

THIRD DIVISION

[G.R. No. 214882, October 16, 2019]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
BERNABE EULALIO Y ALEJO, ACCUSED-APPELLANT.**

D E C I S I O N

HERNANDO, J.:

On appeal is the April 15, 2014 *Decision*^[1] rendered by the Court of Appeals (CA) in CA-G.R. CR HC No. 05924 affirming the ruling^[2] of the Regional Trial Court (RTC) of Malabon City, Branch 169 in Criminal Case Nos. 31438-MN and 31439-MN convicting accused-appellant Bernabe Eulalio y Alejo (Eulalio) of rape and acts of lasciviousness.

The Antecedents:

Accused-appellant Eulalio is appealing his conviction for the crimes of rape and acts of lasciviousness, arguing that his guilt has not been proven beyond reasonable doubt.

The pertinent facts are as follows:

Sometime in August 2004, 11-year-old AAA^[3] was playing in the street when Eulalio summoned her to his house. When AAA refused, Eulalio threatened AAA that he would kidnap one of her siblings. Gripped with fear, AAA went along with Eulalio.

Upon reaching Eulalio's house, the latter brought AAA inside a room and started to undress her. When AAA resisted, Eulalio again threatened to kidnap her sibling. Eulalio then proceeded to undress himself and while standing, rubbed his genitalia against AAA's and kissed her. Eulalio then told AAA to lie down on the bed, forcibly spread her legs apart and inserted his penis into her vagina. Eulalio covered AAA's mouth to prevent her from shouting.

After he was done, Eulalio instructed AAA to put her clothes back on and sent her home. AAA did not reveal the incident to anyone in view of the threats of Eulalio.

About a month later, or on September 5, 2004, AAA was playing in the street when she was informed by CCC,^[4] her older sister, that she was again being summoned by Eulalio who was waiting at their (AAA's) house. This time, AAA did as instructed.

AAA went home and sat on a *papag*. Eulalio did not undress her. Instead, he made AAA lie on the bed and kissed her. Eulalio and AAA were in this compromising position when AAA's father, BBB,^[5] and mother, arrived. BBB then inquired what happened. They then went to the *barangay* to report the incident.

AAA submitted herself to a medical examination wherein the attending physician found deep healing laceration in her hymen, suggestive of a prior blunt force or penetrating trauma to the area.^[6]

Two (2) separate Informations dated September 7, 2004 were filed charging Eulalio with rape in relation to Republic Act (RA) No. 7610, the accusatory portions of which read:

In Criminal Case No. 31438-MN (Rape in relation to RA 7610):

That sometime in the month of August, 2004, in the City of Malabon, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], [an 11-year-old minor], against her will and without her consent, which circumstances debase, degrade or demean the intrinsic worth of a child as a human being thereby endangering her youth[,] normal growth and development.

CONTRARY TO LAW.^[7]

In Criminal Case No. 31439-MN (Rape in relation to RA 7610):

That on or about the 5th day of September 2004, in the City of Malabon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation did, then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA], [an 11-year-old minor], against her will and without her consent, which circumstances debase, degrade or demean the intrinsic worth of a child as a human being thereby endangering her youth normal growth and development.

CONTRARY TO LAW.^[8]

During his arraignment, Eulalio entered a plea of not guilty."^[9]

During trial, the prosecution presented AAA's birth certificate^[10] which revealed that she was only 11 years old when the felonies were committed against her. Apart from this, the prosecution submitted the respective *Sinumpaang Salaysay* of AAA^[11] and the *tanod*^[12] (who arrested Eulalio) which further supported the prosecution's version of the story.

Interestingly, though, Eulalio waived his right to present evidence despite months of postponements of the hearings set by the trial court.^[13]

The Ruling of the RTC

In a Decision^[14] dated August 23, 2012, the RTC gave full credence to the testimony of the victim, AAA,^[15] which was corroborated by the medical findings of the examining physician. The trial court further held that since the victim was only 11 years old at the time of the commission of the crimes, the employment of force or intimidation and the physical resistance of the victim were no longer material. Even so, the RTC found that Eulalio employed intimidation to overpower the victim.^[16]

Apart from these, the RTC found that as regards the September 2004 incident, the victim's father, BBB, actually saw Eulalio on top of AAA while kissing her, which constituted as acts of lasciviousness which is necessarily included in a rape charge. More importantly, the trial court noted that Eulalio did not offer any defense despite several opportunities and in fact even waived the presentation of his defense a year after the prosecution already rested its case.^[17]

Hence, the dispositive portion of the RTC's Decision reads:

WHEREFORE, premises considered, the Court finds accused BERNABE EULALIO y ALEJO **GUILTY** beyond reasonable doubt of the crime of Statutory Rape in Criminal Case No. 31428^[18]-MN. He is hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law, and to pay the costs. Accused is further ordered to indemnify the offended party in the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity; Seventy Five Thousand Pesos (Php 75,000.00) as moral damages; and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.

