before this Court in *Kepner v. United States*. . . The plaintiff in error in that case had been acquitted of the crime charged against him in the court of first instance, but the government, not being satisfied with the decision, appealed to the Supreme Court, and that court reversed the judgment of acquittal. . . . This Court, upon writ of error, held that, in reversing, upon the appeal of the government, the judgment of the court of first instance, and itself convicting the accused and pronouncing judgment against him, the Supreme Court of the Islands violated the provision in

question, and its judgment was therefore reversed[.]

The difference between that case and the one now before the Court is obvious. Here, the accused, while acquitted of the greater offense charged in the complaint, were convicted of a lesser offense included in the main charge. They appealed from the judgment of the court of first instance, and the government had no voice in the matter of the appeal; it simply followed them to the court to which they appealed. . . . The difference is vital between an attempt by the government to review the verdict or decision of acquittal in the court of first instance and the action of the accused person in himself appealing from the judgment and asking for its reversal, even though that judgment, while convicting him of the lower offense, acquits him of the higher one charged in the complaint.

. . . .

In our opinion the better doctrine is that which does not limit the court or jury, upon a new trial, to a consideration of the question of guilt of the lower offense of which the accused was convicted on the first trial, but that the reversal of the judgment of conviction opens up the whole controversy, and acts upon the original judgment as if it had never been. The accused, by his own action, has obtained a reversal of the whole judgment, and we see no reason why he should not, upon a new trial, be proceeded against as if no trial had previously taken place. We do not agree to the view that the accused has the right to limit his waiver as to jeopardy when he appeals from a judgment against him. As the judgment stands before he appeals, it is a complete bar to any further prosecution for the offense set forth in the indictment, or of any lesser degree thereof. No power can wrest from him the right to so use that judgment, but if he chooses to appeal from it, and to ask for its reversal, he thereby waives, if successful, his right to avail himself of the former acquittal of the greater offense contained in the judgment which he has himself procured to be reversed.

[B]y appealing, the accused waives the right to thereafter plead once in jeopardy, when he has obtained a reversal of the judgment, even as to that part of it which acquitted him of the higher while convicting him of the lower offense. When, at his own request, he has obtained a new trial, he must take the burden with the benefit, and go back for a new trial of the whole case. It does not appear to us to be a practice founded on solid reason to permit such a limited waiver by an accused party while himself asking for a reversal of the judgment.[75] (Emphasis supplied)

Trono was subsequently cited with approval by this Court in the en banc cases of *United States v. Flemister*[76] and *United States v. Braga*.^[77] Supporting Trono, the Court in *Santos v. People*,^[78] added that a contrary conclusion would lead to an absurdity:

It cannot be reasonably stated that the petitioners have been twice put in jeopardy of punishment for the same offense because if it were so, we would arrive at the absurdity that whenever a new trial is granted, the only resolution to be rendered is to afford to the petitioner the benefits of the constitutional provision invoked; and we would likewise arrive at the absurdity that in all cases in which an accused appeals from the sentence imposed upon him[/her], there can be no other resolution than to also grant him[/her] the same privilege, which has never been the intention of the legislator.^[79]

Then came the 1957 case of *Green v. United States*.^[80] At the time Green was being decided, two conflicting views existed in the United States on the extent of a defendant's waiver of double jeopardy protection. Roughly half the jurisdictions therein adhered to the common law rule of limited waiver, under which, conviction of a crime of lesser degree than the indicted offense operates as acquittal by implication of the greater offense, which bars retrial for the greater crime. Thus, by seeking review, the defendant waives double jeopardy protection only as to that part of the verdict from which he/she appeals, i.e., conviction for the lesser crime, and should not be considered to have rejected immunity from further prosecution conferred by an implied acquittal of the more serious crime. Other jurisdictions applied a theory of absolute waiver where, by seeking review of conviction for

the lesser offense, the defendant waives the double jeopardy protection that acquittal of the higher crime otherwise afforded him/her. In holding that a new trial for the greater offense after reversal of conviction for the lesser offense does not violate constitutional prohibitions against double jeopardy, they consider the verdict at the first trial an indivisible entity; in taking an appeal, a defendant cannot stand on part of the verdict, repudiating the rest. A new trial, thus, reopens the whole controversy.[81] This latter view was espoused in *Trono*.

