Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RICHARD RICALDE, Petitioner,	**G.R. No. 211002**
	Present:
-versus-	CARPIO, *J., Chairperson,* VELASCO, JR.,* DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** JAN 21 2015

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DECISION

LEONEN, *J.*:

Even men can become victims of rape.

Before us is a criminal case for rape through sexual assault committed against a 10-year-old boy. Accused Richard Ricalde (Ricalde) was charged with rape as described under the second paragraph of Section 266-A of the Revised Penal Code, committed "[b]y 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."[1]

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* Designated acting member per S.O. No. 1910 dated January 12, 2015.

This is a Petition for Review[2] assailing the Court of Appeals' August 28, 2013 Decision[3] affirming Ricalde's conviction for rape through sexual assault and January 15, 2014 Resolution[4] denying reconsideration.

The Provincial Prosecutor of Biñan, Laguna filed an Information charging Ricalde of rape through sexual assault:

> That on or about January 31, 2002, in the Municipality of Sta. Rosa, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused Richard Ricalde, prompted with lewd design, did then and there willfully, unlawfully and feloniously inserting [sic] his penis into the anus of XXX who was then ten (10) years of age against his will and consent, to his damage and prejudice.
>
> CONTRARY TO LAW.[5]

Ricalde pleaded not guilty during his arraignment on August 21, 2002.[6] The prosecution presented the victim (XXX),[7] his mother, and the medico-legal as witnesses, while the defense presented Ricalde as its sole witness.[8]

The facts as found by the lower courts follow.

On January 30, 2002, XXX requested his mother to pick up Ricalde at McDonald's Bel-Air, Sta. Rosa at past 8:00 p.m.[9] Ricalde, then 31 years old,[10] is a distant relative and textmate of XXX, then 10 years old.[11]

After dinner, XXX's mother told Ricalde to spend the night at their house as it was late.[12] He slept on the sofa while XXX slept on the living

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1 Rep. Act No. 8353 (1997) introduced this new provision.
2 *Rollo*, pp. 10–24. The Petition was filed pursuant to Rule 45 of the Rules of Court.
3 Id. at 31–40. The Decision was penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr. of the First Division.
4 Id. at 42–43. The Resolution was penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.
5 Id. at 32 and 54.
6 Id.
7 The fictitious initials "XXX" represent the victim-survivor's real name. In *People v. Cabalquinto* (533 Phil. 703 (2006) [Per J. Tinga , En Banc]), this court discussed the need to withhold the victim's real name and other information that would compromise the victim's identity, applying the confidentiality provisions of: (1) Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* and its implementing rules; (2) Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*) and its implementing rules; and (3) this court's October 19, 2004 Resolution in A.M. No. 04-10-11-SC (*Rule on Violence Against Women and their Children*).
8 Id. at 32 and 55.
9 *Rollo*, pp. 33 and 55.
10 Id. at 20.
11 Id. at 12.
12 Id. at 33 and 55.

room floor.[13]

It was around 2:00 a.m. when XXX awoke as "he felt pain in his anus and stomach and something inserted in his anus."[14] He saw that Ricalde "fondled his penis."[15] When Ricalde returned to the sofa, XXX ran toward his mother's room to tell her what happened.[16] He also told his mother that Ricalde played with his sexual organ.[17]

XXX's mother armed herself with a knife for self-defense when she confronted Ricalde about the incident, but he remained silent.[18] She asked him to leave.[19]

XXX's mother then accompanied XXX to the barangay hall where they were directed to report the incident to the Sta. Rosa police station.[20] The police referred them to the municipal health center for medical examination.[21] Dr. Roy Camarillo examined[22] XXX and found no signs of recent trauma in his anal orifice[23] that was also "NEGATIVE for [s]permatozoa."[24]

On February 4, 2002, XXX and his mother executed their sworn statements at the Sta. Rosa police station, leading to the criminal complaint filed against Ricalde.[25]

Ricalde denied the accusations.[26] He testified that he met XXX during the 2001 town fiesta of Calaca, Batangas and learned that XXX's mother is the cousin of his cousin Arlan Ricalde.[27] He and XXX became textmates, and XXX invited him to his house.[28] On January 30, 2002, XXX's mother picked him up to sleep at their house.[29] He slept at 10:00 p.m. on the living room sofa while XXX slept on the floor.[30] He denied the alleged rape through sexual assault.[31]

