Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

SALVADOR TULAGAN,
Accused-Appellant.

G.R. No. 227363

Present:

BERSAMIN, *C.J.*,
CARPIO,
PERALTA,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
REYES, A., JR.,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER,* *JJ.*

Promulgated:

March 12, 2019

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DECISION

PERALTA, *J*.:

This is an appeal from the Decision[1] of the Court of Appeals (*CA*) dated August 17, 2015 in CA-G.R. CR-HC No. 06679, which affirmed the Joint Decision[2] dated February 10, 2014 of the Regional Trial Court (*RTC*) of San Carlos City in Criminal Case Nos. SCC-6210 and SCC-6211, finding accused-appellant Salvador Tulagan (*Tulagan*) guilty beyond reasonable

* No part.

[1] Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring; *rollo*, pp. 2-38.

[2] CA *rollo*, pp. 38-50.

doubt of the crimes of sexual assault and statutory rape as defined and penalized under Article 266-A, paragraphs 2 and 1(d) of the Revised Penal Code (*RPC*), respectively, in relation to Article 266-B.

In Criminal Case No. SCC-6210, Tulagan was charged as follows:

> That sometime in the month of September 2011, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength forcibly laid complainant AAA,[3] a 9-year-old minor in a cemented pavement, and did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of the said AAA, against her will and consent.
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> Contrary to Article 266-A, par. 2 of the Revised Penal Code in relation to R.A. 7610.

In Criminal Case No. SCC-6211, Tulagan was charged as follows:

> That on or about October 8, 2011 at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength, did then and there, willfully, unlawfully and feloniously have sexual intercourse with complainant AAA, a 9-year-old minor against her will and consent to the damage and prejudice of said AAA, against her will and consent.
>
> Contrary to Article 266-A, par. 1(d) of the Revised Penal Code in relation to R.A. 7610.

Upon arraignment, Tulagan pleaded not guilty to the crimes charged.

During the trial, BBB, aunt of the victim AAA, testified that around 10:30 a.m. of October 17, 2011, she noticed a man looking at AAA outside their house. When AAA asked her permission to go to the bathroom located outside their house, the man suddenly went near AAA. Out of suspicion, BBB walked to approach AAA. As BBB came close to AAA, the man left suddenly. After AAA returned from the bathroom, BBB asked what the man was doing to her. AAA did not reply. She then told AAA to get inside the house. She asked AAA to move her panties down, and examined her

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[3] The identity of the victim or any information to 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, 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"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

genitalia. She noticed that her genitalia was swollen. AAA then confessed to her about the wrong done to her by appellant whom AAA referred to as Badong or Salvador Tulagan. AAA cried hard and embraced BBB tightly. AAA asked BBB for her help and even told her that she wanted Badong to be put in jail.

AAA, nine (9) years old, testified that sometime in September 2011 while she was peeling corn with her cousin who lived adjacent to her grandmother's house, Tulagan approached her, spread her legs, and inserted his finger into her private part. She said that it was painful, but Tulagan just pretended as if he was just looking for something and went home.

AAA, likewise, testified that at around 11:00 a.m. of October 8, 2011, while she was playing with her cousin in front of Tulagan's house, he brought her to his house and told her to keep quiet. He told her to lie down on the floor, and removed her short pants and panties. He also undressed himself, kissed AAA's cheeks, and inserted his penis into her vagina. She claimed that it was painful and that she cried because Tulagan held her hands and pinned them with his. She did not tell anyone about the incident, until her aunt examined her private part.

Upon genital examination by Dr. Brenda Tumacder on AAA, she found a healed laceration at 6 o'clock position in AAA's hymen, and a dilated or enlarged vaginal opening. She said that it is not normal for a 9-year-old child to have a dilated vaginal opening and laceration in the hymen.

For the defense, Tulagan claimed that he did not know AAA well, but admitted that he lived barely five (5) meters away from AAA's grandmother's house where she lived. He added that the whole month of September 2011, from 8:00 a.m. to 1:00 p.m., he was gathering dried banana leaves to sell then take a rest after 1:00 p.m. at their terrace, while his mother cut the banana leaves he gathered at the back of their kitchen. He said that he never went to AAA's house and that he had not seen AAA during the entire month of September 2011. Tulagan, likewise, claimed that before the alleged incidents occurred, his mother had a misunderstanding with AAA's grandmother, who later on started spreading rumors that he raped her granddaughter.

After trial, the RTC found that the prosecution successfully discharged the burden of proof in two offenses of rape against AAA. It held that all the elements of sexual assault and statutory rape was duly established. The trial court relied on the credible and positive declaration of

the victim as against the alibi and denial of Tulagan. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Court finds the accused GUILTY beyond reasonable doubt [of] the crime of rape defined and penalized under Article 266-A, paragraph 1 (d), in relation to R.A. 7610 in Criminal Case No. SCC-6211 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the victim in the amount of fifty thousand (Php50,000.00) pesos; moral damages in the amount of fifty thousand (Php 50,000.00) pesos, and to pay the cost of the suit. Likewise, this Court finds the accused GUILTY beyond reasonable doubt in Criminal Case No. SCC-6210 for the crime of rape defined and penalized under Article 266-A, paragraph 2 and he is hereby sentenced to suffer an indeterminate penalty of six (6) years of *prision correccional,* as minimum, to twelve (12) years of *prision mayor,* as maximum, and to indemnify the victim in the amount of thirty thousand (Php30,000.00) pesos; and moral damages in the amount of twenty thousand (Php20,000.00) pesos, and to pay the cost of suit.
>
> SO ORDERED.[4]

Upon appeal, the CA affirmed with modification Tulagan's conviction of sexual assault and statutory rape. The dispositive portion of the Decision reads:

> **ACCORDINGLY,** the Decision dated February 10, 2014 is **AFFIRMED**, subject to the following **MODIFICATIONS**:
>
> 1. In Criminal Case No. SCC-6210 (Rape by Sexual Assault), appellant is sentenced to an indeterminate penalty of 12 years of *reclusion temporal*, as minimum, to 15 years of *reclusion temporal*, as maximum. The award of moral damages is increased to ₱30,000.00; and ₱30,000.00 as exemplary damages, are likewise granted.
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> 2. In Criminal Case No. SCC-6211 (Statutory Rape), the awards of civil indemnity and moral damages are increased to ₱100,000.00 each. Exemplary damages in the amount of ₱100,000.00, too, are granted.
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> 3. All damages awarded are subject to legal interest at the rate of 6% [*per annum*] from the date of finality of this judgment until fully paid.
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> **SO ORDERED.**[5]

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[4] CA *rollo*, pp. 49-50.

[5] *Rollo*, pp. 36-37. (Emphasis in the original)

Aggrieved, Tulagan invoked the same arguments he raised before the CA in assailing his conviction. He alleged that the appellate court erred in giving weight and credence to the inconsistent testimony of AAA, and in sustaining his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt. To support his appeal, he argued that the testimony of AAA was fraught with inconsistencies and lapses which affected her credibility.

Our Ruling

The instant appeal has no merit. However, a modification of the nomenclature of the crime, the penalty imposed, and the damages awarded in Criminal Case No. SCC-6210 for sexual assault, and a reduction of the damages awarded in Criminal Case No. SCC-6211 for statutory rape, are in order.

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case.[6] Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case:

> Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" - all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more

6 *People v. Gahi*, 727 Phil. 642 (2014).

> stringent application where the said findings are sustained by the Court of Appeals.[7]

Here, in Criminal Case No. SCC-6210 for sexual assault, both the RTC and the CA found AAA's testimony to be credible, straightforward and unwavering when she testified that Tulagan forcibly inserted his finger in her vagina. In Criminal Case No. SCC-6211 for statutory rape, both the RTC and the CA also found that the elements thereof were present, to wit: (1) accused had carnal knowledge of the victim, and (2) said act was accomplished when the offended party is under twelve (12) years of age. Indubitably, the courts *a quo* found that the prosecution was able to prove beyond reasonable doubt Tulagan's guilt for the crime of rape. We find no reason to deviate from said findings and conclusions of the courts *a quo*.

Jurisprudence tells us that a witness' testimony containing inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In fact, the variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony. Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.[8]

As correctly held by the CA, the fact that some of the details testified to by AAA did not appear in her *Sinumpaang Salaysay* does not mean that the sexual assault did not happen. AAA was still able to narrate all the details of the sexual assault she suffered in Tulagan's hands. AAA's account of her ordeal being straightforward and candid and corroborated by the medical findings of the examining physician, as well as her positive identification of Tulagan as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape.

As for Tulagan's imputation of ill motive on the part of AAA's grandmother, absent any concrete supporting evidence, said allegation will not convince us that the trial court's assessment of the credibility of the victim and her supporting witness was tainted with arbitrariness or blindness to a fact of consequence. We reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of her grandmother as per Tulagan's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. In *People v. Garcia*,[9] we held:

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[7] *Id.* at 658.

[8] *People v. Appegu*, 429 Phil. 467, 477 (2002).

[9] 695 Phil. 576 (2012).

> Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. 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.[10]

We also reject Tulagan's defense of denial. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified in a categorical and consistent manner without any ill motive, her positive identification of Tulagan as the sexual offender must prevail over his defenses of denial and alibi.

Here, the courts *a quo* did not give credence to Tulagan's alibi considering that his house was only 50 meters away from AAA's house, thus, he failed to establish that it was physically impossible for him to be at the *locus criminis* when the rape incidents took place. "Physical impossibility" refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be a demonstration that they were so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed. In this regard, Tulagan failed to prove that there was physical impossibility for him to be at the crime scene when the rape was committed.[11] Thus, his alibi must fail.

Further, although the rape incidents in the instant case were not immediately reported to the police, such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be a mere concoction or impelled by some ill motive.[12]

For the guidance of the Bench and the Bar, We take this opportunity to reconcile the provisions on Acts of Lasciviousness, Rape and Sexual Assault under the Revised Penal Code (*RPC*), as amended by Republic Act

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10 *Id.* at 588-589. (Citations omitted).

11 *People v. Barberan, et al.*, 788 Phil. 103, 113 (2016).

12 See *People v. Ilogon*, 788 Phil. 633, 643-644 (2016).

(*R.A.*) No. 8353 *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5(b) of R.A. No. 7610, to fortify the earlier decisions of the Court and doctrines laid down on similar issues, and to clarify the nomenclature and the imposable penalties of said crimes, and damages in line with existing jurisprudence.[13]

Prior to the effectivity of R.A. No. 8353 or *The Anti-Rape Law of 1997* on October 22, 1997, acts constituting sexual assault under paragraph 2,[14] Article 266-A of the RPC, were punished as acts of lasciviousness under Article No. 336[15] of the RPC or Act No. 3815 which took effect on December 8, 1930. For an accused to be convicted of acts of lasciviousness, the confluence of the following essential elements must be proven: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.[16] In *Amployo v. People*,[17] We expounded on the broad definition of the term "lewd":

> The term lewd is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. **What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition**. As early as *U.S. v. Gomez*, we had already lamented that
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>> It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation

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13 *People v. Jugueta*, 783 Phil. 806 (2016).

14 Article 266-A. *Rape*; *When And How Committed. — Rape is Committed —*

x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

15 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.*

16 *PO3 Sombilon, Jr. v. People of the Philippines,* 617 Phil. 187, 195-196 (2009).

17 496 Phil. 747 (2005).

> lies between such conduct and the amorous advances of an ardent lover.[18]

When R.A. No. 7610 or The *Special Protection of Children Against Abuse, Exploitation and Discrimination Act* took effect on June 17, 1992 and its Implementing Rules and Regulation was promulgated in October 1993, the term "lascivious conduct" was given a specific definition. The *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases* states that "lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."

Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punished under Article 336 of the RPC, but were transferred as a separate crime of "sexual assault" under paragraph 2, Article 266-A of the RPC. Committed by "inserting penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" against the victim's will, "sexual assault" has also been called "gender-free rape" or "object rape." However, the term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married.[19] The dichotomy between rape and sexual assault can be gathered from the deliberation of the House of Representatives on the Bill entitled "*An Act To Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault*":

> INTERPELLATION OF MR. [ERASMO B.] DAMASING:
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> x x x x
>
> Pointing out his other concerns on the measure, specifically regarding the proposed amendment to the Revised Penal Code making

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[18] *Id.* at 756. (Emphasis added).