The SCOTUS eventually rejected the absolute waiver theory in *Green* and held that if the rationales offered to support the *Trono* result were adopted, it would unduly impair the constitutional prohibition against double jeopardy. Nonetheless, instead of expressly overturning *Trono*, *Green* merely distinguished it and limited it to its particular factual setting.[82]

In Our jurisdiction, however, We have consistently applied the absolute waiver theory in appeals by the accused. In the en banc cases of *Ko Bu Lin v. Court of Appeals*,^[83] *People v. Carreon*,^[84] and *People v. Rondero*,^[85] all citing *Lontoc v. People*,^[86] We established that when an accused appeals from the sentence of the trial court, he/she waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to him/her.[87] Consequently, the appellate court is not precluded from imposing a higher penalty or from reclassifying the crime if its review of the records so warrant.[88] This right of the appellate court to do so has been incorporated into Rule 124 of the Rules of Court, viz.:

Sec. 11. Scope of judgment. — The Court of Appeals may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Regional Trial Court for new trial or retrial, or dismiss the case. (Emphasis supplied)

Thus, in *People v. Olpindo*,^[89] We noted that since the appeal throws the whole case open for review, there were instances of cases on appeal where the Court imposed a graver penalty than that provided in the assailed judgment.[90] For instance, in *People v. San Andres*,^[91] where the accused was charged with murder, but convicted of homicide, We affirmed the CA's modification of the trial court's decision and convicted him of the original charge of murder. In *People v. Solar*,^[92] where the accused was indicted for and convicted of murder, but on appeal to the CA, the same was downgraded to homicide, this Court found him guilty instead of murder.[93] In *People v. Ladra*,^[94] where the accused was charged with acts of lasciviousness, but convicted of unjust vexation, We instead convicted him of acts of lasciviousness.[95] In *People v. Perez*,^[96] where the accused was charged with statutory rape, but found guilty of acts of lasciviousness, We instead declared him guilty of rape.[97]

We see no cogent reason to depart from this long line of jurisprudence. This Court is tasked first and foremost to dispense justice. We could not claim to be dispensers of justice if Our power of review would be limited to "downward" corrections of error. Review of a conviction for the lesser offense necessarily includes review of the implied acquittal of the original charge since an implied acquittal could only logically result from a conviction of a lesser offense.

As held in *Dela Torre*, the ban on double jeopardy is deeply rooted in jurisprudence and has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also precludes the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. Finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.[98] From the foregoing purposes, it is clear that the ultimate goal is to prevent government oppression,[99] not to frustrate justice. The fundamental tenet animating the double jeopardy clause is that the State should not be able to oppress individuals by abusing the criminal process.[100]

In the present case, however, the appeal was at the instance of the accused-appellant himself and the government merely followed him to the court to which he appealed. There is no reason why the accused should be permitted to use an implied acquittal as a shield should his/her conviction for the lesser offense turn out to be erroneous. Accused-appellant's action having thrown the whole case open to review before the CA, there was no bar for it to convict him of statutory rape in lieu of acts of lasciviousness. So must it be for an appeal at the behest of the accused before this Court.

ACCORDINGLY, the appeal is DISMISSED. The June 23, 2021 Decision of the Court of Appeals in CA-G.R. CR-HC No. 13804 is AFFIRMED with MODIFICATION. Accused-appellant XXX is found GUILTY beyond reasonable doubt of two counts of statutory rape and is sentenced to suffer the penalty of reclusion perpetua for each count. He is ORDERED to pay the victim civil indemnity, moral damages, and exemplary damages each in the amount of PHP 75,000.00 for each count, all of which are subject to legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Gesmundo, C.J., Caguioa, Inting, Zalameda, Gaerlan, J. Lopez, Dimaampao, Marquez, Singh, and Villanueva, JJ., concur.

Leonen, SAJ., see separate opinion.

Hernando, [**] J., on official business.

Lazaro-Javier, [***] J., on official business but left a concurring vote.

Kho, Jr., J., please see concurring opinion

[*] In line with SC Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 8505 in cases of rape and other forms of sexual abuse or assault, the names of the parties and their relatives, and other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[**] On official business.

[***] On official business but left a concurring vote.