In Criminal Case No. 31439-MN, the Court finds accused BERNABE EULALIO y ALEJO **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of SIX (6) MONTHS of *arresto mayor* as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as maximum, and to pay the costs. Accused is further ordered to indemnify the offended party in the sum of Twenty Thousand Pesos (Php

20,000.00) as civil indemnity; Thirty Thousand Pesos (Php 30,000.00) as moral damages; and Five Thousand Pesos (Php 5,000.00) as exemplary damages.

In the service of the sentence, the accused is entitled to the benefits of Article 29 of the Revised Penal Code as amended.

SO ORDERED.^[19]

Aggrieved, Eulalio appealed^[20] before the Court of Appeals (CA) and assigned this sole error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF STATUTORY RAPE AND ACTS OF LASCIVIOUSNESS DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[21]

The Ruling of the Court of Appeals

The CA, in its April 15, 2014 Decision,^[22] affirmed the RTC's ruling convicting Eulalio of rape and acts of lasciviousness. However, the CA modified the amounts of the monetary awards, as follows:

WHEREFORE, premises considered, the Decision of the RTC is hereby **AFFIRMED** with **MODIFICATION**.

1. In Criminal Case No. 31438-MN, we find accused-appellant Bernabe Eulalio y Alejo GUILTY of Rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as . amended. He is sentenced to *reclusion perpetua* with all the accessory penalties prescribed by law; and is ORDERED to pay the victim, AAA, P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P30,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment; and

2. In Criminal Case No. 31439-MN, we find accused-appellant with all the accessory penalties prescribed by law GUILTY of Acts of Lasciviousness defined and penalized under Articles 336 of the Revised Penal Code, as amended. He is sentenced to an indeterminate prison term of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prision correccional*, as maximum; and is ORDERED to pay the victim, AAA, P20,000.00 as civil indemnity; P30,000.00 as moral damages; and P15,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment;

SO ORDERED.^[23]

Discontented, Eulalio appealed^[24] his case before Us, raising the issue of whether or not he is guilty beyond reasonable doubt of the crimes imputed against him.

The Court's Ruling:

The appeal is unmeritorious.

Article 266-A, paragraph (1) of the Revised Penal Code (RPC) reads as follows:

Article 266-A. *Rape, When and How Committed.* — Rape is committed:

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

a) Through force, threat, or intimidation;

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

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

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.^[25] (Emphasis supplied.)

On the other hand, acts of lasciviousness is defined and penalized in this manner:

Art. 336. *Acts of lasciviousness.* - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

As regards the August 2004 incident (Criminal Case No. 31438-MN), this Court is convinced that Eulalio is guilty of rape, specifically, statutory rape. The elements of the said felony are: "(1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape."^[26] Significantly, it was proven by evidence that Eulalio had carnal knowledge of AAA, an 11-year-old victim, by using threats and intimidation.

As regards the September 2004 incident (Criminal Case No. 31439- MN), both the RTC and the CA properly convicted Eulalio of acts of lasciviousness, although charged with rape in the Information. Eulalio committed lewd acts upon AAA, who

was only 11 years old at the time, by kissing her using threats and intimidation. Eulalio can only be held guilty of acts of lasciviousness although charged with rape "following the variance doctrine enunciated under Section 4^[27] in relation to Section 5^[28] of Rule 120 of the Rules on Criminal Procedure. Acts of lasciviousness; the offense proved, is included in rape, the offense charged."^[29]

Apart from this, We must also consider that the said felony should be evaluated in light of RA 7610 and as charged in the Information. The case of *People v. Molejon*^[30] is instructive in this respect:

On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age.

On the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old.

To further expound on the aspect of other sexual abuse, the case of *Quimvel v. People*^[31] as cited in the *Molejon* case, explained that:

As regards the second additional element, it is settled that **the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.** The law does not require physical violence on the person of the victim; **moral coercion or ascendancy is sufficient.**

The petitioner's proposition — that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under RA 7610 — is bereft of merit. **When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.** (Emphasis ours, citations omitted.)

Withal, there is basis to rule that there was sexual abuse in the instant case, given that Eulalio kissed AAA, who was only 11 years old at the time, by employing threats to force her into submission.

In relation to this, it is important to emphasize that although Section 5(b), Article III of RA 7610 was not expressly mentioned in the Information, "this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged."^[32] As the Court categorically declared in *Quimvel v. People*^[33]:

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.