[19] See Records of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 950 and House Bill No. 6265 dated February 19, 1997.

rape gender-free, Mr. Damasing asked how carnal knowledge could be committed in case the sexual act involved persons of the same sex or involves unconventional sexual acts.

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

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

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

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

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

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

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

With regard to Mr. Damasing's query on criminal sexual acts involving persons of the same sex, Mr. Apostol replied that Section 2,

Article 266(b) of the measure on sexual assault applies to this particular provision.

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

SUSPENSION OF SESSION

x x x x

INTERPELLATION OF MR. DAMASING
(Continuation)

Upon resumption of session, Mr. Apostol further expounded on Sections 1 and 2 of the bill and differentiated rape from sexual assault. Mr. Apostol pointed out that the main difference between the aforementioned sections is that carnal knowledge or rape, under Section 1, is always with the opposite sex. Under Section 2, on sexual assault, he explained that such assault may be on the genitalia, the mouth, or the anus; it can be done by a man against a woman, a man against a man, a woman against a woman or a woman against a man.[20]

Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased the penalty thereof from *prision correccional* to *prision mayor.* But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party. Thus, other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610.

Records of committee and plenary deliberations of the House of Representative and of the deliberations of the Senate, as well as the records of bicameral conference committee meetings, further reveal no legislative intent for R.A. No. 8353 to supersede Section 5(b) of R.A. No. 7610. The only contentious provisions during the bicameral conference committee meetings to reconcile the bills of the Senate and House of Representatives which led to the enactment of R.A. No. 8353, deal with the nature of and distinction between rape by carnal knowledge and rape by sexual assault, the threshold age to be considered in statutory rape [whether

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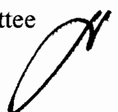
[20] Journal of the House of Representatives, Unfinished Business: Second Reading of Committee Report No. 224 on House Bill No. 6265.



Twelve (12) or Fourteen (14)], the provisions on marital rape and effect of pardon, and the presumptions of vitiation or lack of consent in rape cases. While R.A. No. 8353 contains a generic repealing and amendatory clause, the records of the deliberation of the legislature are silent with respect to sexual intercourse or lascivious conduct against children under R.A. No. 7610, particularly those who are 12 years old or below 18, or above 18 but are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

In instances where the lascivious conduct committed against a child victim is covered by the definition under R.A. No. 7610, and the act is likewise covered by sexual assault under paragraph 2,[21] Article 266-A of the RPC, the offender should be held liable for violation of Section 5(b), Article III of R.A. No. 7610. The ruling in *Dimakuta v. People*[22] is instructive:

> Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.[23]
>
> There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection

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[21] Article 266-A. *Rape: When And How Committed. – Rape is committed*:

x x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[22] 771 Phil. 641 (2015).

[23] *Id.* at 670.

> to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.[24]

Meanwhile, if acts of lasciviousness or lascivious conduct are committed with a child who is 12 years old or less than 18 years old, the ruling in *Dimakuta*[25] is also on point:

> Under Section 5, Article III of R.A. No. 7610, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult. This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements:
>
> (1) That the offender commits any act of lasciviousness or lewdness;
>
> (2) That it is done under any of the following circumstances:
>
> a. By using force or intimidation; or
> b. When the offended party is deprived of reason or otherwise unconscious; or
> c. When the offended party is under 12 years of age; and
>
> (3) That the offended party is another person of either sex.
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> Article 339 of the RPC likewise punishes *acts of lasciviousness committed with the* ***consent*** *of the offended party* if done by the same persons and under the same circumstances mentioned in Articles 337 and 338 of the RPC, to wit:
>
> 1. if committed against a virgin **over twelve years and under eighteen years of age** by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman; or
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> 2. if committed by means of deceit against a woman who is single or a widow of good reputation, **over twelve but under eighteen years of age**.

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24 *Id.* at 670-671.
25 *Supra* note 22.

Therefore, if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a **virgin** and **consents** to the lascivious acts through abuse of confidence or when the victim is **single** or a **widow of good reputation** and consents to the lascivious acts through deceit, or;

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness [are] covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable

3. Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[26]

In *People v. Caoili*,[27] We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. **If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.**

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No.

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[26] *Id.* at 668-669. (Emphasis, underscoring; italics added in the original)

[27] G.R. No. 196848, August 8, 2017, 835 SCRA 107; penned by Associate Justice Noel Gimenez Tijam.

7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua.*[28]

Based on the *Caoili*[29] guidelines, it is only when the victim of the lascivious conduct is 18 years old and above that such crime would be designated as "Acts of Lasciviousness under Article 336 of the RPC" with the imposable penalty of *prision correccional.*

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor.*

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*,[30] but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor.*

Sexual intercourse with a victim who is under 12 years old or is demented is statutory rape

Under Section 5(b) of R.A. No. 7610, the proper penalty when sexual intercourse is committed with a victim who is under 12 years of age or is demented is *reclusion perpetua*, pursuant to paragraph 1(d),[31] Article 266-A

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28 *Id.* at 153-154. (Emphasis added).

29 *Supra* note 27.

30 *Id.*

31 Article 266-A. Rape: *When And How Committed. - Rape is committed*:

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

a) Through force, threat, or intimidation;

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

in relation to Article 266-B of the RPC, as amended by R.A. No. 8353,[32] which in turn amended Article 335[33] of the RPC. Thus:

> Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape [sic] and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal in its medium period*; x x x.[34]

In *Quimvel v. People*,[35] it was opined[36] that the two *provisos* under Section 5(b) of R.A. No. 7610 will apply only if the victim is under 12 years of age, but not to those 12 years old and below 18, for the following reason:

> "while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines "children" as those below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability. Notably, two *provisos* succeeding the first clause of Section 5(b) explicitly state a qualification that when the victim of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period. **It is a basic rule in statutory**

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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.

[32] Article 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x.

[33] Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.
The crime of rape shall be punished by *reclusion perpetua*.

[34] Underscoring added.

[35] G.R. No. 214497, April 18, 2017, 823 SCRA 192.

[36] *Id.* See Separate Concurring Opinion and Majority Opinion.

> **construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains of limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.**[37] Accordingly, this case falls under the qualifying provisos of Section 5(b), Article III of R.A. 7610 because the allegations in the information make out a case for acts of lasciviousness, as defined under Article 336 of the RPC, and the victim is under 12 years of age x x x."[38]

In view of the foregoing rule in statutory construction, it was proposed[39] in *Quimvel* that the penalty for acts of lasciviousness committed against a child should depend on his/her age: if the victim is under 12 years of age, the penalty is *reclusion temporal* in its medium period, and if the victim is 12 years old and below 18, or 18 or older under special circumstances under Section 3(a)[40] of R.A. No. 7610, the penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Applying by analogy the foregoing discussion in *Quimvel* to the act of sexual intercourse with a child exploited in prostitution or subject to other sexual abuse, We rule that when the offended party is under 12 years of age or is demented, only the first *proviso* of Section 5(b), Article III of R.A. No. 7610 will apply, to wit: "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape x x x.*" The penalty for statutory rape under Article 335 is *reclusion perpetua,* which is still the same as in the current rape law, *i.e.*, paragraph 1(d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, except in cases where the victim is below 7 years of age where the imposable penalty is death.[41]

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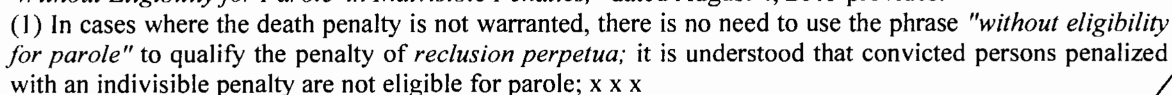
[37] *Chinese Flour Importers Association v. Price Stabilization Board,* 89 Phil. 439 (1951); *Arenas v. City of San Carlos*, 172 Phil. 306 (1978).

[38] *Quimvel v. People, supra* note 35, at 268-269. (Emphasis added).

[39] See Separate Concurring Opinion and Majority Opinion.

[40] Section. 3. *Definition of Terms.* –
(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

[41] Item II (1) of A.M. No. 15-08-02-SC, entitled *"Guidelines for the Proper Use of the Phrase 'Without Eligibility for Parole' in Indivisible Penaties,"* dated August 4, 2015 provides:
(1) In cases where the death penalty is not warranted, there is no need to use the phrase *"without eligibility for parole"* to qualify the penalty of *reclusion perpetua;* it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; x x x



Note that the second *proviso* of Section 5(b) of R.A. No. 7610 will not apply because it clearly has nothing to do with sexual intercourse, and it only deals with *"lascivious conduct when the victim is under 12 years of age."* While the terms "lascivious conduct" and "sexual intercourse" are included in the definition of "sexual abuse" under Section 2(g)[42] of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*, note that the definition of "lascivious conduct"[43] does not include sexual intercourse. Be it stressed that the purpose of indicating the phrase "under twelve (12) years of age" is to provide for statutory lascivious conduct or statutory rape, whereby evidence of force, threat or intimidation is immaterial because the offended party, who is under 12 years old or is demented, is presumed incapable of giving rational consent.

Malto ruling clarified

An important distinction between violation of Section 5(b) of R.A. No. 7610 and rape under the RPC was explained in *Malto v. People.*[44] We ruled in *Malto*[45] that one may be held liable for violation of Sec. 5(b), Article III of R.A. No. 7610 despite a finding that the person did not commit rape, because rape is a felony under the RPC, while sexual abuse against a child is punished by a special law. Said crimes are separate and distinct, and they have different elements. Unlike in rape, however, consent is immaterial in cases involving violation of Sec. 5, Art. III of R.A. No. 7610. The mere fact of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense.

In *Malto*,[46] where the accused professor indulged several times in sexual intercourse with the 17-year-old private complainant, We also stressed that since a child cannot give consent to a contract under our civil laws because she can easily be a victim of fraud as she is not capable of full understanding or knowing the nature or import of her actions, the harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law

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[42] Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

[43] Section 3(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

[44] 560 Phil. 119 (2007); penned by Associate Justice Renato C. Corona.

[45] *Supra*, at 138.

[46] *Id.* at 139-140.

should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. In sum, a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse.

We take exception, however, to the sweeping conclusions in *Malto* (1) that "a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse" and (2) that "consent of the child is immaterial in criminal cases involving violation of Section 5, Article III of RA 7610" because they would virtually eradicate the concepts of statutory rape and statutory acts of lasciviousness, and trample upon the express provision of the said law.

Recall that in statutory rape, the only subject of inquiry is whether the woman is below 12 years old or is demented and whether carnal knowledge took place; whereas force, intimidation and physical evidence of injury are not relevant considerations. With respect to acts of lasciviousness, R.A. No. 8353 modified Article 336 of the RPC by retaining the circumstance that the offended party is under 12 years old in order for acts of lasciviousness to be considered as statutory and by adding the circumstance that the offended party is demented, thereby rendering the evidence of force or intimidation immaterial.[47] This is because the law presumes that the victim who is under 12 years old or is demented does not and cannot have a will of her own on account of her tender years or dementia; thus, a child's or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil.[48]

However, considering the definition under Section 3(a) of R.A. No. 7610 of the term "children" which refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, We find that the opinion in *Malto,* that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape or acts of lasciviousness to those victims who are within the range of 12 to 17 years old, and even those 18 years old and above under special circumstances who are still considered as "children" under Section 3(a) of R.A. No. 7610. While *Malto* is correct that consent is immaterial in cases under R.A. No. 7610 where the offended party is below 12 years of age, We clarify that consent of the child is material and may even be a defense in

[47] See Separate Concurring Opinion in *Quimvel v. People, supra* note 35.

[48] *People v. Brioso,* 788 Phil. 292, 306 (2016).

criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances. Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse **either** "due to money, profit or any other consideration **or** due to the coercion or influence of any adult, syndicate or group."