[1] Rollo, p. 3.

[2] Id. at 9-34. The June 23, 2021 Decision in CA-G.R. CR-HC No. 13804 was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Germano Francisco D. Legaspi and Raymond Reynold R. Lauigan of the Seventh Division, Court of Appeals, Manila.

[3] Id. at 37-70. The November 5, 2019 Joint Judgment in Criminal Cases No. 17-0678 and 17-0904 was penned by Acting Presiding Judge Mildred Jacinto Marquez of Branch 254, Regional Trial Court, xxxxxxxxxxxx.

[4] Republic Act No. 7610 (1992), Special Protection of Children Against Abuse, Exploitation, and Discrimination Act.

[5] Geographical location is concealed pursuant to SC Amended Administrative Circular No. 83-2015.

[6] RTC records (Criminal Case No. 17-0678), p. 1.

[7] RTC records (Criminal Case No. 17-0904), p. 210.

[8] Rollo, pp. 12-15.

- [9] Id. at 69-70.
- [10] CA rollo, pp. 37-67.
- [11] Id. at 39-40.
- [12] 377 Phil. 904 (1999) [Per J. Bellosillo, Second Division].
- [13] CA rollo, pp. 47-48.
- [14] Id. at 51, 61.
- [15] CA rollo, pp. 120-165.
- [16] Id. at 133, 135, 138.
- [17] Rollo, p. 34.
- [18] Id. at 74-78.
- [19] Id. at 79-88.
- [20] Id. at 85.
- [21] CA rollo, pp. 45-46.
- [22] RTC records (Criminal Case No. 17-0678), pp. 6-7.
- [23] 377 Phil. 904 (1999) [Per J. Bellosillo, Second Division].
- [24] Id. at 911-912.
- [25] RULES OF COURT, Rule 110, sec. 11 states:
- Sec. 11. Date of commission of the offense. — It is not necessary to state in the . . . information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.
- [26] 377 Phil. 750 (1999) [Per J. Kapunan, En Banc].
- [27] Id. at 767.
- [28] 390 Phil. 150 (2000) [Per J. Mendoza, Second Division].
- [29] Id. at 161.
- [30] 394 Phil. 822 (2000) [Per J. Mendoza, En Banc].
- [31] Id. at 828.
- [32] Id. at 843.
- [33] Id. at 835.
- [34] Id. at 836.
- [35] Id. at 837.
- [36] Id. at 834.
- [37] 27 Phil. 421 (1914) [Per J. Moreland, En Banc].

[38] Id. at 422.

[39] Id. at 426.

[40] *People v. Cantomayor*, 441 Phil. 840 (2002) [Per J. Ynares-Santiago, First Division].

[41] Id. at 847.

[42] *People v. Gianan*, 394 Phil. 822, 834 (2000) [Per J. Mendoza, En Banc].

[43] RULES OF COURT, Rule 117, sec. 9. Failure, to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule

[44] RULES OF COURT, Rule 117, sec. 3(e). See *Rocaberte v. People*, 271 Phil. 154, 159 [Per J. Narvasa, First Division], where the Court held: "A defect in the averment as to the time of the commission of the crime charged is not, however, a ground for a motion to quash. . . Even if it were, a motion for quashal on that account will be denied since the defect is one that can be cured by amendment; instead, the court shall order the amendment to be made by stating the time with particularity.

The remedy against an indictment that fails to allege the time of the commission of the offense with sufficient definiteness is a motion for bill of particulars[.]"

[45] TSN, AAA, August 23, 2018, pp. 29, 41.

[46] Id. at 54-56.

[47] Id. at 57.

[48] Id. at 58.

[49] TSN, AAA, December 4, 2017, pp. 14, 17-20.

[50] TSN, AAA, August 23, 2018, pp. 59-60.

[51] *People v. Gahi*, 727 Phil. 642, 659 (2014) [Per J. Leonardo-De Castro, First Division].

[52] *People v. Famudulan*, 763 Phil. 138, 147 (2015) [Per J. Villarama, Jr., Third Division].

[53] TSN, AAA, August 23, 2018, pp. 23, 28-30, 33, 40-43.

[54] Rollo, p. 65.

[55] Id. at 57.

[56] Id. at 29-30.