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

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

Specifically, "[i]n *Olivarez v. Court of Appeals*, this Court found the information sufficient to convict the accused of sexual abuse despite the absence of the specific sections of RA 7610 alleged to have been violated by the accused."^[34] In the case at bench, the Information alleged sufficiently all the elements constituting the crime of acts of lasciviousness. Eulalio forced AAA, who was 11 years old at the time, to engage in lascivious acts which is within the ambit of other sexual abuse in relation to Section 5(b). Thus, even if Section 5(b) was not expressly mentioned or specified in the Information, Eulalio could still be convicted of acts of lasciviousness in relation to Section 5(b) of RA 7610 given the facts provided in the Information and those which were proven during the trial of the case.^[35]

To stress, there is no dispute that the victim, AAA, was 11 years old at the time of the commission of the crimes. More importantly, based on this Court's assessment of the records and the evidence, Eulalio was guilty of the crimes being, imputed against him. It was satisfactorily proved that he had carnal knowledge of the victim, AAA, by employing threats and intimidation in order to achieve his reprehensible desires. It was also proved beyond doubt that through force and intimidation, he committed acts of lasciviousness on AAA by lying on top of her and kissing her on the lips. The clear, candid, and concise manner in which the commission of the felonies were described especially during the testimony of AAA ultimately confirmed that Eulalio was guilty beyond reasonable doubt for both crimes.

Besides, "[i]t is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."^[36]

Moreover, We held in *People v. Macapagal*^[37] that:

In cases of offended parties who are young and immature girls, there is considerable receptivity on the part of the courts to lend credence to their testimonies, considering not only their relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, BBB's testimony is entitled to full faith and credence. (citations omitted)

Indeed, AAA's positive and categorical testimony, together with her father's testimony, should be given credence especially since Eulalio did not even bother to raise any defense at all.^[38] In view of this, this Court emphasizes that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."^[39]

In like manner, "[j]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."^[40] Ergo, based on Our evaluation, the testimonies of the

prosecution witnesses should be accorded great weight, given that the said testimonies corroborated each other on material points.

It is worthy to point out that both the RTC and the CA held that Eulalio was guilty of statutory rape and acts of lasciviousness. We likewise note that Eulalio did not present any defense which could otherwise convince Us of his innocence. We therefore see no reason to depart from the rulings of the RTC and the CA as regards the accused-appellant's guilt.

As for the penalties, the RTC, which the CA affirmed, correctly imposed *reclusion perpetua* in Criminal Case No. 31438-MN for the felony of statutory rape under Article 266-13 of the RPC.^[41]

The damages awarded by the appellate court in Criminal Case No. 31438-MN, however, must be modified. As explained in the case of *People v. Roy*,^[42] "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amount of civil indemnity, moral damages, and exemplary damages should be [PhP] 75,000.00 each."^[43] Moreover, the monetary awards should be subject to the interest rate of 6% *per annum* from the finality of the Decision until fully paid.^[44]

With regard to the penalty and monetary awards in Criminal Case No. 31439-MN for the crime of acts of lasciviousness, since the elements of Article 336 of the RPC as well as that of lascivious conduct under RA No. 7610 (given that the victim was below 12 years old) were clearly proven in this case, the imposable penalty is *reclusion temporal* in its medium period.^[45] Furthermore,

Applying the Indeterminate Sentence Law (ISL), and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal minimum*, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, *i.e.*, *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.^[46]

Accordingly, the prison term is modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period as maximum.^[47]

Furthermore, the award of civil indemnity, as well as moral and exemplary damages in favor of the offended party, should be increased to PhP 50,000.00 each

in view of the recent pronouncement in *People v. Tulagan*.^[48] Likewise, a fine in the amount of PhP 15,000.00 is imposed.^[49] Additionally, the said monetary awards should earn a legal interest of 6% *per annum* from the date of the finality of this Decision until fully paid.

In conclusion, We hereby affirm Eulalio's conviction for one count of statutory rape and one count of acts of lasciviousness. However, the penalties and monetary awards should be modified to conform to recent jurisprudence.

WHEREFORE, the instant appeal is hereby **DISMISSED**. The assailed April 15, 2014 Decision rendered by the Court of Appeals in CA-G.R. CR HC No. 05924, is hereby **AFFIRMED with MODIFICATIONS**.

In Criminal Case No. 31438-MN, accused-appellant Bernabe A. Eulalio is held **GUILTY** of statutory rape under Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353 and is hereby sentenced to *reclusion perpetua* and its accessory penalties. He is likewise **ORDERED** to pay the victim AAA in addition to the costs of the suit, the following amounts, to wit: (i) PhP 75,000.00 as civil indemnity; (ii) PhP 75,000.00 as moral damages; and (iii) PhP 75,000.00 as exemplary damages.

In Criminal Case No. 31439-MN, accused-appellant Bernabe A. Eulalio is held **GUILTY** of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610 and is hereby sentenced to twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* medium, as maximum, and its accessory penalties. He is likewise **ORDERED** to pay the victim AAA in addition to the costs of the suit, the following amounts, to wit: (i) PhP 50,000.00 as civil indemnity; (ii) PhP 50,000.00 as moral damages; (iii) PhP 50,000.00 as exemplary damages; and (iv) PhP 15,000.00 as fine.