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13 Id.
14 Id. at 55.
15 Id.
16 Id. at 33 and 55.
17 Id. at 33.
18 Id. at 33 and 55.
19 Id.
20 Id.
21 Id. at 33.
22 Id. at 55. Dr. Camarillo examined XXX at the Regional Crime Laboratory in Camp Vicente Lim, Calamba, Laguna.
23 Id. at 33 and 57.
24 Id. at 33.
25 Id. at 33 and 55.
26 Id. at 34.
27 Id. at 34 and 57.
28 Id.
29 Id. at 34 and 58.
30 Id. at 33 and 55.
31 Id. at 34.

The Regional Trial Court in its Decision[32] dated June 20, 2011 found Ricalde guilty beyond reasonable doubt of rape through sexual assault:

> **WHEREFORE**, this Court finds accused Richard Ricalde **guilty** beyond reasonable doubt of the crime of **rape by sexual assault** and, accordingly, sentences him to suffer the penalty of imprisonment ranging from four (4) years, two (2) months and one (1) day of *prision correccional* as minimum, to eight (8) years of *prision mayor* as maximum. Accused is ordered to pay [XXX] the sums of □50,000.00 as moral damages and □50,000.00 as civil indemnity.
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> **SO ORDERED**.[33]

The Court of Appeals in its Decision[34] dated August 28, 2013 affirmed the conviction with the modification of lowering the amounts of damages awarded:

> **WHEREFORE**, the Decision dated 20 June 2011 of Branch 34 of the Regional Trial Court of Calamba, Laguna, in Crim. Case No. 11906-B, is **AFFIRMED** but with **MODIFICATION** as to the award of damages. Accused-appellant RICHARD RICALDE is ordered to pay the victim civil indemnity in the amount of Thirty Thousand (□30,000.00) Pesos and moral damages likewise in the amount of Thirty Thousand (□30,000.00) Pesos, both with interest at the legal rate of six (6%) percent per annum from the date of finality of this judgment until fully paid.[35]

Ricalde filed this Petition praying for his acquittal.[36]

Petitioner argues the existence of reasonable doubt in his favor. First, the medico-legal testified that he found "no physical signs or external signs of recent trauma [in XXX's] anus,"[37] or any trace of spermatozoa.[38] He contends that physical evidence "ranks high in [the court's] hierarchy of trustworthy evidence."[39]

Second, XXX did not categorically say that a penis was inserted into his anal orifice, or that he saw a penis or any object being inserted into his anal orifice.[40] XXX was also able to immediately push him away.[41] Thus,

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32 Id. at 54–64. The Decision was penned by Presiding Judge Wilhelmina B. Jorge-Wagan, Branch 34, Regional Trial Court, Calamba, Laguna.
33 Id. at 64.
34 Id. at 31–40.
35 Id. at 39–40.
36 Id. at 23.
37 Id. at 16.
38 Id.
39 Id. at 17, *quoting Bank of the Philippine Islands v. Reyes, et al.*, 568 Phil. 188, 204 (2008) [Per J. Austria-Martinez, Third Division].
40 Id. at 17.

no push and pull movement happened that would explain XXX's alleged stomach ache.[42] Petitioner submits that the alleged stomach ache was an attempt to aggravate the charge against him.[43]

Petitioner argues that XXX's inconsistent testimony raises reasonable doubt on his guilt.[44] XXX claimed that he immediately pushed petitioner away, but in another instance, he testified as follows: "I felt that he was inserting his penis inside my anus because I was even able to hold his penis. He was also playing with my penis."[45] XXX also stated in his *salaysay* that "the penis reached only the periphery of his anal orifice."[46]

Third, XXX testified that after he had pushed petitioner away, he saw that petitioner was wearing pants with the zipper open.[47] Petitioner submits that performing anal coitus while wearing pants with an open zipper poses a challenge — the risk of injuring the sexual organ or having pubic hair entangled in the zipper.[48] Petitioner argues that the court must consider every circumstance favoring the innocence of an accused.[49]