[57] 930 Phil. 559 (2022) [Per J. Caguioa, En Banc].

[58] Id. at 592.

[59] Id. at 595.

[60] Id. at 595-596, 603-604.

[61] C.J. Gesmundo, Concurring Opinion in *People v. Agao*, 930 Phil. 559, 613-616 (2022) [Per J. Caguioa, En

Banc].

[62] 880 Phil. 291 (2020) [Per C.J. Peralta, First Division].

[63] Id. at 304-306.

[64] 640 Phil. 139 (2010) [Per J. Leonardo-De Castro, First Division].

[65] Id. at 159-160.

[66] 546 Phil. 601 (2007) [Per J. Tinga, En Banc].

[67] Id. at 607.

[68] 430 Phil. 420 (2002) [Per J. Panganiban, Third Division].

[69] Id. at 429-431.

[70] *People v. XXX262846*, G.R. No. 262846, February 18, 2025 [Per J. Kho, Jr., En Banc] at 13. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website

[71] 418 Phil. 804 (2001) [Per J. Puno, First Division].

[72] 195 U.S. 100 (1904).

[73] 241 Phil. 554 (1988) [Per J. Cruz, First Division].

[74] 199 U.S. 521 (1905).

[75] *Trono v. United States*, 199 U.S. 521 (1905), pp. 528-534.

[76] 5 Phil. 650 (1906) [Per J. Johnson, En Banc].

[77] 12 Phil. 202 (1908) [Per J. Willard, En Banc].

[78] 64 Phil. 10 (1937) [Per J. Diaz, First Division].

[79] Id. at 13.

[80] 355 U.S. 184 (1957).

[81] *Defendant's Waiver of Double Jeopardy by Appealing Conviction for a Lesser Included Offense*, 66 YALE L.J. 592, 593-594 (1957).

[82] The Court in *Green* stated that "[a]ll that was before the Court in *Trono* was a statutory provision against double jeopardy pertaining to the Philippine Islands—a territory just recently conquered with long-established legal procedures that were alien to the common law" (355 U.S. 184, 197 [1957]) and that the Philippine Supreme Court was "acting under peculiar local procedures modeled on preexisting Spanish practices, which allowed it to review the facts and law and to substitute its findings for those of the trial judge." (355 U.S. 184, 195 [1957]).

[83] 204 Phil. 211, 252 (1982) [Per J. Melencio-Herrera, En Banc].

[84] 115 Phil. 242, 245 (1962) [Per J. Barrera, En Banc].

[85] 378 Phil. 123, 128 (1999) [Per Curiam, En Banc].

[86] 74 Phil. 513, 519 (1943) [Per J. Ozaeta, First Division].

[87] See also *Geroche v. People*, 748 Phil. 464, 470 (2014) [Per J. Peralta, Third Division]; *People v. Torres*, 743 Phil. 553, 563 (2014) [Per J. Del Castillo, Second Division]; *People v. Mirandilla*, 670 Phil. 397, 415 (2011) [Per J. Perez, Second Division].

[88] Lucas P. Bersamin, *Appeal and Review in the Philippines* (2nd ed.), p. 339.

[89] 919 Phil. 1024 (2022) [Per C.J. Gesmundo, En Banc].

[90] *Id.* at 1043-1044, citing *People v. Larrañaga*, 466 Phil. 324, 392-393 (2004) [Per Curiam, En Banc], where the trial court originally found the accused guilty of the crime of kidnapping and imposed the penalty of reclusion perpetua. On appeal to the Supreme Court, the accused were found guilty of the special complex crime of kidnapping with homicide and were imposed the penalty of death.

[91] 383 Phil. 102 (2000) [Per J. Bellosillo, Second Division].

[92] 858 Phil. 884 (2019) [Per J. Caguioa, En Banc].

[93] *Id.* at 908, 932.

[94] 813 Phil. 862 (2017) [Per J. Perlas-Bernabe, First Division].

[95] *Id.* at 865, 877.

[96] 428 Phil. 533 (2002) [Per J. Vitug, Third Division].

[97] *Id.* at 554.

[98] *People v. Dela Torre*, 430 Phil. 420, 430 (2002) [Per J. Panganiban, Third Division], citing *North Carolina v. Pearce*, 395 U.S. 711 (1969).