It bears emphasis that violation of the first clause of Section 5(b), Article III of R.A. No. 7610 on sexual intercourse with a child exploited in prostitution or subject to other sexual abuse, is separate and distinct from statutory rape under paragraph 1(d), Article 266-A of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements.[49] Nevertheless, sexual intercourse with a victim who is under 12 years of age or is demented is always statutory rape, as Section 5(b) of R.A. No. 7610 expressly states that the perpetrator will be prosecuted under Article 335, paragraph 3 of the RPC [now paragraph 1(d), Article 266-A of the RPC as amended by R.A. No. 8353].

Even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610. For example, a nine (9)-year-old girl was sold by a pimp to a customer, the crime committed by the latter if he commits sexual intercourse with the girl is still statutory rape, because even if the girl consented or is demented, the law presumes that she is incapable of giving a rational consent. The same reason holds true with respect to acts of lasciviousness or lascivious conduct when the offended party is less than 12 years old or is demented. Even if such party consents to the lascivious conduct, the crime is always statutory acts of lasciviousness. The offender will be prosecuted under Article 336[50] of the RPC, but the penalty is provided for under Section 5(b) of R.A. No. 7610. Therefore, there is no conflict between rape and acts of lasciviousness under the RPC, and sexual intercourse and lascivious conduct under R.A. No. 7610.

Meanwhile, if sexual intercourse is committed with a child under 12 years of age, who is deemed to be "exploited in prostitution and other sexual abuse," then those who engage in or promote, facilitate or induce child

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[49] The elements of violation of the first clause of Section 5(b) of R.A. No. 7610 are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or other sexual abuse; and (3) the child, whether male or female, is 12 years old or below 18. On the other hand, the elements of statutory rape under paragraph 1(d), Article 266-A of the RPC are: (1) the offender is a man; (2) the offender shall have carnal knowledge of a woman; and (3) the offended party is under 12 years of age or is demented.

[50] 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.*

prostitution under Section 5(a)[51] of R.A. No. 7610 shall be liable as principal by force or inducement under Article 17[52] of the RPC in the crime of statutory rape under Article 266-A(1) of the RPC; whereas those who derive profit or advantage therefrom under Section 5(c)[53] of R.A No. 7610 shall be liable as principal by indispensable cooperation under Article 17 of the RPC. Bearing in mind the policy of R.A. No. 7610 of providing for stronger deterrence and special protection against child abuse and exploitation, the following shall be the nomenclature of the said statutory crimes and the imposable penalties for principals by force or inducement or by indispensable cooperation:

1. Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(a) or (c), as the case may be, of R.A. No. 7610, with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua;*

2. Rape under Article 266-A(1) of the RPC, in relation to Article 17 of the RPC and Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion perpetua,* pursuant to Article 266-B of the RPC, except when the victim is below 7 years old, in which case the crime is considered as Qualified Rape, for which the death penalty shall be imposed; and

3. Sexual Assault under Article 266-A(2) of the RPC, in relation to Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua.*

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[51] Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration, or due to coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
(1) Acting as a procurer of a child prostitute;
(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
(3) Taking advantage of influence or relationship to procure a child as prostitute;
(4) Threatening or using violence towards a child to engage him as a prostitute; or
(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

[52] Article 17. *Principals.* - The following are considered principals:
1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[53] (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335[54] of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority,"[55] like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337[56] or simple seduction under Article 338.[57]

Rulings in Tubillo, Abay* and *Pangilinan clarified

At this point, it is not amiss to state that the rulings in *People v. Tubillo*,[58] *People v. Abay*[59] *and People v. Pangilinan*[60] should be clarified, because there is no need to examine whether the focus of the prosecution's

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[54] Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the whom is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua.*

x x x

[55] *People v. Bentayo*, G.R. No. 216938, June 5, 2017, 825 SCRA 620, 626; *People v. Mayola*, 802 Phil. 756, 762 (2016).

[56] Art. 337. *Qualified seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.
The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.
Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

[57] Article 338. *Simple seduction.* — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor.*

[58] *People v. Tubillo*, G.R. No. 220718, June 21, 2017, 828 SCRA 96; penned by Associate Justice Jose Catral Mendoza.

[59] 599 Phil. 390 (2009); penned by Associate Justice Renato C. Corona.

[60] 676 Phil. 16 (2011); penned by Associate Justice Diosdado M. Peralta.

evidence is "coercion and influence" or "force and intimidation" for the purpose of determining which between R.A. No. 7610 or the RPC should the accused be prosecuted under in cases of acts of lasciviousness or rape where the offended party is 12 years of age or below 18.

To recap, We explained in *Abay*[61] that under Section 5 (b), Article III of R.A. No. 7610 in relation to R.A. No. 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under paragraph 1(d), Article 266-A of the RPC, and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1 [d]) of the RPC. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy might be prejudiced. Besides, rape cannot be complexed with a violation of Section 5(b) of R.A. No. 7610, because under Section 48 of the RPC (on complex crimes), a felony under the RPC (such as rape) cannot be complexed with an offense penalized by a special law.

Considering that the victim in *Abay* was more than 12 years old when the crime was committed against her, and the Information against appellant stated that the child was 13 years old at the time of the incident, We held that appellant may be prosecuted either for violation of Section 5(b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1[d]) of the RPC. We observed that while the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of the child through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Hence, appellant was found guilty of rape under paragraph 1(a), Article 266-A of the RPC.

In *Pangilinan,* where We were faced with the same dilemma because all the elements of paragraph 1, Article 266-A of the RPC and Section 5(b) of R.A. No. 7610 were present, it was ruled that the accused can be charged with either rape or child abuse and be convicted therefor. However, We observed that rape was established, since the prosecution's evidence proved that the accused had carnal knowledge of the victim through force and intimidation by threatening her with a samurai. Citing the discussion in *Abay*, We ruled as follows:

> As in the present case, appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor. The prosecution's evidence established that appellant had carnal knowledge of AAA through force and intimidation by threatening her with a samurai. Thus, rape was

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[61] *Supra* note 59, at 395-396.

> established. Considering that in the resolution of the Assistant Provincial Prosecutor, he resolved the filing of rape under Article 266-A of the Revised Penal Code for which appellant was convicted by both the RTC and the CA, therefore, we merely affirm the conviction.[62]

In the recent case of *Tubillo* where We noted that the Information would show that the case involves both the elements of paragraph 1, Article 266-A of the RPC and Section 5(b) of R.A. No. 7610, We likewise examined the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim. In ruling that appellant should be convicted of rape under paragraph 1(a), Article 266-A of the RPC instead of violation of Section 5(b) of R.A. No. 7610, We explained:

> Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A(1)(a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.[63]

With this decision, We now clarify the principles laid down in *Abay, Pangilinan* and *Tubillo* to the effect that there is a need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the RPC or R.A. No. 7610 when the offended party is 12 years old or below 18.

First, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.

Second, when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due

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62 *People v. Pangilinan, supra* note 60, at 37.
63 *People v. Tubillo, supra* note 58, at 107.

to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

To avoid further confusion, We dissect the phrase "children exploited in prostitution" as an element of violation of Section 5(b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct"[64] has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*.[65] In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5[66] of R.A. No. 7610 to qualify or refer to the means through which

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[64] "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. [Section 2(h) Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

[65] Issued in October 1993.

[66] Section 5. *Child Prostitution and Other Sexual Abuse.* – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be **children exploited in prostitution and other sexual abuse.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for

"any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b)[67] of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a)[68] for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

For a clearer view, a comparison of the elements of rape under the RPC and sexual intercourse with a child under Section 5(b) of R.A. No. 7610 where the offended party is between 12 years old and below 18, is in order.

Rape under Article 266-A(1)(a,b,c) under the RPC	**Section 5(1) of R.A. No. 7610**
1. Offender is a man;	1. Offender is a man;
2. Carnal knowledge of a woman;	2. Indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances;
3. Through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority	3. Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute

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lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal in its medium period*; x x x. (Emphasis supplied)

67 *Id.*

68 Section 5. *Child Prostitution and Other Sexual Abuse.* — x x x.

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of "prostitute" was retained by the new law:[69]

> Article 202. *Prostitutes; Penalty.* – For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.
>
> Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 where the victim indulged in sexual intercourse because she is exploited in prostitution **either** "for money, profit or any other consideration **or** due to coercion or influence of any adult, syndicate or group" – the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of R.A. No. 7610.

Third, if the charge against the accused where the victim is 12 years old or below 18 is sexual assault under paragraph 2, Article 266-A of the RPC, then it may happen that the elements thereof are the same as that of lascivious conduct under Section 5(b) of R.A. No. 7610, because the term "lascivious conduct" includes introduction of any object into the genitalia, anus or mouth of any person.[70] In this regard, We held in *Dimakuta* that in

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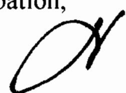
[69] *AN ACT DECRIMINALIZING VAGRANCY, AMENDING FOR THIS PURPOSE ARTICLE 202 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE.*

[70] Section 3(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.



instances where a "lascivious conduct" committed against a child is covered by R.A. No. 7610 and the act is likewise covered by sexual assault under paragraph 2, Article 266-A of the RPC [punishable by *prision mayor*], the offender should be held liable for violation of Section 5(b) of R.A. No. 7610 [punishable by *reclusion temporal medium*], consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. But when the offended party is below 12 years of age or is demented, the accused should be prosecuted and penalized under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, because the crime of sexual assault is considered statutory, whereby the evidence of force or intimidation is immaterial.

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information – *e.g.,* carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1(a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f)[71] of Rule 117 of the Rules of Court – and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997.*" R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion*

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[71] Section 3. *Grounds.* – The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

perpetua under Article 266-B of the RPC, or even the death penalty if the victim is (1) under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or common-law spouse of the parent of the victim; or (2) when the victim is a child below 7 years old.

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will.[72] Indeed, statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence, and if several laws cannot be harmonized, the earlier statute must yield to the later enactment, because the later law is the latest expression of the legislative will.[73] Hence, Article 266-B of the RPC must prevail over Section 5(b) of R.A. No. 7610.

In sum, the following are the applicable laws and penalty for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610:

Designation of the Crime & Imposable Penalty

Age of Victim: / **Crime Committed:**	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances[74]	18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious conduct[75] under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable

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72 *Republic of the Philippines v. Yahon*, 736 Phil. 397, 410 (2014).

73 *Id.* at 410-411.

74 The "children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. [Section 3(a), R.A. No. 7610]

"Child" shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse. [Section 2(a), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

75 "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. [Section 2(h), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed[76]	Sexual Abuse[77] under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Sexual Assault under Article 266-A(2) of the RPC: *prision mayor*

For the crime of acts of lasciviousness or lascivious conduct, the nomenclature of the crime and the imposable penalty are based on the guidelines laid down in *Caoili*. For the crimes of rape by carnal knowledge and sexual assault under the RPC, as well as sexual intercourse committed against children under R.A. No. 7610, the designation of the crime and the imposable penalty are based on the discussions in *Dimakuta*,[78] *Quimvel*[79] and *Caoili*, in line with the policy of R.A. No. 7610 to provide stronger

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[76] Subject to R.A. No. 9346 entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines.*"

[77] "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. [Section 3(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

[78] *Supra* note 22.

[79] *Supra* note 35; penned by Associate Justice Presbitero J. Velasco, Jr.

deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development. It is not amiss to stress that the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information.[80] Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[81]

Justice Caguioa asks us to abandon our rulings in *Dimakuta*, *Quimvel* and *Caoili*, and to consider anew the viewpoint in his Separate Dissenting Opinion in *Quimvel* that the provisions of R.A. No. 7610 should be understood in its proper context, *i.e.*, that it only applies in the specific and limited instances where the victim is a child "subjected to prostitution or other sexual abuse." He asserts that if the intention of R.A. No. 7610 is to penalize all sexual abuses against children under its provisions to the exclusion of the RPC, it would have expressly stated so and would have done away with the qualification that the child be "exploited in prostitution or subjected to other sexual abuse." He points out that Section 5(b) of R.A. No. 7610 is a provision of specific and limited application, and must be applied as worded — a separate and distinct offense from the "common" or ordinary acts of lasciviousness under Article 336 of the RPC. In support of his argument that the main thrust of R.A. No. 7610 is the protection of street children from exploitation, Justice Caguioa cites parts of the sponsorship speech of Senators Santanina T. Rasul, Juan Ponce Enrile and Jose D. Lina, Jr.