All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

Peralta (Chairperson), A. Reyes, Jr., and Carandang,^[*] JJ., concur.
Leonen, J., on official leave.

November 6, 2019

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **October 16, 2019** a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 6, 2019 at 3:37 p.m.

Very truly yours,

**(Sgd.) MISAEL DOMINGO C.
BATTUNG III**
Deputy Division Clerk of Court

[*] Per Raffle dated October 9, 2019 *vice* Associate Justice Henri Jean Paul B. Inting.

[1] *Rollo*, pp. 2-15; penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[2] Records, unpaginated; penned by Judge Emmanuel D. Laurea.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, And For Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing For Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rules on Violence Against Women and their Children, effective November 15, 2004. (*People v. Dumadag*, 667 Phil. 664,669 [2011].)

[4] *Id.*

[5] *Id.*

[6] Records, pp. 6, 12.

[7] *Id.* at 2.

[8] *Id.* at 8.

[9] *Id.* at 19.

[10] Folder of Exhibits, Exhibit "A."

[11] *Id.*, Exhibit "D."

[12] Records, pp. 5, 11.

[13] *Id.* at 72.

[14] *Supra* note 2.

[15] Decision, p. 4; records, unpaginated.

[16] *Id.* at 5.

[17] *Id.*

[18] Should be Criminal Case No. 31438-MN.

[19] *Rollo*, p. 5; records, unpaginated.

[20] Records, pp. 82-83.

[21] *CA rollo*, p. 37.

[22] *Supra* note 1.

[23] *CA rollo*, p. 110.

[24] *Id.* at 16-20.

[25] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[26] *People v. Roy*, G.R. No. 225604, July 23, 2018, citing *People v. Ronquillo*, G.R. No. 214762, September 20, 2017; *People v. Cadano, Jr.*, 729 Phil. 576, 584 (2014).

[27] *Lutap v. People*, G.R. No. 204061, February 5, 2018 citing SEC. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the

accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[28] *Id.*, citing SEC. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[29] *Id.*, citing *People v. Caoili*, G.R. No. 196342, August 8, 2017.

[30] G.R. No. 208091, April 23, 2018, citing *Cruz v. People*, 745 Phil. 54, 73 (2014) and *People v. Fragante*, 657 Phil. 577, 596 (2011).

[31] 808 Phil. 889, 930-931 (2017).

[32] *People v. Molejon*, *supra* note 30, citing *People v. Ursua*, G.R. No. 218575, October 4, 2017.

[33] *Supra* note 31 at 912-913.

[34] *People v. Molejon*, *supra* note 30, citing *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[35] *People v. Molejon*, *id.*, citing *Malto v. People*, 560 Phil. 119 (2007).

[36] *People v. Salaver*, G.R. No. 223681, August 20, 2018, citing *People v. Vergara*, 724 Phil. 702, 709 (2014).

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

[38] *People v. Salaver*, *supra* note 36, citing *People v. Colentava*, 753 Phil. 361 (2015).

[39] *People v. Dalipe*, 633 Phil. 428, 448 (2010).

[40] *People v. Barcelá*, 734 Phil. 332, 342 (2014).

[41] The rape in this case was not qualified as the circumstances needed to qualify the felony are not present. Notably, there is no longer a need to state that accused-appellant is not eligible for parole, given that the impossible penalty for the crime of statutory rape is not death. We have already explained that:

In summary, there is only a need to qualify that the accused is not 'eligible for parole' in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346. This is to differentiate cases where the penalty imposable was **reduced** to *reclusion perpetua* from cases where the penalty imposed was *reclusion perpetua*. Here, Gozo is guilty of simple rape, punishable by *reclusion perpetua*; thus, there was no need to indicate that he was ineligible for parole because accused sentenced to indeterminate penalties are *ipso facto* ineligible for parole. See *People v. Gozo*, G.R. No. 225605, July 23, 2018 citing A.M. No. 15-08-02-SC (Guidelines for the proper use of the phrase "without eligibility for parole" in indivisible penalties.)

[42] *Supra* note 26.

[43] *Id.*, citing *People v. Jugueta*, 783 Phil. 806, 840 (2016).

[44] *Id.*, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[45] Section 5(b), R.A. No. 7610; See also *People v. Lutap*, *supra* note 27, citing *People v. Caoili*, *supra* note 29.

[46] *Lutap v. People*, *supra* note 27; citing *Quimvel v. People*, *supra* note 31.

[47] *Id.*, citing *People v. Padlan*, G.R. No. 214880, September 6, 2017.

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

[49] *Lutap v. People*, *supra* note 27.