[99] *People v. Velasco*, 394 Phil. 517, 557 (2000) [Per J. Bellosillo, En Banc]. (Emphasis supplied)

[100] *Id.*, citing *Lockhart v. Nelson*, 488 U.S. 33, 42 (1988).

CONCURRING OPINION

LEONEN, SAJ:

I concur. Double jeopardy does not attach when it is the accused who appeals the judgment.^[1]

When a criminal conviction is appealed, this Court is obliged to meticulously review every angle of the case to determine whether the prosecution has established the accused's guilt beyond reasonable doubt. However, as clearly articulated in the ponencia, the personality of the party appealing the judgment—be it the accused or the prosecution—determines the extent to which the Court can modify the judgment.

If the prosecution or the private complainant challenges a judgment of conviction or acquittal, this Court must ensure that the accused's constitutional protection against double jeopardy remains intact. Article III, Section 21 of the Constitution provides:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

This safeguard is reinforced by the doctrine of finality of acquittal, which holds that "[a] judgment of acquittal, whether by the trial or the appellate court, is final, unappealable, and immediately executory."^[2] "As a rule, the

prosecution cannot appeal or bring as an error the proceedings from a judgment rendered in favor of the defendant in a criminal case due to the final and executory nature of a judgment of acquittal and the constitutional prohibition against double jeopardy." [3]

The relationship and rationale of these principles were discussed in *People v. Velasco*: [4]

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x" Thus Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, "(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. [5] (Citations omitted)

The constitutional prohibition on double jeopardy and the finality-of-acquittal rule ensure that an accused who has faced the full machinery of the State will be protected "from a continuing state of anxiety and insecurity by the threat of repeated criminal prosecution." [6] Thus, even when the appellate court discerns error in an acquittal or identifies grounds to impose a more severe penalty, the constitutional proscription on double jeopardy protects the accused from a second prosecution. [7]

An appeal of a criminal conviction is a serious matter, and the courts before whom it is raised must discharge their obligation consistent with the tenets of the Constitution. Thus, if the prosecution appeals a criminal judgment, the courts must work within the bounds accorded by the prohibition against double jeopardy.

However, this right is not absolute. When an accused themselves appeals their conviction, they waive the constitutional safeguard against double jeopardy. In seeking a reversal or modification of the judgment, an accused necessarily opens the entire case for a full review of the charges. [8] They must accept the decision of the reviewing tribunal, which is "tasked to render such judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned. This authority includes modifying the penalty imposed—either increasing or decreasing the same." [9]

As explained in *Geroche v. People*:^[10]

An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties. When an accused appeals from the sentence of the trial court, he or she waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate. An appeal confers upon the appellate court jurisdiction to examine the records, revise the judgment appealed from, increase (or reduce) the penalty, and cite the proper provision of the penal law. The appellate court may, and generally does, look into the entire records to ensure that no fact of weight or substance has been overlooked, misapprehended, or misapplied by the trial court.

Thus, when petitioners appealed the trial court's judgment of conviction for Less Serious Physical Injuries, they are deemed to have abandoned their right to invoke the prohibition on double jeopardy since it becomes the duty of the appellate court to correct errors as may be found in the assailed judgment. Petitioners could not have been placed twice in jeopardy when the [Court of Appeals] set aside the ruling of the [Regional Trial Court] by finding them guilty of Violation of Domicile as charged in the Information instead of Less Serious Physical Injuries.^[11] (Citations omitted)

The shedding of the protection afforded by the constitutional right against double jeopardy is a necessary consequence of an accused's appeal. Thus, where the accused appeals a conviction for a lesser offense, the appellate court is not precluded from convicting them of the greater offense properly alleged in the information and proven at trial. Indeed, to restrict the court only to outcomes favorable to the accused would lead to the absurdity of a one-sided review, allowing a full reevaluation of facts and law while prohibiting the corresponding imposition of the appropriate penalty.

In this case, plaintiff-appellee XXX appealed his conviction of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610. Having sought a review of his conviction, he waived the protection against double jeopardy. Thus, this Court was within its power to convict him of statutory rape, as alleged in the Information and established during trial, without infringing his constitutional rights.

I now turn to the error of the trial court in convicting plaintiff-appellee only of acts of lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610.