Assuming he committed an offense, petitioner contends that the court should have applied the "variance doctrine" in *People v. Sumingwa*,[50] and the court would have found him guilty for the lesser offense of acts of lasciviousness under Article 336 of the Revised Penal Code.[51] The petition then enumerated circumstances showing possible homosexual affections between petitioner and XXX.[52] These include the fact that they were textmates and that petitioner played with XXX's penis.[53]

Petitioner argues that this masturbation could have caused an irritation that XXX mistook as penetration.[54] XXX could also have mistaken the "overreaching fingers as a male organ trying to enter his [anus]."[55] Assuming these acts took place, these would only be considered as acts of lasciviousness.[56]

The People of the Philippines counters that the prosecution proved

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41 Id.
42 Id.
43 Id.
44 Id. at 21.
45 Id. at 60, *citing* TSN, September 11, 2003.
46 Id. at 21.
47 Id. at 18.
48 Id.
49 Id.
50 618 Phil. 650, 668 (2009) [Per J. Nachura, Third Division].
51 *Rollo,* p. 19.
52 Id. at 20–21.
53 Id. at 20.
54 Id. at 21.
55 Id.
56 Id.

beyond reasonable doubt all elements of the crime charged.

The Comment[57] discussed that it is neither improbable nor contrary to human experience that XXX's mother allowed her son to be left alone with a stranger.[58] Petitioner was not a complete stranger, and she could not have foreseen such abuse since "rape by sexual assault or any form of sexual abuse of a boy by a grown man is fairly uncommon in our culture."[59]

Petitioner's reliance on the medico-legal's findings deserves scant consideration.[60] The Comment quoted *People v. Penilla*[61] in that "[a] medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime."[62] In any case, the medico-legal testified on the sphincter's flexibility and how an insertion into the anal orifice would not necessarily cause injury.[63]

Lastly, the prosecution established all elements of rape through sexual assault based on XXX's clear and categorical testimony.[64] Petitioner's defense of mere denial cannot outweigh positive testimony.[65] Consequently, petitioner's contention that the incident only amounts to acts of lasciviousness lacks merit.[66]

The issue before us for resolution is whether the prosecution proved beyond reasonable doubt petitioner Richard Ricalde's guilt for the crime of rape through sexual assault.

We affirm petitioner's conviction with modification on the penalty imposed.

The Anti-Rape Law of 1997[67] classified rape as a crime against persons[68] and amended the Revised Penal Code to include Article 266-A on rape through sexual assault:

> Article 266–A. *Rape; When and How Committed.*—Rape is Committed—

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57 Id. at 124–138.
58 Id. at 129.
59 Id. at 128.
60 Id. at 129.
61 G.R. No. 189324, March 20, 2013, 694 SCRA 141, 166 [Per J. Perez, Second Division].
62 Id. at 130.
63 Id. at 38 and 130.
64 Id. at 131–132.
65 Id. at 135.
66 Id. at 131–132.
67 Rep. Act No. 8353 (1997).
68 Rep. Act No. 8353 (1997), sec. 2.

> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
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> a) Through force, threat, or intimidation;
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> b) When the offended party is deprived of reason or otherwise unconscious;
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> c) By means of fraudulent machination or grave abuse of authority; and
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> 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;
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> ***2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person***. (Emphasis supplied)

Rape under the second paragraph of Article 266-A is also known as "instrument or object rape,"[69] "gender-free rape,"[70] or "homosexual rape."[71] The gravamen of rape through sexual assault is "the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice."[72]

Jurisprudence holds that "the findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect."[73]

The trial court found that XXX's "straightforward, unequivocal and convincing testimony"[74] sufficiently proved that petitioner committed an act of sexual assault by inserting his penis into XXX's anal orifice.[75] There was

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69 *People v. Abulon*, 557 Phil. 428, 454 (2007) [Per J. Tinga, En Banc], *citing People v. Silvano*, 368 Phil. 676, 696 (1999) [Per Curiam, En Banc].

70 *People v. Abulon*, 557 Phil. 428, 454 (2007) [Per J. Tinga, En Banc], *citing* Deliberations of the Senate on Senate Bill No. 950, Special Law on Rape, August 6, 1996, pp. 12–15; Deliberations of the House of Representatives, Committee on Revision of Laws and Committee on Women on House Bill No. 6265 entitled "An Act to Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault," August 27, 1996, pp. 44–50; *See also People v. Garcia*, G.R. No. 206095, November 25, 2013, 710 SCRA 571, 580 [Per J. Mendoza, Third Division].