We find no compelling reason to abandon our ruling in *Dimakuta*, *Quimvel* and *Caoili*.

In his Separate Concurring Opinion in *Quimvel*, the *ponente* aptly explained that if and when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles under Section 2 of R.A. No. 7610, as well as Section 3(2), Article XV of the 1987 Constitution:

> [R.A. No. 7610] Sec. 2. Declaration of State Policy and Principles. - It is hereby declared to be the policy of the State to **provide special protection to children from all forms of abuse, neglect, cruelty,**

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80 *People v. Ursua,* G.R. No. 218575, October 4, 2017, 842 SCRA 165, 178; *Malto v. People, supra* note 44, at 135-136.

81 *Id.*

> **exploitation and discrimination, and other conditions prejudicial to their development**; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.
>
> It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.
>
> The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. [Emphasis added]
>
> [Article XV 1987 Constitution] Section 3. The State shall defend:
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> x x x x
>
> (2) The **right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.**[82]

Clearly, the objective of the law, more so the Constitution, is to provide a special type of protection for children from all types of abuse. Hence, it can be rightly inferred that the title used in Article III, Section 5, "Child Prostitution and Other Sexual Abuse" does not mean that it is only applicable to children used as prostitutes as the main offense and the other sexual abuses as additional offenses, the absence of the former rendering inapplicable the imposition of the penalty provided under R.A. No. 7610 on the other sexual abuses committed by the offenders on the children concerned.

Justice Caguioa asserts that Section 5(b), Article III of R.A. No. 7610 is clear - it only punishes those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. There is no ambiguity to speak of that which requires statutory construction to ascertain the legislature's intent in enacting the law.

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[82] Emphasis supplied.

We would have agreed with Justice Caguioa if not for Section 5 itself which provides who are considered as "children exploited in prostitution and other sexual abuse." Section 5 states that "[c]hildren, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse." Contrary to the view of Justice Caguioa, Section 5(b), Article III of R.A. No. 7610 is not as clear as it appears to be; thus, We painstakingly sifted through the records of the Congressional deliberations to discover the legislative intent behind such provision.

Justice Caguioa then asks: (1) if the legislature intended for Section 5(b), R.A. No. 7610 to cover any and all types of sexual abuse committed against children, then why would it bother adding language to the effect that the provision applies to "children exploited in prostitution or subjected to other sexual abuse?" and (2) why would it also put Section 5 under Article III of the law, which is entitled "Child Prostitution and Other Sexual Abuse?"

We go back to the record of the Senate deliberation to explain the history behind the phrase "child exploited in prostitution or subject to other sexual abuse."

Section 5 originally covers *Child Prostitution* only, and this can still be gleaned from Section 6 on *Attempt To Commit Child Prostitution*, despite the fact that both Sections fall under Article III on *Child Prostitution and Other Sexual Abuse*. Thus:

> **Section 6. *Attempt To Commit Child Prostitution.*** – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.
>
> There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

Even Senator Lina, in his explanation of his vote, stated that Senate Bill 1209 also imposes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* for those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution.[83] Senator Lina mentioned nothing about the phrases "subject to other sexual abuse" or "Other Sexual Abuse" under Section 5(b), Article III of R.A. No. 7610.

However, to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, Senator Eduardo Angara proposed the insertion of the phrase "WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP, INDULGE" in sexual intercourse or lascivious conduct, under Section 5(b), Article III of R.A. No. 7610.[84]

Further amendment of then Article III of R.A. No. 7610 on *Child Prostitution* was also proposed by then President *Pro Tempore* Sotero Laurel, to which Senator Angara agreed, in order to cover the "expanded scope" of "child abuse." Thus, Article III was amended and entitled "*Child Prostitution and Other Sexual Abuse*."[85] This is the proper context where the element that a child be "exploited in prostitution and other sexual abuse" or EPSOSA, came to be, and should be viewed.

We hold that it is under President Pro Tempore Laurel's amendment on "expanded scope" of "child abuse" under Section 5(b) and the definition of "child abuse" under Section 3,[86] Article I of R.A. No. 7610 that should be relied upon in construing the element of "exploited under prostitution and other sexual abuse." In understanding the element of "exploited under prostitution and other sexual abuse", We take into account two provisions of R.A. No. 7610, namely: (1) Section 5, Article III, which states that "[c]hildren, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be

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83 Record of the Senate, Vol. II, No. 58, December 2, 1991, pp. 793-794.

84 Record of the Senate, Vol. I, No. 7, August 1, 1991, p. 262.

85 *Id.*

86 **Section 3. *Definition of Terms.*** –

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

exploited in prostitution and other sexual abuse"; and (2) Section 3, Article I, which states that "child abuse" refers to the maltreatment, whether habitual or not, of the child, which includes, sexual abuse.

To clarify, once and for all, the meaning of the element of "exploited in prostitution" under Section 5(b), Article III of R.A. No. 7610,[87] We rule that it contemplates 4 scenarios, namely: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; (c) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

Note, however, that the element of "exploited in prostitution" does not cover a male child, who for money, profit or any other consideration, or due to coercion or influence of any adult, syndicate, or group, indulges in sexual intercourse. This is because at the time R.A. No. 7610 was enacted in 1992, the prevailing law on rape was Article 335 of the RPC where rape can only be committed by having carnal knowledge of a woman under specified circumstances. Even under R.A. No. 8353 which took effect in 1997, the concept of rape remains the same — it is committed by a man who shall have carnal knowledge of a woman under specified circumstances. As can be gathered from the Senate deliberation on Section 5(b), Article III of R.A. No. 7610, it is only when the victim or the child who was abused is a male that the offender would be prosecuted thereunder because the crime of rape does not cover child abuse of males.[88]

The term "other sexual abuse," on the other hand, should be construed in relation to the definitions of "child abuse" under Section 3,[89] Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g)[90] of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*.[91] In

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[87] **Section 5. *Child Prostitution and Other Sexual Abuse.*** – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or for lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;

[88] Record of the Senate Vol. IV, No. 116, May 9, 1991, pp. 333-334.

[89] *Supra* note 85.

[90] *Supra* note 42.

[91] Issued in October 1993.

the former provision, "child abuse" refers to the maltreatment, **whether habitual or not**, of the child which includes sexual abuse, among other matters. In the latter provision, "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. Thus, the term "other sexual abuse" is broad enough to include all other acts of sexual abuse other than prostitution. Accordingly, a single act of lascivious conduct is punished under Section 5(b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances. In contrast, when the victim is under 12 years old, the proviso of Section 5(b) states that the perpetrator should be prosecuted under Article 336 of the RPC for acts of lasciviousness, whereby the lascivious conduct itself is the sole element of the said crime. This is because in statutory acts of lasciviousness, as in statutory rape, the minor is presumed incapable of giving consent; hence, the other circumstances pertaining to rape — force, threat, intimidation, etc. — are immaterial.

Justice Caguioa also posits that the Senate deliberation on R.A. No. 7610 is replete with similar disquisitions that all show the intent to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses. He stresses that the passage of the laws was the Senate's act of heeding the call of the Court to afford protection to a special class of children, and not to cover any and all crimes against children that are already covered by other penal laws, such as the RPC and Presidential Decree No. 603, otherwise known as the *Child and Youth Welfare Code*. He concludes that it is erroneous for us to rule that R.A. No. 7610 applies in each and every case where the victim although he or she was not proved, much less, alleged to be a child "exploited in prostitution or subjected to other sexual abuse." He invites us to go back to the ruling in *Abello* that "since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. Any doubt in this regard we must resolve in favor of the accused."

Justice Estela M. Perlas-Bernabe also disagrees that R.A. No. 7610 would be generally applicable to all cases of sexual abuse involving minors, except those who are under 12 years of age. Justice Perlas-Bernabe concurs with Justice Caguioa that Section 5(b), Article III of R.A. No. 7610 only applies in instances where the child-victim is "*exploited in prostitution or subject to other sexual abuse*" (EPSOSA). She asserts that her limited view, as opposed to the *ponencia's* expansive view, is not only supported by several textual indicators both in law and the deliberations, but also squares with practical logic and reason. She also contends that R.A. No. 7610 was

enacted to protect those who, like the child-victim in *People v. Ritter*, willingly engaged in sexual acts, not out of desire to satisfy their own sexual gratification, but because of their vulnerable pre-disposition as exploited children. She submits that, as opposed to the RPC where sexual crimes are largely predicated on the lack of consent, Section 5(b) fills in the gaps of the RPC by introducing the EPSOSA element which effectively dispenses with the need to prove the lack of consent at the time the act of sexual abuse is committed. Thus, when it comes to a prosecution under Section 5(b), consent at the time the sexual act is consummated is, unlike in the RPC, not anymore a defense.

We are unconvinced that R.A. No. 7610 only protects a special class of children, *i.e.*, those who are "exploited in prostitution or subjected to other sexual abuse," and does not cover all crimes against them that are already punished by existing laws. It is hard to understand why the legislature would enact a penal law on child abuse that would create an unreasonable classification between those who are considered as "exploited in prostitution and other sexual abuse" or EPSOSA and those who are not. After all, the policy is to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development.

In the extended explanation of his vote on Senate Bill No. 1209,[92] Senator Lina emphasized that the bill complements the efforts the Senate has initiated towards the implementation of a national comprehensive program for the survival and development of Filipino children, in keeping with the Constitutional mandate that "*[t]he State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.*"[93] Senator Lina also stressed that the bill supplies the inadequacies of the existing laws treating crimes committed against children, namely, the RPC and the Child and Youth Welfare Code, in the light of the present situation, *i.e.*, current empirical data on child abuse indicate that a stronger deterrence is imperative.[94]

In the same vein, Senator Rasul expressed in her Sponsorship Speech the same view that R.A. No. 7610 intends to protect all children against all forms of abuse and exploitation, thus:

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[92] *AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE AND EXPLOITATION, PROVIDING LEGAL PRESUMPTIONS AND PENALTIES FOR ITS VIOLATIONS.*

[93] Record of the Senate, December 2, 1991, Volume II, No. 58, pp. 793-794.

[94] *Id.*

There are still a lot of abuses and injustices done to our children who suffer not only from strangers, but sadly, also in the hands of their parents and relatives. We know for a fact that the present law on the matter, the Child and Welfare Code (PD No. 603) has very little to offer to abuse children. We are aware of the numerous cases not reported in media.

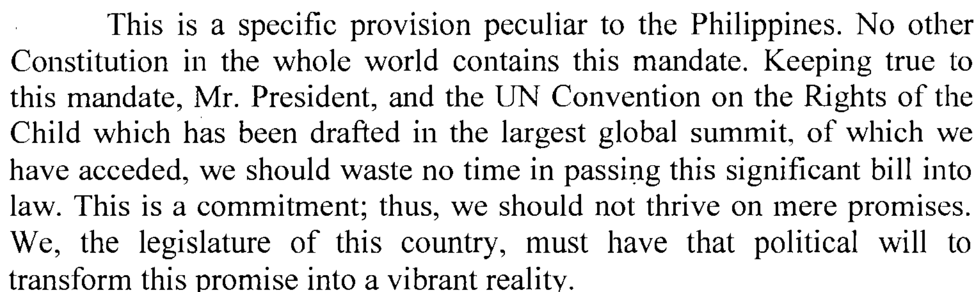
In the Filipino Family structure, a child is powerless; he or she is not supposed to be heard and seen. Usually, it is the father or the mother who has a say in family matters, and children, owing to their limited capability, are not consulted in most families. Many children may be suffering from emotional, physical and social abuses in their homes, but they cannot come out in the open; besides, there is a very thin line separating discipline from abuse. This becomes wider when the abuse becomes grave and severe.

Perhaps, more lamentable than the continuing child abuses and exploitation is the seeming unimportance or the lack of interest in the way we have dealt with the said problem in the country. No less than the Supreme Court, in the recent case of *People v. Ritter*, held that we lack criminal laws which will adequately protect street children from exploitation of pedophiles. But as we know, we, at the Senate have not been remiss in our bounden duty to sponsor bills which will ensure the protection of street children from the tentacles of sexual exploitation. Mr. President, now is the time to convert these bills into reality.