As discussed in the ponencia, the Regional Trial Court narrowly focused on the alleged absence of penile penetration and disregarded the private complainant's consistent testimony that plaintiff-appellee attempted to push his penis into her vagina.^[12] The Court of Appeals disagreed, holding that the penis' mere touching of the labia or lips of the female organ is sufficient to consummate rape. However, it refused to impose a conviction of statutory rape due to its erroneous belief that it was barred by double jeopardy.^[13]

The insistence on specifically determining how a penis was attempted to be inserted or which part of the private complainant's vagina was violated to justify a rape conviction illustrates the very concern I raised in my Dissenting Opinion in *People v. Agao*^[14]—the unnecessary fragmentation of rape into degrees of sexual violation based on technicalities that diminish the lived trauma of survivors. As I stated there:

Human beings have full autonomy to decide who to be intimate with and what acts may be shared through that intimacy. Rape is a crime because it violates that autonomy.

Now this Court is faced with determining the "anatomical situs" of where exactly a biological man's penis needs to touch a biological woman's vagina in order for it to be rape. But rape is no less an act of rape regardless of the "situs." The degree of penetration does not make one case of rape less heinous than the other. This is because all forced sexual acts involve the desecration of the person's will and dignity. In *People v.*

Quintos:

The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable . . . [O]ne experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.

"The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.

Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality. (Citations omitted)

. . . .

This Court should view Article 266-A of the Revised Penal Code from the eyes of the victim, not from the point of view of the perpetrator. All rape victims suffer the same trauma. All rape victims suffer the same indignity. To continue the discussion started by the ponencia would be to accept that the victim will now bear the burden to prove that the penis touched the "outer fleshy part" of her vagina and not merely the muscular part of the pudendum. It places the blame on the victim should she fight back and there would only be a slight touching of the pudendum, because only the lower offense of attempted rape can be charged then.

We are not discussing here whether the crime has been committed. There is no issue in this case that rape occurred. A discussion of the different degrees of commission presupposes that the crime was committed. There was rape. AAA was raped. To further discuss which part of her vagina was violated serves no other purpose than as a platform to determine how this Court can lessen her rapist's punishment.

To reduce a woman to merely a vagina that can be sexually conquered reduces her worth and dignity. By unnecessarily belaboring on the different physiological aspects of her vagina in the guise of protecting the accused's rights from "the [considerable] difference in the lengths of period of incarceration" between the attempted and consummated rape of a minor, this Court takes a step back towards the previous heteronormative — and frankly, misogynistic — definitions of rape. It likewise undermines the severity of the trauma suffered by sexually abused women and children.

Rape is a crime because it is a violation of a person's consent to intimacy and sexual relations. Rape is a crime because it is a violation of a person's human dignity. No amount of anatomical discourse should ever erase the heinousness of this crime.[15] (Emphasis supplied, citations omitted)

A rape is a full and complete violation of the victim's worth and dignity as a human being. An assault is no less of a rape simply because there was no penetration by the male organ. To split the victim's violation into degrees of severity demeans and trivializes the victim's harrowing ordeal. It places a needless burden on the victim to recount with specificity the exact parameters of her violation, despite having established that her sexual organ made physical contact with the assailant's male organ without her consent. Further, it limits the trial court's ability to render a conviction of rape on a technicality that is not only unnecessary but also marred by the aftereffects of trauma on one's memory.

The present case demonstrates the concrete harm caused by viewing rape in terms of degrees of physical violation. As observed by the ponencia, the private complainant—then only 9 years old—repeatedly testified that plaintiff-appellee attempted to insert his penis into her vagina, causing her pain.[16] Yet, despite her testimony, the Regional Trial Court merely convicted him of acts of lasciviousness. The trial court focused on the absence of penetration to justify the conviction of a lesser crime, disregarding altogether the absolute sexual violation experienced by the private complainant, a minor.

While the ponencia finally convicts plaintiff-appellee of statutory rape, the interval between his July 5, 2017 conviction of the lesser crime and the present rape conviction has undoubtedly caused added distress to the private complainant.

This Court must therefore reexamine its doctrine in *Agao* to ensure that no other conviction of rape slips through the cracks due to undue fixation on degrees of penetration.