71 *People v. Abulon*, 557 Phil. 428, 454 (2007) [Per J. Tinga, En Banc], *citing* Deliberations of the Senate on Senate Bill No. 950, Special Law on Rape, August 6, 1996, pp. 12–15.

72 *Pielago v. People*, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 488 [Per J. Reyes, First Division].

73 *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54, 64–65 [Per J. Leonardo-De Castro, First Division].

74 *Rollo*, p. 59.

75 Id.

no showing of ill motive on the part of XXX to falsely accuse petitioner.[76] The Court of Appeals accorded great weight to the trial court's findings and affirmed petitioner's conviction.[77]

No cogent reason exists for this court to overturn the lower courts' findings.

First, petitioner's argument highlighting alleged inconsistencies in XXX's testimony fails to convince.

In a long line of cases,[78] this court has given full weight and credit to the testimonies of child victims. Their "[y]outh and immaturity are generally badges of truth and sincerity."[79] XXX, then only 10 years old, had no reason to concoct lies against petitioner.[80]

This court has also held that "[l]eeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse."[81]

Petitioner contends that XXX did not categorically say that a penis was inserted into his anal orifice, or that he saw a penis or any object being inserted into his anal orifice.

This contradicts petitioner's earlier statement in his appellant's brief[82] that "[a]lthough it is true that the Supreme Court, in a long line of cases, did not rule out the possibility of rape in cases where the victim remained physically intact at the time she or he was physically examined, still, it bears stressing that in the instant case, *the private complainant testified that the accused-appellant's penis fully penetrated his anus*."[83]

The trial court also quoted portions of the transcript of XXX's testimony in that he "felt something was inserted in [his] anus."[84]

> Q: That early morning of January 31, 2002, while you were

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76 Id. at 62.
77 Id. at 36–37.
78 *See Pielago v. People*, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 488 [Per J. Reyes, First Division]; *Campos v. People*, 569 Phil. 658, 671 (2008) [Per J. Ynares-Santiago, Third Division], *quoting People v. Capareda*, 473 Phil. 301, 330 (2004) [Per J. Callejo, Sr., Second Division]; *People v. Galigao*, 443 Phil. 246, 260 (2003) [Per J. Ynares-Santiago, En Banc].
79 *People v. Oliva*, 616 Phil. 786, 792 (2009) [Per J. Nachura, Third Division], *citing People v. De Guzman*, 423 Phil. 313, 331 (2001) [Per Curiam, En Banc].
80 *Rollo*, pp. 37 and 62.
81 *People v. Dominguez*, G.R. No. 191065, June 13, 2011, 651 SCRA 791, 802 [Per J. Sereno (now C.J.), Third Division].
82 *Rollo*, pp. 44–53.
83 Id. at 50–51.
84 Id. at 59, *citing* TSN, September 11, 2003.

> sleeping at your house, do you recall any unusual incident that happened to you?
>
> A: Yes sir, I felt something was inserted in my anus.
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> . . . .
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> Q: When you said that you felt something was inserted in your anus, what did you do?
>
> A: I felt that he was inserting his penis inside my anus because I was even able to hold his penis. He was also playing with my penis.
>
> Q: So when you said he was inserting his penis to your anus and he was even playing with your private part, who is this person you are referring to as "he"?
>
> A: Richard, sir.[85]

In *People v. Soria*,[86] this court discussed that a victim need not identify what was inserted into his or her genital or anal orifice for the court to find that rape through sexual assault was committed:

> We find it inconsequential that "AAA" could not specifically identify the particular instrument or object that was inserted into her genital. What is important and relevant is that indeed something was inserted into her vagina. To require "AAA" to identify the instrument or object that was inserted into her vagina would be contrary to the fundamental tenets of due process.[87]

Second, petitioner's reliance on the medico-legal's finding of no recent trauma in XXX's anal orifice, or any trace of spermatozoa, lacks merit. The absence of spermatozoa in XXX's anal orifice does not negate the possibility of an erection and penetration. This result does not contradict the positive testimony of XXX that the lower courts found credible, natural, and consistent with human nature.

This court has explained the merely corroborative character of expert testimony and the possibility of convictions for rape based on the victim's credible lone testimony.[88]

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85 Id. at 59–60, *citing* TSN, September 11, 2003.

