

FIRST DIVISION

[G.R. No. 249307, August 27, 2020]

**BBB,^[1] PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This petition for review on *certiorari*^[2] seeks to reverse the Decision^[3] dated August 29, 2019 of the Court of Appeals in CA-G.R. CR No. 01722-MIN, which affirmed with modification petitioner BBB's conviction for rape by sexual assault.

Antecedents

BBB was charged with rape by sexual assault under Article 266-A (2) of the Revised Penal Code (RPC) in relation to Republic Act No. 7610^[4] (RA 7610), viz.:

That sometime on November 14, 2012, in the [REDACTED] Province of North Cotabato, Philippines and within the jurisdiction of this Honorable Court, the said child in conflict with the law, acting with discernment, with lewd design, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously insert his finger into the genitalia of [AAA]^[5] who is 11 years old, against her will, which act does not only debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a child but [is] also prejudicial to her growth and development.

CONTRARY TO LAW.^[6]

When arraigned, petitioner pleaded not guilty.^[7]

Version of the Prosecution

Complainant testified that she was born on August 24, 2001. On November 14, 2012 around 2 o'clock in the afternoon, while attending an event in school, her classmate Hara Jane Generosa (Generosa) invited her to go to John Mark Socubos' (Socubos) house together with petitioner and Robin James Navido (Navido). Due to Generosa's persistent invitation, she eventually agreed. She and Generosa followed petitioner and his friends to Socubos' house. There, she noticed that none of Socubos' relatives were home. When Socubos and Navido went out to buy something, petitioner asked Generosa to go out for a while, leaving her and petitioner alone in the house.^[8]

In the living room, petitioner asked her if she had her monthly period. She answered in the negative. He then moved closer to her, lowered her pants and underwear, and kissed her on the cheek. She was so shocked and scared, she failed to do anything. He then inserted his forefinger into her vagina. Jolted by the pain, she immediately pulled up her pants and underwear and dashed out of the house. She and Generosa went back to school. Generosa told her not to tell anyone what happened.^[9]

But Generosa herself later told their class adviser what happened to her. The class adviser, in turn, relayed it to her mother. The following day, on December 4, 2012, her mother reported the incident to the Municipal Social Development Office (MSDO). There, they were advised to also report the incident to the police. She was examined at the Municipal Health Center. Dr. Phillen D. Ureta (Dr. Ureta) found an old hymenal abrasion at 5 to 6 o'clock positions.^[10]

Version of the Defense

Petitioner testified that he was only fifteen (15) years old when the alleged incident happened. Since February 13, 2011, he and complainant were already a couple.^[11]

On November 14, 2012, he was with Socubos and Navido composing a song for their intermission number in complainant's school. But when they later learned they could no longer participate in the event, they just decided to eat lunch at Socubos' house. There, they found nothing to eat. Thus, Socubos and Navido went out to eat while he stayed in the house and took a nap.^[12]

He was awakened when he heard someone calling his name. When he looked out, he saw Generosa and complainant. Generosa told him that complainant wanted to talk to him. He told complainant, however, they could not talk inside as the place was not his, but complainant and Generosa came in anyway. Generosa then stepped out again and closed the door behind her. The doorknob was broken and could only be opened from the outside. But Generosa refused to let them out of the house.^[13]

Inside, complainant was crying while asking him regarding the rumors she heard about his supposed girlfriend in another school. He consoled and assured her that she was his only girlfriend. To further appease her, he hugged and kissed her on the cheek. She then told him to "watch out." Just as Socubos and Navido were coming back, Generosa called out for complainant to come out. He offered to accompany complainant back to school but she refused.^[14]

The Trial Court's Ruling

In the body of its Decision dated July 6, 2018,^[15] Regional Trial Court (RTC), Branch 23, Kidapawan City pronounced petitioner guilty as charged, *viz.*:

WHEREFORE, based [on] the forgoing disquisitions, this court finds the accused guilty of the crime as charged beyond reasonable doubt and he is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correctional* as minimum to [eight] (8) years and one (1) day of *prision mayor* as maximum.

The accused is further directed to pay the victim the sum of P30,000.00 as civil indemnity; P30,000.00 as moral damages, and P30,000.00 as exemplary damages. The period of preventive detention of the accused is counted in his favor. Cost de Officio.

[16]

The trial court gave full credence to complainant's testimony. It noted that complainant was just eleven (11) years old at the time the crime was committed., hence, the only subject of inquiry is whether "carnal knowledge" in fact took place. It similarly noted that complainant never faltered in her testimony even when she was subjected to a grueling cross-examination by the defense. Her testimony was not only consistent and straightforward, it was further supported by Dr. Ureta's findings.

The trial court, too, adopted the social worker's finding that petitioner acted with discernment when he committed the offense. For petitioner admitted that complainant was his girlfriend and he understood how difficult it was inside the detention cell. In fact, he even cried when recalling his time inside.

The trial court, nonetheless, concluded in the body of its decision that since Dr. Ureta found complainant's hymen to be intact, petitioner cannot be convicted of rape, but only of lascivious conduct.