"All rape is rape. All rape violates dignity. The finer points of the parts of the vagina touched by the penis is irrelevant." [17]

When a rape victim comes before our courts, she does so with the full knowledge that her ordeal and trauma will be laid bare for all to see. She exposes herself and her family to public scrutiny, pity, shame, and even suspicion in the hope that justice will be achieved.

Her courage must be met with an equally resolute commitment from this Court—one that affirms her dignity rather than conditions protection upon anatomical technicalities. We must not turn away from her exacting gaze. We must not do a disservice to our people by rendering a judgment that not only trivializes the violation but also causes the victim to retreat and question the value of her hard-fought self-worth and dignity.

ACCORDINGLY, I vote to DISMISS the appeal.

[*] In line with Amended Administrative Circular No. 83-2015, as mandated by Republic Act No. 8505, the names of the private offended parties and their relatives, along with all other personal circumstances that may tend to establish their identities, are made confidential to protect their privacy and dignity.

[1] See *People v. Villanueva*, 822 Phil. 735, 746-747 (2017) [Per J. Tijam, First Division]; *People v. Jagdon*, 850 Phil. 985, 999 (2019) [Per J. Reyes, Second Division]; *Geroche v. People*, 748 Phil. 464, 470 (2014) [Per J. Peralta, Third Division].

[2] *People v. Ampatuan, Sr.*, G.R. No. 258710, January 27, 2025 [Per J. Rosario, First Division] at 6. This pinpoint citations refers to the copy of the Decision uploaded to the Supreme Court website.

[3] *Rebuta v. People*, 944 Phil. 634, 649 (2023) [Per J. Inting, Third Division].

[4] 394 Phil. 517 (2000) [Per J. Bellosillo, En Banc].

[5] *Id.* at 556-557.

[6] *People v. Ampatuan, Sr.*, G.R. No. 258710, January 27, 2025 [Per J. Rosario, First Division].

[7] *People v. JJJ*, 954 Phil. 337, 360 (2024) [Per J. Inting, Third Division].

[8] See *People v. Villanueva*, 822 Phil. 735, 746-747 (2017) [Per J. Tijam, First Division]; *People v. Jagdon*, 850 Phil. 985, 999 (2019) [Per J. Reyes, Second Division]; *Geroche v. People*, 748 Phil. 464, 470 (2014) [Per J. Peralta, Third Division].

[9] Escalante v. People, 811 Phil. 769, 778 (2017) [Per J. Mendoza, Second Division]. (Citation omitted)

[10] 748 Phil. 464 (2014) [Per J. Peralta, Third Division].

[11] Id. at 470.

[12] Ponencia, pp. 3-4, 12-13.

[13] Id. at 13-14, 15-16.

[14] 930 Phil. 559 (2022) [Per J. Caguioa, En Banc].

[15] J. Leonen, Dissenting Opinion in People v. Agao, 930 Phil. 559, 644-647 (2022) [Per J. Caguioa, En Banc].

[16] Ponencia, pp. 10-13.

[17] J. Leonen, Dissenting Opinion in People v. Agao, 930 Phil. 559, 633 (2022) [Per J. Caguioa, En Banc].

CONCURRING OPINION

KHO, JR., J.:

I concur.

In the recent case of People v. XXX262846,[1] the Court expressly abandoned its previous ruling in People v. Balunsat[2] and held that the accused's right against double jeopardy is not violated when a reviewing court increases the penalty on appeal in the event it is the accused who appeals the lower court's decision.

In XXX262846, the Court held that the accused was guilty of attempted rape instead of unjust vexation — as erroneously held by the Regional Trial Court and affirmed by the Court of Appeals — despite the accused having appealed his conviction before the Supreme Court. In so ruling, the Court explained that the finality-of-acquittal rule is meant to be a proscription against the State, and does not apply when it is the accused who appeals their conviction, viz.:

The right of an accused against being placed twice in jeopardy for the same crime is guaranteed by our Constitution. Thus, the Court has consistently recognized the finality-of-acquittal rule, which ordains that a verdict of acquittal is immediately final and that a review of the merits of an acquittal places the accused in double jeopardy. This rule prevents the State, through the prosecution, from appealing acquittals or seeking a more severe penalty on appeal.