86 G.R. No. 179031, November 14, 2012, 685 SCRA 483 [Per J. Del Castillo, Second Division]. Justice Brion penned a dissenting opinion.

87 Id. at 504–505.

88 *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673 [Per J. Reyes, First Division], *citing People v. Balonzo,* 560 Phil. 244, 259–260 (2007) [Per J. Chico-Nazario, Third Division]; *See also People v. De Guzman,* G.R. No. 188352, September 1, 2010, 629 SCRA 784, 799 [Per J. Mendoza, Second Division].

In any case, the medico-legal explained that his negative finding of trauma in the anal orifice does not remove the possibility of an insertion considering the flexibility of the sphincter:

> Q: Now, a while ago you testified that he was sodomized and your findings states [sic] that you did not find any congestion or abrasion, can you explain to this court why you stated in your findings that you did not find any congestion or abrasion?
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> A: Again, based on my examination[,] there were no external signs of recent trauma to the anus. It should be realized that the sphincter, that is the particular portion of the anus controlling the bowel movement, it exhibits a certain flexibility such that it can resist any objected [sic] inserted and that area is very vascular, meaning to say, it is rich in blood supply, such that any injuries would be healed in 24 hours or less than 24 hours, sir?[89]

Lastly, we address petitioner's invocation of the "variance doctrine" citing *People v. Sumingwa.*[90]

Section 4 in relation to Section 5 of Rule 120 of the Rules on Criminal Procedure provides for the "variance doctrine":

> **SEC. 4.** ***Judgment in case of variance between allegation and proof***.—When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.
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> **SEC. 5.** ***When an offense includes or is included in another***.—An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former continue or form part of those constituting the latter.

In *Sumingwa,* the accused in Criminal Case Nos. 1649 and 1654 was charged with qualified rape but was convicted for the lesser offense of acts of lasciviousness committed against a child under Article III, Section 5(b) of Republic Act No. 7610[91] since "there was no penetration, or even an attempt to insert [the accused's] penis into [the victim's] vagina."[92]

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89 *Rollo*, p. 38, *citing* TSN, January 22, 2003, p. 9.
90 618 Phil. 650 (2009) [Per J. Nachura, Third Division].
91 Id. at 666.
92 Id. at 667.

In the instant case, no variance exists between what was charged and what was proven during trial. The prosecution established beyond reasonable doubt all elements of the crime of rape through sexual assault.

XXX testified that he "felt something was inserted [into his] anus."[93] The slightest penetration into one's sexual organ distinguishes an act of lasciviousness from the crime of rape. *People v. Bonaagua*[94] discussed this distinction:

> It must be emphasized, however, that like in the crime of rape whereby the slightest penetration of the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime, in like manner, *if the tongue, in an act of cunnilingus, touches the outer lip of the vagina, the act should also be considered as already consummating the crime of rape through sexual assault, not the crime of acts of lasciviousness.* Notwithstanding, in the present case, such logical interpretation could not be applied. It must be pointed out that the victim testified that Ireno only touched her private part and licked it, but did not insert his finger in her vagina. This testimony of the victim, however, is open to various interpretation, since it cannot be identified what specific part of the vagina was defiled by Ireno. Thus, in conformity with the principle that the guilt of an accused must be proven beyond reasonable doubt, the statement cannot be the basis for convicting Ireno with the crime of rape through sexual assault.[95] (Emphasis supplied)

People v. Bonaagua considers a woman's private organ since most if not all existing jurisprudence on rape involves a woman victim. Nevertheless, this interpretation can apply by analogy when the victim is a man in that the slightest penetration to the victim's anal orifice consummates the crime of rape through sexual assault.

The gravamen of the crime is the violation of the victim's dignity. The degree of penetration is not important. Rape is an "assault on human dignity."[96]

People v. Quintos[97] discussed how rape causes incalculable damage on a victim's dignity, regardless of the manner of its commission:

> The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of

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93 *Rollo*, p. 59, *citing* TSN, September 11, 2003.
94 G.R. No. 188897, June 6, 2011, 650 SCRA 620 [Per J. Peralta, Second Division].
95 Id. at 640.
96 *People v. Jalosjos*, 421 Phil. 43, 54 (2001) [Per J. Ynares-Santiago, En Banc].
97 G.R. No. 199402, November 12, 2014 [Per J. Leonen, Second Division].