Ruling of the Court of Appeals

On appeal , the Court of Appeals rendered its assailed Decision dated August 29; 2019, [17] viz.:

WHEREFORE, [the] foregoing premises considered, the appeal is **DENIED**. The *Decision* dated 06 July 2018 of the Regional Trial Court (RTC), Branch 23, 12th Judicial Region, Kidapawan City in Crim. Case No. 1737-2013 in convicting the appellant of the crime charged is hereby

AFFIRMED in that accused-appellant BBB is **GUILTY** beyond reasonable doubt of the crime of Rape by Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correctional* [sic] in its medium period, as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.

Accused-appellant is **ORDERED** to pay the private complainant the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages. The amounts of damages awarded shall have an interest of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

The case against the accused-appellant shall be **REMANDED** to the trial court for appropriate disposition in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.^[18]

The Court of Appeals found petitioner guilty of rape by sexual assault. It affirmed the trial court's assessment of complainant's credibility as there was no showing that the trial court's factual findings were tainted with arbitrariness or oversight. It disregarded the defense's claim that complainant's account of what happened during and after the alleged incident was contrary to human experience. It emphasized that a child victim cannot be expected to behave and react as an adult.

It similarly found that petitioner acted with discernment when he committed the act. Petitioner obviously knew what he was doing when he asked complainant first whether she had her monthly period at that time.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays anew for his acquittal.

In the main, petitioner, faults the Court of Appeals for affirming the trial court's factual findings on the credibility of complainant's testimony. He maintains that it was inconsistent with human nature for an eleven (11) year old girl to go to the house of someone she claimed she did not even know very well and to not react when this person allegedly undressed and instructed her not to report to anyone the horrendous thing which he allegedly did to her.^[19] Too, the imposition of the penalty under RA 7610 instead of the RPC is misplaced considering that he was also a minor when the incident happened. Imposing on him the heavier penalty under RA 7610 is contrary to the provisions of the Juvenile Justice and Welfare Act of 2006 which aim to protect the best interest of the child in conflict with the law.^[20]

The People, on the other hand, argues that the issues raised by petitioner are factual in nature, hence, not proper a subject of a petition for review on *certiorari*. Besides, these issues were already discussed and resolved by the trial court and Court of Appeals.^[21] In any case, the trial court and the Court of Appeals correctly found petitioner guilty of rape by sexual assault. Complainant never faltered in her testimony. She was consistent and straightforward. Dr. Ureta's findings also corroborate complainant's allegations.^[22] Notably too, the defense stipulated on the assessment of the Municipal Social Welfare and Development Officer (MSWDO) that petitioner had acted with discernment. Petitioner cannot now deny a finding to which he agreed.^[23]

Lastly, the Court of Appeals did not err when it imposed on petitioner the heavier penalty under RA 7610. The framers of RA 7610 clearly intended to provide a heavier penalty for sexual abuses committed against minors. The provisions of RA 7610 should be given full force and effect. To exempt a minor offender from the heavier penalty under RA 7610 would not only defeat the purpose of the law but will also prejudice the minor victim because the minor offender is protected by the Juvenile Justice and Welfare Act of 2006. This would be tantamount to tolerating the acts of the minor offender.^[24]

Issues

1. Did the Court of Appeals err in finding petitioner guilty of rape by sexual assault?
2. Did the Court of Appeals err when it applied the penalty prescribed under RA 7610 to petitioner, a minor offender?

Ruling

To begin with, there is a discrepancy in the designation of the crime which petitioner was found to have committed, as borne in the body of the trial court's decision, on one hand, and as borne in the *fallo* itself, on the other. In the body, the trial court concluded that the accused (petitioner) did not commit rape through sexual assault but only acts of lasciviousness, thus:

Nevertheless, since based on the findings of the doctor, the hymen of the victim was intact, it can be gleaned that the accused has not committed the crime of rape [through] sexual assault but merely acts of lasciviousness. Although the charged [sic] was rape by sexual assault under Article 266-A second paragraph, the accused can still be convicted of the crime of acts of lasciviousness under Article 335 of the Revised Penal Code in relation to Title III, Section 5(b) of R.A. 7610.

Under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence, even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.^[25]

But in the *fallo*, the trial court pronounced petitioner guilty of the crime, as charged, to wit:

WHEREFORE, based [on] the forgoing disquisitions, this court finds the accused guilty of the crimes as charged beyond reasonable doubt and he is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to [eight] (8) years and one (1) day of *prision mayor* as maximum.

The accused is further directed to pay the victim the sum of P30,000.00 as civil indemnity; P30,000.00 as moral damages, and P30,000.00 as exemplary damages. The period of preventive detention of the accused is counted in his favor. Cost de Officio.

^[26]

It is settled that where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.^[27] ***Florentino v. Rivera***^[28] ordains:

It is settled rule that "the operative part in every decision is the dispositive portion or the *fallo*, and where there is conflict between the