In People v. Dela Torre, the Court explained that the proscription on double jeopardy, a principle deeply rooted in jurisprudence, has several purposes:

Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty. (Citations omitted)

In the more recent case of People, v. Arcega, the Court, ruling on a petition for review on certiorari filed by the State, cited Balunsat and held that a judgment of the CA modifying a conviction from attempted rape to acts of lasciviousness amounts to a judgment of acquittal for the former. The Court ruled that double jeopardy had already set in and the State was already barred from filing the petition for review assailing the conviction of the accused for the offense with the lesser penalty.

Significantly, the finality of acquittal rule is a proscription against the State, and does not apply when it is the accused who appeals their conviction. As stated earlier, an appeal in a criminal case throws the entire case open for the appellate court's review. The appellate court is then called on to render such judgment as law and justice dictate, whether favorable or unfavorable to the accused-appellant. Thus, in *Mirandilla*, the Court modified the CA decision finding the accused in that case guilty of several counts of rape, kidnapping with rape, and rape by sexual assault, and instead found the accused guilty of the special complex crime of kidnapping and illegal detention with rape. The crime as modified by the Court merited the death penalty, which was reduced to reclusion perpetua without the possibility of parole.

In *People v. Villanueva*, the accused was initially charged with three counts of rape but convicted by the trial court of only one count. On appeal, the CA affirmed. However, the Court found that the evidence established his guilt for three counts of rape. The Court stated:

While the Court affirms the RTC's and the CA's finding that accused-appellant is guilty of rape, We note that accused-appellant was in fact charged under three separate Informations for three counts of rape, specifically stating therein that the accused-appellant, together with his co-accused, conspired, confederated[,] and helped each other in committing the crime. While it is true that the RTC and the CA only found accused-appellant guilty of one count of rape, when he appealed from the decision of the RTC and later on, the CA, he waived the constitutional safeguard against double jeopardy and threw the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the accused-appellant. (Emphasis supplied; citation omitted)

Notably, the Court's decision in *Balunsat* involved an appeal by the accused. Under the foregoing rule, since the accused in *Balunsat* waived his right against double jeopardy by lodging the appeal, the Court then had the authority to review the downgrading of the offense from attempted rape to acts of lasciviousness. Thus, *Balunsat* erroneously invoked the right of the accused against double jeopardy in ruling that the downgrading may no longer be reviewed.

For clarity, the Court declares that the doctrine laid down in *Balunsat* is hereby abandoned. The rule must be emphasized that when the accused appeals from the judgment in a criminal case, the entire case is open for review. Such comprehensive review may result, as law and justice dictate, in a heavier penalty. The Court may, as in this case, reverse the downgrading of the offense where it finds guilt beyond reasonable doubt for the crime carrying the more severe penalty. On the other hand, where it is the State seeking the review of an acquittal or a higher penalty, the constitutional safeguard against double jeopardy may rightfully be invoked. In these cases, the burden is on the State to prove that the judgment of acquittal or the judgment imposing a lesser penalty was handed down in violation of the prosecution's due process rights, such that the trial of the accused was a sham, or the prosecution was denied the opportunity to controvert or check the veracity of the evidence presented.[3]

Applying XXX262846 to the present case, the accused should be held guilty of statutory rape for the 2015 incident as the prosecution had established the elements of statutory rape beyond reasonable doubt. The Court of Appeals erred in declaring that the accused would no longer be held guilty for statutory rape for the 2015 incident based on the rationale that such increase in penalty would violate the accused's right against double jeopardy since the trial court only found the accused guilty of acts of lasciviousness. Based on the procedural history of this case, it was the accused who appealed his conviction not only before the Court of Appeals but also before this Court. Hence, pursuant to XXX262846, the accused's right against double jeopardy is not violated. A different conclusion would be true if it was the prosecution who appealed the accused's conviction.

Based on the foregoing considerations, the accused in the present case should be convicted for two counts of statutory rape.

ACCORDINGLY, I vote to DISMISS the accused's Appeal.

[1] G.R. No. 262846, February 18, 2025 [Per J. Kho, Jr., En Banc].

[2] 640 Phil. 139 (2010) [Per J. Leonardo-De Castro, First Division].

[3] G.R. No. 262846, February 18, 2025 [Per J. Kho, Jr., En Banc].

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