In our long quest for solutions to problems regarding children, which problems are deeply rooted in poverty, I have felt this grave need to sponsor a bill, together with Senators Lina and Mercado, which would ensure the children's protection from all forms of abuse and exploitation, to provide stiffer sanction for their commission and carry out programs for prevention and deterrence to aid crisis intervention in situations of child abuse and exploitation.

Senate Bill No. 1209 translates into reality the provision of our 1987 Constitution on "THE FAMILY," and I quote:

> Sec. 3. The State shall defend:
>
> x x x x
>
> (2) The **right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**.



This is a specific provision peculiar to the Philippines. No other Constitution in the whole world contains this mandate. Keeping true to this mandate, Mr. President, and the UN Convention on the Rights of the Child which has been drafted in the largest global summit, of which we have acceded, we should waste no time in passing this significant bill into law. This is a commitment; thus, we should not thrive on mere promises. We, the legislature of this country, must have that political will to transform this promise into a vibrant reality.

> Children's normal growth and development, considering their young minds and fragile bodies, must not be stunted. We legislators must pave the way for the sustained progress of our children. Let not a child's opportunity for physical, spiritual, moral, social and intellectual well-being be stunted by the creeping cruelty and insanity that sometimes plague the minds of the adults in the society who, ironically, are the persons most expected to be the guardians of their interest and welfare.[95]

Justice Caguioa further submits that Section 5(b) of R.A. No. 7610 cannot be read in isolation in the way that *Dimakuta*, *Quimvel* and *Caoili* do, but must be read in the whole context of R.A. No. 7610 which revolves around (1) child prostitution, (2) other sexual abuse in relation to prostitution and (3) the specific acts punished under R.A. No. 7610, namely, child trafficking under Article IV, obscene publications and indecent shows under Article V, and sanctions for establishments where these prohibited acts are promoted, facilitated or conducted under Article VII. He adds that even an analysis of the structure of R.A. No. 7610 demonstrates its intended application to the said cases of child exploitation involving children "exploited in prostitution or subjected to other sexual abuse." Citing the exchange between Senators Pimentel and Lina during the second reading of Senate Bill No. 1209 with respect to the provision on attempt to commit child prostitution, Justice Caguioa likewise posits that a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof of the unique circumstances of the children "exploited in prostitution or subjected to other sexual abuse."

We disagree that the whole context in which Section 5(b) of R.A. No. 7610 must be read revolves only around child prostitution, other sexual abuse in relation to prostitution, and the specific acts punished under R.A. No. 7610. In fact, the provisos of Section 5(b) itself explicitly state that it must also be read in light of the provisions of the RPC, thus: *"Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period."*

When the first proviso of Section 5(b) states that "when the victim is under 12 years of age shall be prosecuted under the RPC," it only means that the elements of rape under then Article 335, paragraph 3 of the RPC [now Article 266-A, paragraph 1(d)], and of acts of lasciviousness under Article 336 of the RPC, have to be considered, alongside the element of the child

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[95] Record of the Senate on Senate Bill No. 1209, Volume III, No. 104, pp. 1204-1205. (Emphasis added).

being "exploited in prostitution and or other sexual abuse," in determining whether the perpetrator can be held liable under R.A. No. 7610. The second proviso of Section 5(b), on the other hand, merely increased the penalty for lascivious conduct when the victim is under 12 years of age, from *prision correccional* to *reclusion temporal* in its medium period, in recognition of the principle of statutory acts of lasciviousness, where the consent of the minor is immaterial.

Significantly, what impels Us to reject Justice Caguioa's view that acts of lasciviousness committed against children may be punished under **either** Article 336 of the RPC [with *prision correccional*] **or** Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610 [with *reclusion temporal medium*]/Lascivious Conduct under Section 5(b) of R.A. No. 7610 [with *reclusion temporal medium* to *reclusion perpetua*], is the provision under Section 10 of R.A. No. 7610.

As pointed out by the *ponente* in *Quimvel,* where the victim of acts of lasciviousness is under 7 years old, Quimvel cannot be merely penalized with *prisión correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. The legislative intent is expressed under Section 10, Article VI of R.A. No. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age, to wit:

> Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —
>
> x x x x
>
> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. **The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.**[96]

The *ponente* explained that to impose upon Quimvel an indeterminate sentence computed from the penalty of *prisión correccional* under Article

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96 See Separate Concurring Opinion in *Quimvel v. People*, *supra* note 36. (Emphasis added).

336 of the RPC would defeat the purpose of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,[97] which used to be punishable by *arresto mayor*, and now by *prisión correccional* pursuant to Section 10, Article VI of R.A. No. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prisión correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child a probationable offense, pursuant to the Probation Law of 1976,[98] as amended by R.A. No. 10707.[99] Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. No. 7610 and the Constitution on the special protection to children.

Justice Caguioa also faults that a logical leap was committed when the *ponencia* posited that the Section 10, Article VI, R.A. No. 7610 amendment of the penalties under Articles 337, 339, 340 and 341 of the RPC, also affected Article 336 on acts of lasciviousness. He argues that given the clear import of Section 10 to the effect that the legislature expressly named the provisions it sought to amend through R.A. No. 7610, amendment by implication cannot be insisted on.

We disagree. Articles 337 (Qualified Seduction), 339 (Acts of Lasciviousness with the Consent of the Offended Party), 340 (Corruption of Minor) and 341 (White Slave Trade) of the RPC, as well as Article 336 (Acts of Lasciviousness) of the RPC, fall under Title Eleven of the RPC on Crimes against Chastity. All these crimes can be committed against children. Given the policy of R.A. No. 7610 to provide stronger deterrence and special

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[97] ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party.* — The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in Articles 337 and 338.

ARTICLE 337. *Qualified Seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prisión correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. *Simple Seduction.* — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

[98] Presidential Decree No. 968.

[99] *An Act Amending Presidential Decree No. 968*, otherwise known as the "*Probation Law of 1976*", as amended. Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prisión correccional* is 6 months and 1 day to 6 years.

protection against child abuse, We see no reason why the penalty for acts of lasciviousness committed against children should remain to be *prision correccional* when Section 5(b), Article III of R.A. No. 7610 penalizes those who commit lascivious conduct with a child exploited in prostitution or subject to other sexual abuse with a penalty of *reclusion temporal* in its medium period when the victim is under 12 years of age.

Contrary to the view of Justice Caguioa, there is, likewise, no such thing as a recurrent practice of relating the crime committed to R.A. No. 7610 in order to increase the penalty, which violates the accused's constitutionally protected right to due process of law. In the interpretation of penal statutes, the rule is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused,[100] and at the same time preserve the obvious intention of the legislature.[101] A strict construction of penal statutes should also not be permitted to defeat the intent, policy and purpose of the legislature, or the object of the law sought to be attained.[102] When confronted with apparently conflicting statutes, the courts should endeavor to harmonize and reconcile them, instead of declaring the outright invalidity of one against the other, because they are equally the handiwork of the same legislature.[103] In this case, We are trying to harmonize the applicability of the provisions of R.A. No. 7610 *vis-à-vis* those of the RPC, as amended by R.A. No. 8353, in order to carry out the legislative intent to provide stronger deterrence and special protection against all forms of child abuse, exploitation and discrimination.

Pertinent parts of the deliberation in Senate Bill No. 1209 underscoring the legislative intent to increase the penalties as a deterrent against all forms of child abuse, including those covered by the RPC and the Child and Youth Welfare Code, as well as to give special protection to all children, read:

> **Senator Lina**. x x x
>
> For the information and guidance of our Colleagues, the phrase "child abuse" here is more descriptive than a definition that specifies the particulars of the acts of child abuse. As can be gleaned from the bill, Mr. President, there is a reference in Section 10 to the "Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development."
>
> We refer, for example, to the Revised Penal Code. There are already acts described and punished under the Revised Penal Code and the

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100 *Centeno v. Judge Villalon-Pornillos*, 306 Phil. 219, 230 (1994).
101 *U.S. v. Go Chico*, 14 Phil. 128, 140 (1909)
102 *People v. Manantan*, 115 Phil. 657, 665 (1962)
103 *Akbayan-Youth v. Comelec*, 407 Phil. 618, 639 (2001).

Child and Youth Welfare Code. These are all enumerated already, Mr. President. There are particular acts that are already being punished.

But we are providing stronger deterrence against child abuse and exploitation by increasing the penalties when the victim is a child. That is number one. We define a child as "one who is 15 years and below." [*Later amended to those below 18, including those above 18 under special circumstances*]

The President Pro Tempore. Would the Sponsor then say that this bill repeals, by implication or as a consequence, the law he just cited for the protection of the child as contained in that Code just mentioned, since this provides for stronger deterrence against child abuse and we have now a Code for the protection of the child?

Senator Lina. We specified in the bill, Mr. President, increase in penalties. That is one. But, of course, that is not everything included in the bill. There are other aspects like making it easier to prosecute these cases of pedophilia in our country. That is another aspect of this bill.

The other aspects of the bill include the increase in the penalties on acts committed against children; and by definition, children are those below 15 years of age.

So, it is an amendment to the Child and Youth Welfare Code, Mr. President. This is not an amendment by implication. We made direct reference to the Articles in the Revised Penal Code and in the Articles in the Child and Youth Welfare Code that are amended because of the increase in the penalties.

The President Pro Tempore. Would Senator Lina think then that, probably, it would be more advisable to specify the amendments and amend the particular provision of the existing law rather than put up a separate bill like this?

Senator Lina. We did, Mr. President. In Section 10, we made reference to...

The President Pro Tempore. The Chair is not proposing any particular amendment. This is just an inquiry for the purpose of making some suggestions at this stage where we are now in the period of amendments.

Senator Lina. We deemed it proper to have a separate Act, Mr. President, that will include all measures to provide stronger deterrence against child abuse and exploitation. **There are other aspects that are included here other than increasing the penalties that are already provided for in the Revised Penal Code and in the Child and Youth Welfare Code when the victims are children.**

Aside from the penalties, there are other measures that are provided for in this Act. Therefore, to be more systematic about it, instead of filing several bills, we thought of having a separate Act that will address the problems of children below 15 years of age. This is to

> **emphasize the fact that this is a special sector in our society that needs to be given special protection.** So this bill is now being presented for consideration by the Chamber.[104]

The aforequoted parts of the deliberation in Senate Bill No. 1209 likewise negate the contention of Justice Perlas-Bernabe that "to suppose that R.A. No. 7610 would generally cover acts already punished under the Revised Penal Code (RPC) would defy the operational logic behind the introduction of this special law." They also address the contention of Justice Caguioa that the passage of the same law was the Senate's act of heeding the call of the Court to afford protection to a special class of children, and not to cover any and all crimes against children that are already covered by other penal laws, like the RPC and P.D. No. 603.

As pointed out by Senator Lina, the other aspect of S.B. No. 1209, is to increase penalties on acts committed against children; thus, direct reference was made to the Articles in the RPC and in the Articles in the Child and Youth Welfare Code that are amended because of the increase in the penalties. The said legislative intent is consistent with the policy to provide stronger deterrence and special protection of children against child abuse, and is now embodied under Section 10, Article VI of R.A. No. 7610, *viz.*:

> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.

Justice Perlas-Bernabe and Justice Caguioa are both correct that R.A. No. 7610 was enacted to fill the gaps in the law, as observed by the Court in *People v. Ritter.* However, they may have overlooked that fact that the Congressional deliberations and the express provisions of R.A. No.7610 all point to the intention and policy to systematically address the problems of children below 15 years of age [later increased to below 18], which Senator Lina emphasized as a special sector in our society that needs to be given special protection.[105]

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[104] Record of the Senate, Vol. 1, No. 7, August 1, 1991, pp. 258-259. (Emphasis added).

[105] *Id.*

Justice Perlas-Bernabe also noted that a general view on the application of R.A. No. 7610 would also lead to an unnerving incongruence between the law's policy objective and certain penalties imposed thereunder. She pointed out that under Article 335 of the RPC, prior to its amendment by R.A. No. 8353, the crime of rape committed against a minor who is not under 12 and below 18, is punished with the penalty of *reclusion perpetua*, while under Section 5(b), Article III of R.A. No. 7610, the crime of sexual abuse against a child EPSOSA is punished only with a lower penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. She concluded that it would not make sense for the Congress to pass a supposedly stronger law against child abuse if the same carries a lower penalty for the same act of rape under the old RPC provision.