> another person, the damage to the victim's dignity is incalculable. Child sexual abuse in general has been associated with negative psychological impacts such as trauma, sustained fearfulness, anxiety, self-destructive behavior, emotional pain, impaired sense of self, and interpersonal difficulties. Hence, one experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.
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> "The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.
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> Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.
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> However, the discriminatory treatment of these two acts with the same result was not raised in this case. Acknowledging that every presumption must be accorded in favor of accused in criminal cases, we have no choice but to impose a lesser penalty for rape committed by inserting the penis into the mouth of the victim.[98] (Citations omitted)

We affirm petitioner's conviction but modify the penalty imposed by the lower court to the penalty under Article III, Section 5(b) of Republic Act No. 7610 known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act":[99]

> **SEC. 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***.
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> The penalty of reclusion temporal in its medium period to reclusion perpertua shall be imposed upon the following:
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> . . . .
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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 and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case maybe: 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***;

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98 Id.

99 Rep. Act No. 7610 was approved on June 17, 1992.

(Emphasis supplied)

The Implementing Rules and Regulations of Republic Act No. 7610 defines "lascivious conduct":

> [T]he 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.[100]

In *People v. Chingh*,[101] the accused was charged with rape "for inserting his fingers and afterwards his penis into the private part of his minor victim[.]"[102] The Court of Appeals found the accused guilty of two counts of rape: statutory rape and rape through sexual assault.[103] This court modified the penalty imposed for rape through sexual assault to the penalty provided in Article III, Section 5(b) of Republic Act No. 7610, discussing as follows:

> It is undisputed that at the time of the commission of the sexual abuse, VVV was ten (10) years old. This calls for the application of R.A. No. 7610, or "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," which defines sexual abuse of children and prescribes the penalty therefor in Section 5(b), Article III, to wit:
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> . . . .
>
> In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is *prision mayor*, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.
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> ***The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article 366, in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of***

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100 *See Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243, 254 [Per J. Carpio, Second Division]; *See also People v. Chingh*, G.R. No. 178323, March 16, 2011, 645 SCRA 573, 587 [Per J. Peralta, Second Division].

101 G.R. No. 178323, March 16, 2011, 645 SCRA 573 [Per J. Peralta, Second Division].

102 Id. at 577.

103 Id. at 580.

> ***reclusion temporal in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by prision mayor. This is undeniably unfair to the child victim.*** To be sure, 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. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still 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."[104] (Emphasis supplied, citations omitted)

Thus, "for Rape Through Sexual Assault under paragraph 2, Article 266-A, [the accused Chingh was] 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."[105]

The imposable penalty under Republic Act No. 7610, Section 5(b) "for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." This penalty is higher than the imposable penalty of *prision correccional* for acts of lasciviousness under Article 336 of the Revised Penal Code.

In enacting Republic Act No. 7610, the legislature intended to impose a higher penalty when the victim is a child.

The fact that XXX was only 10 years old when the incident happened was established by his birth certificate, and this was admitted by the defense.[106] His age of 10 years old was alleged in the Information.[107] The higher penalty under Republic Act No. 7610, as discussed in *People v. Chingh,* applies in this case.

Having sex with a 10-year-old is child abuse and is punished by a special law (Republic Act No. 7610). It is a progression from the Revised Penal Code to provide greater protection for children. Justice Velasco suggests that this is not so. He anchors his view on his interpretation that Republic Act No. 7610 requires a showing that apart from the actual coerced sexual act on the 10-year-old, the child must also be exploited by prostitution or by other sexual acts. This view is inaccurate on grounds of verba legis and ratione legis.

The first paragraph of Article III, Section 5 of Republic Act No. 7610 clearly provides that "children . . . who . . . due to the coercion . . . of any

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104 Id. at 586–588.
105 Id. at 589.
106 *Rollo*, p. 62.
107 Id. at 54.

adult . . . indulge in sexual intercourse . . . are deemed to be children exploited in prostitution and other sexual abuse." The label "children exploited in . . . other sexual abuse" inheres in a child who has been the subject of coercion and sexual intercourse.

Thus, paragraph (b) refers to a specification only as to who is liable and the penalty to be imposed. The person who engages in sexual intercourse with a child already coerced is liable.