Justice Perlas-Bernabe's observation on incongruent penalties was similarly noted by the *ponente* in his Separate Concurring Opinion in *Quimvel*, albeit with respect to the penalties for acts of lasciviousness committed against a child, but he added that the proper remedy therefor is a corrective legislation:

> Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [*reclusion temporal* medium] when the victim is under 12 years old is lower compared to the penalty [*reclusion temporal* medium to *reclusion perpetua*] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,[106] Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as the minimum term in the case of the older victims shall be taken from *prisión mayor medium* to *reclusion temporal minimum.* It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation is the proper remedy to

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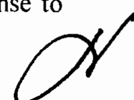
106 Section 31. *Common Penal Provisions.* —
x x x x
(c) The penalty provided herein shall be imposed in its **maximum period** when the perpetrator is an **ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. [Emphasis added]



address the noted incongruent penalties for acts of lasciviousness committed against a child.[107]

To support his theory that the provisions of R.A. No. 7610 are intended only for those under the unique circumstances of the children being "exploited in prostitution or subjected to other sexual abuse," Justice Caguioa quoted pertinent portions of the Senate deliberation on the provision on "attempt to commit child prostitution," which concededly do not affect Article 336 of the RPC on acts of lasciviousness. Senator Lina provided with a background, not of the provision of Section 5(b), but of Section 6 of R.A. No. 7610 on attempt to commit child prostitution, thus:

> **Senator Lina.** xxx Mr. President, Article 336 of Act No. 3815 will remain unaffected by this amendment we are introducing here. As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim. And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially foreigner, is seen with a child with whom he has no relation—blood or otherwise — and they are just seen in a room and there is no way to enter the room and to see them *in flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles.
>
> So we are introducing into this bill, Mr. President, an act that is already considered an attempt to commit child prostitution. This, in no way, affects the Revised Penal Code provisions on acts of lasciviousness or qualified seduction. [108]

Justice Caguioa's reliance on the foregoing statements of Senator Lina is misplaced. While Senator Lina was referring to the specific provision on attempt to commit child prostitution under Section 6, Article III of R.A. No. 7610, Senator Aquilino Pimentel Jr.'s questions were directed more on the general effect of Senate Bill No. 1209 on the existing provisions of the RPC on child sexual abuse, which elicited from Senator Lina the intent to provide higher penalties for such crimes, to wit:

> **Senator Pimentel.** I understand the Gentleman's opinion on that particular point. But my question really is much broader. I am sorry that it would seem as if I am trying to be very meticulous about this.
>
> **Senator Lina.** It is all right.
>
> **Senator Pimentel.** **<u>But the point is, there are existing laws that cover the sexual abuse of children already, particularly female children. What I am trying to say is, what effect will the distinguished</u>**

[107] Citations omitted.

[108] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 334-335.

Gentleman's bill have on these existing laws, particularly provisions of the Revised Penal Code. That is why I tried to cite the case of rape—having sexual intercourse with a child below 12 years of age, seduction instances, qualified abduction, or acts of lasciviousness, involving minors; meaning to say, female below 18 years of age. There are already existing laws on this particular point.

Senator Lina. Mr. President, there will also be a difference in penalties when the person or the victim is 12 years old or less. That is another effect. So, there is a difference.

For example, in qualified seduction, the penalty present for all persons between age of 13 to 17 is *prision correccional;* for acts of lasciviousness under the proposal, similar acts will be *prision mayor* if the child is 12 years or less.

Under qualified seduction, the present penalty is *prision correccional*, minimum and medium. Under the proposal, it will be *prision correccional* maximum to *prision mayor* minimum, and so on and so forth.

Even in facts of lasciviousness, with consent of the offended party, there is still a higher penalty. In corruption of minors, there will be a higher penalty. When murder is committed, and the victim is under 12 years or less, there will be a higher penalty from *reclusion temporal* to *reclusion perpetua.* The penalty when the culprit is below 12 years or less will be *reclusion perpetua.* The intention is really to provide a strong deterrence sand special protection against child abuse and exploitation.

Senator Pimentel. So, the net effect of this amendment, therefore, is to amend the provisions of the Revised Penal Code, insofar as they relate to the victims who are females below the age of 12.

Senator Lina. That will be the net effect, Mr. President.

Senator Pimentel. We probably just have to tighten up our provisions to make that very explicit. Mr. President.

Senator Lina. Yes. During the period of individual amendments, Mr. President, that can be well taken care of. [109]

Quoting the sponsorship speech of Senator Rasul and citing the case of *People v. Ritter*,[110] Justice Caguioa asserts that the enactment of R.A. No. 7610 was a response of the legislature to the observation of the Court that there was a gap in the law because of the lack of criminal laws which adequately protect street children from exploitation of pedophiles.

[109] *Id.* at 336-337.

[110] 272 Phil. 532 (1991).

Justice Caguioa is partly correct. Section 5(b) of R.A. No. 7610 is separate and distinct from common and ordinary acts of lasciviousness under Article 336 of the RPC. However, when the victim of such acts of lasciviousness is a child, as defined by law, We hold that the penalty is that provided for under Section 5(b) of R.A. No. 7610 – *i.e., reclusion temporal medium* in case the victim is under 12 years old, and *reclusion temporal medium* to *reclusion perpetua* when the victim is between 12 years old or under 18 years old or above 18 under special circumstances – and not merely *prision correccional* under Article 336 of the RPC. Our view is consistent with the legislative intent to provide stronger deterrence against all forms of child abuse, and the evil sought to be avoided by the enactment of R.A. No. 7610, which was exhaustively discussed during the committee deliberations of the House of Representatives:

> **HON. [PABLO] P. GARCIA:** Thank you, Mr. Chairman. This problem is also bogging me for quite some time because there has been so much cry against this evil in our society. But, then until now, neither the courts nor those in the medical world have come up with the exact definition of pedophilia. I have two standard dictionaries—Webster and another one an English dictionary, Random Dictionary and the term "pedophilia" is not there. Although, we have read so much literature, articles about pedophilia and it is commonly understood as we might say a special predilection for children. "Pedo" coming from the Greek word "pedo." But whether this would apply to children of either sex, say male or female is not also very clear. It is a sexual desire for its very unusual out of the ordinary desire or predilection for children. Now, in our country, this has gain[ed] notoriety because of activities of foreigners in Pagsanjan and even in Cebu. But most of the victims I have yet to hear of another victim than male. Of course, satisfaction of sexual desire on female, young female, we have instances of adults who are especially attracted to the young female children, say below the ages of 12 or 15 if you can still classify these young female children. So our first problem is whether pedophilia would apply only to male victims or should it also apply to female victims?
>
> I am trying to make this distinction because we have already a law in our jurisdiction. I refer to the Revised Penal Code where sexual intercourse with a child below 12 automatically becomes statutory rape whether with or without consent. In other words, force or intimidation is not a necessary element. If a person commits sexual intercourse with a child below 12, then he automatically has committed statutory rape and the penalty is stiff. Now, we have really to also think deeply about our accepted definition of sexual intercourse. Sexual intercourse is committed against... or is committed by a man and a woman. There is no sexual intercourse between persons of the same sex. The sexual intercourse, as defined in the standard dictionaries and also as has been defined by our courts is always committed between a man and a woman. And so if we pass here a law, which would define pedophilia and include any sexual contact between persons of different or the same sexes, in other words,

homosexual or heterosexual, then, we will have to be overhauling our existing laws and jurisprudence on sexual offenses.

For example, we have in our Revised Penal Code, qualified seduction, under Article 337 of the Revised Penal Code, which provides that the seduction of a virgin over 12 and under 18 committed by any person in public authority: priest, house servant, domestic guardian, teacher, or person who in any capacity shall be entrusted with the education or custody of the woman seduced, shall be punished by etc. etc. Now, if we make a general definition of pedophilia then shall that offender, who, under our present law, is guilty of pedophilia? I understand that the consensus is to consider a woman or a boy below 15 as a child and therefore a potential victim of pedophilia. And so, what will happen to our laws and jurisprudence on seduction? The Chairman earlier mentioned that possible we might just amend our existing provisions on crimes against chastity, so as to make it stiffer, if the victim or the offended party is a minor below a certain age, then there is also seduction of a woman who is single or a widow of good reputation, over 12 but under 18. Seduction, as understood in law, is committed against a woman, in other words, a man having sexual intercourse with a woman. That is how the term is understood in our jurisprudence. So I believe Mr. Chairman, that we should rather act with caution and circumspection on this matter. Let us hear everybody because we are about to enact a law which would have very drastic and transcendental effects on our existing laws. In the first place, we are not yet very clear on what is pedophilia. We have already existing laws, which would punish these offenses.

As a matter of fact, for the information of this Committee, in Cebu, I think that it is the first conviction for an offense which would in our understanding amounts to pedophilia. A fourteen-year old boy was the victim of certain sexual acts committed by a German national. The fiscal came up with an information for acts of lasciviousness under the Revised Penal Code and that German national was convicted for the offense charged. Now, the boy was kept in his rented house and subjected to sexual practices very unusual, tantamount to perversion but under present laws, these offenses such as... well, it's too, we might say, too obscene to describe, cannot be categorized under our existing laws except acts of lasciviousness because there is no sexual intercourse. Sexual intercourse in our jurisdiction is as I have stated earlier, committed by a man and a woman. And it is a sexual contact of the organ of the man with the organ of the woman. But in the case of this German national, if there was any sexual contact it was between persons of the same sex. So, he was convicted. He's a detention prisoner and there is also deportation proceeding against him. In fact, he has applied for voluntary deportation, but he is to serve a penalty of *prision correccional* to *prision mayor*. So, that is the situation I would say in which we find ourselves. I am loath to immediately act on this agitation for a definition of a crime of pedophilia. There is no I think this Committee should study further the laws in other countries. Whether there is a distinct crime known as pedophilia and whether this can be committed against a person of the same sex or of another sex, or whether this crime is separate and distinct from the other crimes against honor or against chastity in their respective jurisdictions. This is a social evil but it has to be addressed with the tools we have at hand. If we have to forge another tool or instrument to find to fight this evil, then I think we should make sure that we are not doing violence for

> destroying the other existing tools we have at hand. And maybe there is a need to sharpen the tools we have at hand, rather than to make a new tool to fight this evil. Thank you very much, Mr. Chairman.[111]

Moreover, contrary to the claim of Justice Caguioa, We note that the Information charging Tulagan with rape by sexual assault in Criminal Case No. SCC-6210 not only distinctly stated that the same is "*Contrary to Article 266-A, par. 2 of the Revised Penal Code in relation to R.A. 7610,*" but it also sufficiently alleged all the elements of violation of Section 5(b) of R.A. No. 7610, in this wise:

Elements of Section 5(b) of R.A No. 7610	**Information in Criminal Case No. SCC-6210**
1. The accused commits the act of sexual intercourse or lascivious conduct.	1. That sometime in the month of September 2011 x x x, the above-named accused [Tulagan] x x x did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of said AAA, against her will and consent.
2. The said act is performed with a child exploited in prostitution or other sexual abuse. Section 5 of R.A. No. 7610 deems as "*children exploited in prostitution and other sexual abuse*" those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the **coercion or influence** of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.	2. [T]he above-name accused, **by means of force, intimidation and with abuse of superior strength** forcibly laid complainant AAA, x x x in a cemented pavement, and x x x inserted his finger into the vagina of said AAA, against her will and consent.
3. The child, whether male or female, is below 18 years of age.	3. AAA is a 9-year-old minor.

In *Quimvel*, We ruled that the Information in *Olivarez v. Court of Appeals*[112] is conspicuously couched in a similar fashion as the Information in the case against Quimvel. We explained that the absence of the phrase "*exploited in prostitution or subject to other sexual abuse*" or even a specific mention of "*coercion*" or "*influence*" was never a bar for us to uphold the finding of guilt against an accused for violation of R.A. No. 7610. Just as We held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of "*force and intimidation,*" We

[111] Deliberation of the Committee on Justice, December 19, 1989.
[112] 503 Phil. 421 (2005).

must also rule that the Information in the case at bench does not suffer from the alleged infirmity.

We likewise held in *Quimvel* that the offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged. Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of opportunity to prepare his defense accordingly. Its import is underscored in this case where the preamble states that the crime charged is "*Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610.*"

We held that for purposes of determining the proper charge, the term "coercion or influence" as appearing in the law is broad enough to cover "force and intimidation" as used in the Information; in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by R.A. No. 7610 and by the Information are different."[113] We also ruled that a child is considered one "exploited in prostitution or subjected to other sexual abuse" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult."[114] Thus, We rule that the above-quoted Information in Criminal Case No. SCC-6210 sufficiently informs Tulagan of the nature and cause of accusation against him, namely: rape by sexual assault under paragraph 2, Article 266-A of the RPC in relation to R.A. No. 7610.

We also take this opportunity to address the position of Justice Caguioa and Justice Perlas-Bernabe, which is based on dissenting opinions[115] in *Olivarez* and *Quimvel*. Citing the Senate deliberations, the dissenting opinions explained that the phrase "or any other consideration or due to coercion or influence of any adult, syndicate or group," under Section 5(b) of R.A. No. 7610, was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. The dissenting opinions added that this was significant because profit or monetary gain is essential in prostitution; thus, the lawmakers intended that in case all other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution.[116]

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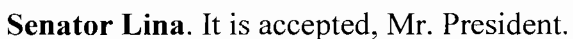
113 *People v. Francisco Ejercito*, G.R. No. 229861, July 2, 2018.
114 *Id.*
115 Penned by Senior Associate Justice Antonio T. Carpio.
116 See Justice Carpio's Dissenting Opinion in *Quimvel v. People*, *supra* note 35.

We partly disagree with the foregoing view. The amendment introduced by Senator Eduardo Angara not only covers cases wherein the child is misused for sexual purposes not because of money or profit, and coercion or intimidation, but likewise expanded the scope of Section 5 of R.A. No. 7610 to cover not just child prostitution but also "*other sexual abuse*" in the broader context of "child abuse," thus:

> **Senator Angara**. I refer to line 9, "who for money or profit." I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave a loophole in this section.
>
> This proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.
>
> **The President Pro Tempore.** I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?
>
> **Senator Angara.** No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.
>
> I am contending, Mr. President, that there may be situations where the child may not have been used for profit or …
>
> **The President Pro Tempore.** So, it is no longer prostitution. Because the essence of prostitution is profit.
>
> **Senator Angara.** Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.
>
> **The President Pro Tempore.** What does the Sponsor say? Will the Gentleman kindly restate the amendment?
>
> ANGARA AMENDMENT
>
> **Senator Angara**. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.
>
> **Senator Lina**. It is accepted, Mr. President.



> **The President Pro Tempore**. Is there any objection? [*Silence*] Hearing none, the amendment is approved.
>
> **How about the title, "Child Prostitution," shall we change that too?**
>
> **Senator Angara. Yes, Mr. President, to cover the expanded scope.**
>
> **The President Pro Tempore. Is that not what we would call probably "child abuse"?**
>
> **Senator Angara. Yes, Mr. President.**
>
> **The President Pro Tempore. Is that not defined on line 2, page 6?**
>
> **Senator Angara. Yes, Mr. President. Child prostitution and other sexual abuse.**
>
> **The President Pro Tempore**. Subject to rewording. Is there any objection? [*Silence*] Hearing none, the amendment is approved. Any other amendments?[117]

Indeed, the Angara amendment explains not just the rationale of the body of Section 5(b) of R.A. No. 7610 to cover a loophole or situation where the minor may have been coerced or intimidated to indulge in lascivious conduct. The amendment of President *Pro Tempore* Laurel, however, also affects the title of Article III, Section 5 of R.A. No. 7610, *i.e.*, "Child Prostitution and Other Sexual Abuse." It is settled that if a chapter and section heading has been inserted merely for convenience or reference, and not as integral part of the statute, it should not be allowed to control interpretation.[118] To our mind, however, the amendment highlights the intention to expand the scope of Section 5 to incorporate the broader concept of "child abuse," which includes acts of lasciviousness under Article 336 of the RPC committed against "children," as defined under Section 3 of R.A. No. 7610. Records of the Senate deliberation show that "child prostitution" was originally defined as "minors, whether male or female, who, for money or profit, indulge in sexual intercourse or lascivious conduct are deemed children exploited in prostitution."[119] With the late addition of the phrase "or subject to other sexual abuse," which connotes "child abuse," and in line with the policy of R.A. No. 7610 to provide stronger deterrence and special protection of children against child abuse, We take it to mean that Section 5(b) also intends to cover those crimes of child sexual abuse already punished under the RPC, and not just those children exploited in prostitution or subjected to other sexual abuse, who are coerced or intimidated to indulge in sexual intercourse or lascivious conduct. This is the reason why We disagree with the view of Justice Perlas-Bernabe that the first proviso under

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117 Record of the Senate, Vol. I, No. 7, August 1, 1991, p. 262.

118 *Commissioner of Customs v. Relunia*, 105 Phil. 875 (1959).

119 Records of the Senate, Vol. IV, No. 116, May 9, 1991, p. 33.

Section 5(b) — which provides that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under x x x the Revised Penal Code, for rape or lascivious conduct, as the case may be*" — is a textual indicator that R.A. No. 7610 has a specific application only to children who are pre-disposed to "consent" to a sexual act because they are "exploited in prostitution or subject to other sexual abuse," thereby negating the *ponente's* theory of general applicability.

In *People v. Larin,*[120] We held that a child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Under R.A. No. 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition." Noting that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in any lascivious conduct, We ruled that Section 5(b) of R.A. No. 7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. We stressed that this is clear from the deliberations of the Senate, and that the law does not confine its protective mantle only to children under twelve (12) years of age.

In *Amployo v. People,*[121] citing *Larin,* We observed that Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation. As case law has it, 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. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

In *Olivarez vs. Court of Appeals,*[122] We held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. We found that the 16-year old victim in that case was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. We stated that it

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120 357 Phil. 987 (1998).

121 *Supra* note 17.

122 *Supra* note 111. Penned by Associate Justice Consuelo Ynares-Santiago, with Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna, concurring; and Chief Justice Hilario G. Davide, Jr. joining the dissent of Associate Justice Antonio T. Carpio.

is inconsequential that the sexual abuse occurred only once because, as expressly provided in Section 3(b) of R.A. 7610, the abuse may be habitual or not. We also observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse.

In *Garingarao v. People*,[123] We ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. We further ruled that it is inconsequential that sexual abuse under R.A. No. 7610 occurred only once. Section 3(b) of R.A. No. 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold an accused liable for acts of lasciviousness under R.A. No. 7610.

In *Quimvel*,[124] We stressed that Section 5(a) of R.A. No. 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. This is even made clearer by the deliberations of the Senate, as cited in the landmark ruling of *People v. Larin.* We also added that the very definition of "child abuse" under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment whether habitual or not, of the child. Thus, a violation of Section 5(b) of R.A. No. 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual offense.

In *Caoili*,[125] We reiterated that R.A. No. 7610 finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or

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123 669 Phil. 512 (2011).
124 *Supra* note 35.
125 *Supra* note 27, at 144.

condition." It has been settled that Section 5(b) of R.A. No. 7610 does not require a prior or contemporaneous abuse that is different from what is complained of, or that a third person should act in concert with the accused. Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct.

Meanwhile, Justice Marvic Mario Victor F. Leonen partly agrees with the *ponencia* that insertion of a finger into a minor's vagina deserves a higher penalty than *prision mayor* under Article 266-A, paragraph 2 in relation to Article 266-B of the RPC. However, he asserts that non-consensual insertion of a finger in another's genitals is rape by carnal knowledge under Article 266-A, paragraph 1 of the RPC. He also reiterates his view in *People v. Quimvel* that Article 336 of the RPC has already been rendered ineffective with the passage of R.A. No. 8353.

We stand by our ruling in *Caoili* that the act of inserting a finger in another's genitals cannot be considered rape by carnal knowledge, thus:

> The language of paragraphs 1 and 2 of Article 266-A of the RPC, as amended by R.A. No. 8353, provides the elements that substantially differentiate the two forms of rape, *i.e.*, rape by sexual intercourse and rape by sexual assault. It is through legislative process that the dichotomy between these two modes of rape was created. To broaden the scope of rape by sexual assault, by eliminating its legal distinction from rape through sexual intercourse, calls for judicial legislation which We cannot traverse without violating the principle of separation of powers. The Court remains steadfast in confining its powers within the constitutional sphere of applying the law as enacted by the Legislature.
>
> In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.[126]

We also maintain the majority ruling in *Quimvel* that Sec. 4 of R.A. No. 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. *Apropos* is the following disquisition in *Quimvel*:

> *x x x* Rather, the phrase in Sec. 4 states: *"deemed amended, modified, or repealed accordingly" qualifies "Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353]."*

126 *Supra* note 27, at 143.

As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC, which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A. Thus, the reference by Art. 336 of the RPC to any of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the circumstances covered by Art. 266-A as introduced by the Anti-Rape Law.

We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws. Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. And as demonstrated, the Anti Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase *"preceding article"* is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

It is likewise incorrect to claim that Art. 336 had been rendered inoperative by the Anti-Rape Law and argue in the same breath the applicability of Sec. 5(b) of RA 7610. x x x

x x x x

If Art. 336 then ceased to be a penal provision in view of its alleged incompleteness, then so too would Sec. 5(b) of RA 7610 be ineffective since it defines and punishes the prohibited act by way of reference to the RPC provision.

The decriminalization of Acts of Lasciviousness under the RPC, as per Justice Leonen's theory, would not sufficiently be supplanted by RA 7610 and RA 9262, otherwise known as the Anti-Violence Against Women and their Children Law (Anti-VAWC Law). Under RA 7610, only minors can be considered victims of the enumerated forms of abuses therein. Meanwhile, the Anti-VAWC law limits the victims of sexual abuses covered by the RA to a wife, former wife, or any women with whom the offender has had a dating or sexual relationship, or against her child. Clearly, these laws do not provide ample protection against sexual offenders who do not discriminate in selecting their victims. One does not have to be a child before he or she can be victimized by acts of lasciviousness. Nor does one have to be a woman with an existing or prior relationship with the offender to fall prey. Anyone can be a victim of another's lewd design. And if the Court will subscribe to Justice Leonen's position, it will render a large portion of our demographics (*i.e.,* adult

females who had no prior relationship to the offender, and adult males) vulnerable to sexual abuses.[127]

To be sure, deliberation of Senate Bill No. 950 which became R.A. No. 8353 reveals the legislative intent not to repeal acts of lasciviousness under Article 336 of the RPC as a crime against chastity, but only to reclassify rape as a crime against persons, thus:

> **Senator Enrile**: x x x
>
> As I indicated last week, I will support this bill but I would like to clarify some points just to set the matters into the Record.
>
> Mr. President, the first thing I would like to find out is the status of this bill — whether this is going to be a statutory crime or a part of the crimes defined in the Revised Penal Code.
>
> There is a big difference between these two concepts, Mr. President, because all of us who have studied law know in our course in Criminal Law two of crimes: Crimes which we call *malum prohibitum* which are statutory crimes and *mala in se* or crimes that would require intent. That is why we always recite the principle that *actus non facit reum, nisi mens sit rea.* Because in every crime defined in the Revised Penal Code, we required what they call a *mens rea*, meaning intent to commit a crime in almost all cases: attempted, frustrated and consummated.
>
> Now, am I now to understand, Madam Sponsor, that this type of crime will be taken out of the Revised Penal Code and shall be covered by a special law making it a statutory crime rather than a crime that is committed with the accompaniment of intent.
>
> **Senator Shahani**: Mr. President, we will recall that this was the topic of prolonged interpellations not only by Senator Enrile, but also by Senator Sotto. In consultation with Senator Roco – we were not able to get in touch with Senator Santiago — we felt that the purpose of this bill would be better served if we limited the bill to amending Article 335 of the Revised Penal Code, at the same time expanding the definition of rape, reclassifying the same as a crime against persons, providing evidentiary requirements and procedures for the effective prosecution of offenders, and institutionalizing measures for the protection and rehabilitation of rape victims and for other purposes. In other words, it stays within the Revised Penal Code, and rape is associated with criminal intent.
>
> Having said this, it means that there will be a new chapter. They are proposing a new chapter to be known as Chapter III on rape, under Title 8 of the Revised Penal Code. There it remains as a crime against persons and no longer as a crime against chastity, but the criminal intent is retained.

[127] *Supra* note 35, at 247.

> **Senator Enrile. So, the distinction between rape as a crime, although now converted from a crime against chastity to a crime against persons, and seduction and act of lasciviousness would be maintained. Am I correct in this, Mr. President?**
>
> **Senator Shahani. That is correct, Mr. President.**[128]

In light of the foregoing disquisition, We hold that Tulagan was aptly prosecuted for sexual assault under paragraph 2, Article 266-A of the RPC in Criminal Case No. SCC-6210 because it was alleged and proven that AAA was nine (9) years old at the time he inserted his finger into her vagina. Instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor,* the proper penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct."[129] Hence, the proper nomenclature of the offense should be Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal.* On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, Tulagan should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal,* as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal,* as maximum.

In Criminal Case No. SCC-6211 for statutory rape, We affirm that Tulagan should suffer the penalty of *reclusion perpetua* in accordance with paragraph 1(d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

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[128] Record of the Senate, Bill on Second Reading, S. No. 950 – Special Law on Rape, July 29, 1996.

[129] Section 3(h) of R.A No. 7610 states that "lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

Damages

For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each. The said amount is based on *People v. Jugueta*[130] which awards civil indemnity and moral damages in the amount of ₱50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal.* In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of ₱50,000.00 should likewise be awarded.

The said award of civil indemnity, moral damages and exemplary damages should be distinguished from those awarded in cases of: (1) Acts of Lasciviousness under Article 336 of the RPC where the imposable penalty is *prision correccional*, the amount of civil indemnity and moral damages should now be fixed at ₱20,000.00 while exemplary damages, if warranted, should also be ₱20,000.00; (2) Sexual Assault under paragraph 2, Article 266-A of the RPC where the imposable penalty is *prision mayor*, the award of civil indemnity and moral damages should be fixed at ₱30,000.00 each, while the award of exemplary damages, if warranted, should also be ₱30,000.00 pursuant to prevailing jurisprudence;[131] and (3) Lascivious conduct under Section 5(b) of R.A. No. 7610, when the penalty of *reclusion perpetua* is imposed, and the award of civil indemnity, moral damages and exemplary damages is ₱75,000.00 each.

The justification for the award of civil indemnity, moral damages and exemplary damages was discussed in *People v. Combate*,[132] as follows:

> First, **civil indemnity** *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law. This award stems from Article 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."
>
> Civil liability *ex delicto* may come in the form of restitution, reparation, and indemnification. Restitution is defined as the compensation for loss; it is full or partial compensation paid by a criminal to a victim

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130 *Supra* note 13.
131 *People v. Brioso, supra* note 48; *Ricalde v. People*, 751 Phil. 793 (2015).
132 653 Phil. 487 (2010).

ordered as part of a criminal sentence or as a condition for probation. Likewise, reparation and indemnification are similarly defined as the compensation for an injury, wrong, loss, or damage sustained. Clearly, all of these correspond to actual or compensatory damages defined under the Civil Code.

x x x x

The second type of damages the Court awards are **moral damages**, which are also compensatory in nature. *Del Mundo v. Court of Appeals* expounded on the nature and purpose of moral damages, *viz.*:

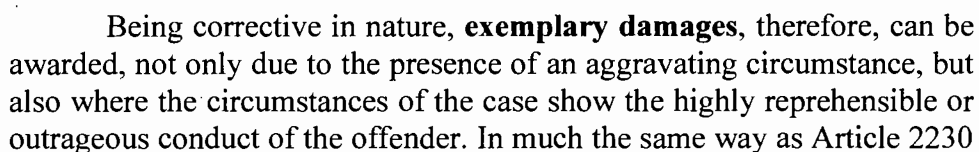
> **Moral damages**, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219 and Article 2220 of the Civil Code x x x.

Similarly, in American jurisprudence, **moral damages** are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress."

The rationale for awarding **moral damages** has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted."

Corollarily, **moral damages** under Article 2220 of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.

x x x x



Being corrective in nature, **exemplary damages**, therefore, can be awarded, not only due to the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230

prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. In *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[133]

In summary, the award of civil indemnity, moral damages and exemplary damages in Acts of Lasciviousness under Article 336 of the RPC, Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, Lascivious Conduct under Section 5(b) of R.A. No. 7610, Sexual Assault under paragraph 2, Article 266-A of the RPC, and Sexual Assault in relation to Section 5(b) of R.A. No. 7610, are as follows:

Crime	**Civil Indemnity**	**Moral Damages**	**Exemplary Damages**[134]
Acts of Lasciviousness under Article 336 of the RPC [Victim is of legal age]	₱20,000.00	₱20,000.00	₱20,000.00
Acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610 [Victim is a child under 12 years old or is demented]	₱50,000.00	₱50,000.00	₱50,000.00
Sexual Abuse or Lascivious Conduct under Section 5(b) of R.A. No. 7610 [Victim is a child 12 years old and below 18, or above 18 under special circumstances]	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)
	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal medium*)	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal medium*)	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal*

[133] Id. at 504-508. (Emphasis added; citations omitted).

[134] If an aggravating circumstance is present or to set as a public example to deter sexual abuse.

			medium)
Sexual Assault under Article 266-A(2) of the RPC [Victim is of legal age]	₱30,000.00	₱30,000.00	₱30,000.00
Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610 [Victim is a child under 12 years old or is demented]	₱50,000.00	₱50,000.00	₱50,000.00

It is settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. The award of exemplary damages is also called for to set a public example and to protect the young from sexual abuse. As to the civil liability in Criminal Case No. SCC-6210 for sexual assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b) of R.A. No. 7610, Tulagan should, therefore, pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

Anent the award of damages in Criminal Case No. SCC-6211 for statutory rape, We modify the same in line with the ruling in *People v. Jugueta,*[135] where We held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages." Also in consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Over and above the foregoing, We observe that despite the clear intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty for violation of Section 5(b) of R.A. No. 7610 [*reclusion temporal* medium] when the victim is under 12 years old is lower compared to the penalty [*reclusion temporal* medium to *reclusion perpetua*] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating

[135] *Supra* note 13.

circumstance or committed by persons under Section 31,[136] Article XII of R.A. No. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum,[137] whereas as the minimum term in the case of the older victims shall be taken from *prisión mayor medium* to *reclusion temporal minimum.*[138] It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,[139] but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.[140] Thus, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

We further note that R.A. No. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. No. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. No. 8353, except in sexual assault as a form of rape. To recall, R.A. No. 8353 only modified Article 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances[141] applicable to rape, *viz.*: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. Hence, Article 336 of the RPC, as amended, is still

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[136] Section 31. *Common Penal Provisions.* –
x x x x
(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[137] Ranging from 12 years and 1 day to 14 years and 8 months.

[138] Ranging from 8 years 1 day to 14 years and 8 months.

[139] *Lamb v. Phipps*, 22 Phil. 456 (1912).

[140] *People v. De Guzman*, 90 Phil. 132 (1951).

[141] Aside from the use of force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

a good law despite the enactment of R.A. No. 8353 for there is no irreconcilable inconsistency between their provisions. When the lascivious act is not covered by R.A. No. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. No. 7610.

We are also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prisión mayor*.

In *People v. Chingh*,[142] We noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. We held that despite the passage of R.A. No. 8353, R.A. No. 7610 is still a good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."[143]

In *Dimakuta*, We added that where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium and the said act is, likewise, covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. No. 7610. The reason for the foregoing is that with respect to lascivious conduct, R.A. No. 7610 affords special protection and stronger deterrence against child abuse, as compared to R.A. No. 8353 which specifically amended the RPC provisions on rape.

Finally, despite the enactment of R.A. No. 8353 more than 20 years ago in 1997, We had been consistent in our rulings in *Larin, Olivarez*, and *Garingarao*, *Quimvel* and *Caoili*, all of which uphold the intent of R.A. No. 7610 to provide special protection of children and stronger deterrence against child abuse. Judicial stability compels to stand by, but not to abandon, our sound rulings: [1] that Section 5(b), Article III of R.A. No.

142 661 Phil. 208 (2011).
143 R.A. No. 7610, Art. 1, Sec. 3(a).

7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse wherein a child engages in sexual intercourse or lascivious conduct through coercion or influence; and [2] that it is inconsequential that the sexual abuse occurred only once. Our rulings also find textual anchor on Section 5, Article III of R.A. No. 7610, which explicitly states that a child is deemed "exploited in prostitution or subjected to other sexual abuse," when the child indulges in sexual intercourse or lascivious conduct for money, profit or any other consideration, or under the coercion or influence of any adult, syndicate or group, as well as on Section 3(b), Article I thereof, which clearly provides that the term "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse.

If the lawmakers disagreed with our interpretation, they could have easily amended the law, just like what they did when they enacted R.A. No. 10591[144] [Amendment on the provision of use of firearm in the commission of a crime], R.A. No. 10951[145] [Amendments to certain penalty and fines under the Revised Penal Code] and R.A. No. 10707[146] [Amendments to the Probation Law] after We rendered *People v. Ladjaalam*,[147] *Corpuz v. People*,[148] *Colinares v. People* and *Dimakuta v. People*, respectively, and their silence could only be construed as acquiescence to our rulings.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DENIED**. The Joint Decision dated February 10, 2014 of the Regional Trial Court in Criminal Case Nos. SCC-6210 and SCC-6211, as affirmed by the Court of Appeals Decision dated August 17, 2015 in CA-G.R. CR-HC No. 06679, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Salvador Tulagan:

1. Guilty beyond reasonable doubt of **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610**, in Criminal Case No. SCC-6210, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

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144 *AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.*

145 *AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE,"* AS AMENDED.

146 *Supra* note 98.

147 395 Phil. 1 (2005).

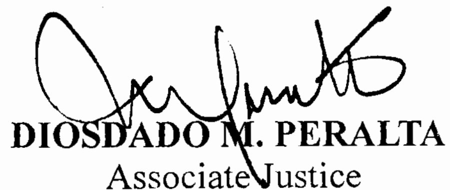
148 734 Phil. 353 (2014)

2. Guilty beyond reasonable doubt of **Statutory Rape under Article 266-A(1)(d) and penalized in Article 266-B of the Revised Penal Code,** in Criminal Case No. SCC-6211, and is sentenced to suffer the penalty of *reclusion perpetua* with modification as to the award of damages. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

Let a copy of this Decision be furnished the Department of Justice, the Office of the Solicitor General, the Office of the Court Administrator, and the Presiding Justice of the Court of Appeals, for their guidance and information, as well as the House of Representatives and the Senate of the Philippines, as reference for possible statutory amendments on the maximum penalty for lascivious conduct under Section 5(b), Article III of R.A. No. 7610 when the victim is under 12 years of age [*reclusion temporal medium*], and when the victim is 12 years old and below 18, or 18 or older under special circumstances [*reclusion temporal* medium to *reclusion perpetua*] under Section 3(a) of R.A. No. 7610.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

ANTONIO T. CARPIO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

Please see separate opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

Concurring in the result
See separate opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

I join separate concurring & dissenting opinion of J. Caguioa

FRANCIS H. JARDELEZA
Associate Justice

Pls. See separate Concurring & Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

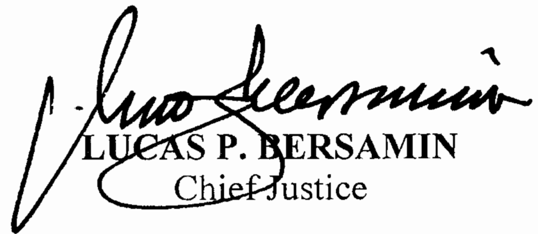
RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

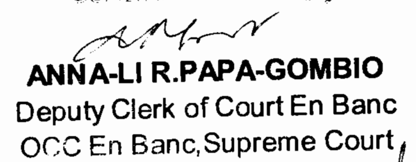
No part
AMY C. LAZARO-JAVIER
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



LUCAS P. BERSAMIN
Chief Justice



Certified True Copy

ANNA-LI R.PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc,Supreme Court