It does not make sense for the law not to consider rape of a child as child abuse. The proposal of Justice Velasco implies that there has to be other acts of a sexual nature other than the rape itself that will characterize rape as child abuse. One count of rape is not enough. Child abuse, in his view, is not yet present with one count of rape.

This is a dangerous calculus which borders on judicial insensitivity to the purpose of the law. If we adopt his view, it would amount to our collective official sanction to the idea that a single act of rape is not debilitating to a child. That a single act of rape is not a tormenting memory that will sear into a child's memory, frame his or her view of the world, rob him or her of the trust that will enable him or her to have full and diverse meaningful interactions with other human beings. In my view, a single act of sexual abuse to a child, by law, is already reprehensible. Our society has expressed that this is conduct which should be punishable. The purpose and text of the law already punish that single act as child abuse.

Rape is rape. Rape of a child is clearly, definitely, and universally child abuse.

Justice Velasco further observes that the right to due process of the accused will be violated should we impose the penalty under Republic Act No. 7610. I disagree.

The Information was clear about the facts constitutive of the offense. The facts constitutive of the offense will suggest the crime punishable by law. The principle is that ignorantia legis non excusat. With the facts clearly laid out in the Information, the law which punishes the offense should already be clear and the accused put on notice of the charges against him.

Additionally, there is no argument that the accused was not represented by counsel. Clear from the records is the entry and active participation of his lawyer up to and including this appeal.

On the award of damages, we maintain the amount of □30,000.00 in favor of XXX as a victim of rape through sexual assault, consistent with jurisprudence.[108]

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[108] *See People v. Garcia*, G.R. No. 206095, November 25, 2013, 710 SCRA 571, 588 [Per J. Mendoza, Third Division]; *People v. Lomaque*, G.R. No. 189297, June 3, 2013, 697 SCRA 383, 410 [Per J. Del

This court has stated that "jurisprudence from 2001 up to the present yields the information that the prevailing amount awarded as civil indemnity to victims of simple rape committed by means other than penile insertion is ₱30,000."[109]

This statement considered the prevailing situation in our jurisprudence where victims of rape are all women. However, as in this case, men can also become victims of rape through sexual assault, and this can involve penile insertion.

WHEREFORE, the Court of Appeals Decision in CA-G.R. C.R. No. 34387 dated August 28, 2013 is **AFFIRMED** with **MODIFICATION** in that for rape through sexual assault under Article 266-A, paragraph 2, accused-appellant Richard Ricalde 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. He is ordered to pay the victim civil indemnity in the amount of ₱30,000.00 and moral damages likewise in the amount of ₱30,000.00, both with interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

Castillo, Second Division]; *Pielago v. People*, G.R. No. 202020, March 13, 2013, 693 SCRA 476, 488 and 489 [Per J. Reyes, First Division]; *People v. Soria,* G.R. No. 179031, November 14, 2012, 685 SCRA 483, 508 [Per J. Del Castillo, Second Division].

109 *People v. Dominguez*, G.R. No. 191065, June 13, 2011, 651 SCRA 791, 806 [Per J. Sereno (now C.J.), Third Division], *citing People v. Soriano*, 436 Phil. 719, 757 (2002) [Per Curiam, En Banc], *People v. Palma*, 463 Phil. 767, 784 (2003) [Per J. Vitug, En Banc], *People v. Olaybar*, 459 Phil. 114, 129 (2003) [Per J. Vitug, En Banc], *People v. Suyu*, 530 Phil. 569, 597 (2006) [Per J. Callejo, Sr., First Division], *People v. Hermocilla*, 554 Phil. 189, 212 (2007) [Per J. Ynares-Santiago, Third Division], *People v. Fetalino*, 552 Phil. 254, 279 (2007) [Per J. Chico-Nazario, Third Division], *People v. Senieres*, 547 Phil. 674, 689 (2007) [Per J. Tinga, Second Division], *Flordeliz v. People*, 628 Phil. 124, 143 (2010) [Per J. Nachura, Third Division], *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452 [Per J. Del Castillo, First Division].

ANTONIO T. CARPIO
Associate Justice
Chairperson

Please see Concurring + Dissenting Opinion

PRESBITERO J. VELASCO, JR.
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice