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conspiracy charge could amount to a prosecution for general criminality resulting in a finding of guilt by association. The courts should, at all times, guard against this possibility so that the constitutional rights of an individual are not curbed or clouded by the web of circumstances involved in a conspiracy charge.[29]

Corollarily, petitioner prays in G.R. No. 148468 for this Court to issue a writ of *habeas corpus*. The Amended Information being fatally defective, it is imperative that petitioner be dropped from the Amended Information and proceeded against under a new one charging the proper offense. In the absence of a standing case against him, the issuance of a writ of *habeas corpus* is in order."[30]

WHEREFORE, I vote to *GRANT* the petitions in G.R. No. 148769 and G.R. No. 148468.

EN BANC

[G.R. No. 149199. January 28, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NEMESIO BON,** *accused-appellant.*

SYNOPSIS

Accused-appellant was found guilty by the trial court of the crime of rape for sexually abusing his six-year old niece. He was sentenced to suffer the supreme penalty of death. Hence, this automatic review of the case.

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[29] *Goldberg vs. State, supra.*

[30] *Aleria, Jr. vs. Velez*, 298 SCRA 611 (1998).

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Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the law in force at the time of the commission of the offense, 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 or demented. Carnal knowledge is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman. The Supreme Court ruled that absent direct proof of carnal knowledge, appellant cannot be convicted of rape. It appeared that in the "Sinumpaang Salaysay" of the victim, she never claimed that appellant's penis grazed or touched her private parts. The presence of a deep healed laceration on the hymen of the victim does not conclusively prove carnal knowledge. The victim likewise testified that appellant removed her underwear, inserted his finger into and licked her vagina. Under the present law on rape, insertion of one's finger into the genital of another constitutes "rape through sexual assault." This law, however, found no application in the case at bar, considering that the governing law at the time of the commission of the crime was Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, where insertion of one's finger into the genitals of another does not amount to rape. Nevertheless, appellant is not completely without liability. Appellant can be convicted of acts of lasciviousness because it is included in rape. In the case at bar, all the elements of the offense were established, making appellant liable for the crime of acts of lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code in relation to R.A. No. 7610 or the Child Abuse Law. As evidenced by her birth certificate, the victim was six years of age at the time of the commission of the offense. Appellant was sentenced to suffer an indeterminate prison term.

SYLLABUS

1. CRIMINAL LAW; RAPE; HOW COMMITTED.— Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, the law in force at the time of the commission of the offense on August 19, 1997, 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

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woman is deprived of reason or otherwise unconscious; and (3) When the woman is under twelve years of age or demented.

2. ID.; ID.; CARNAL KNOWLEDGE, DEFINED.— *Carnal knowledge* is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman. In *People v. Campuhan,* we held that the touching of the external genitalia by the penis capable of consummating the sexual act should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the mons pubis or the pudendum.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY NOT DISTURBED ON APPEAL; EXCEPTION; CASE AT BAR.— The general rule is that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the result of the case. However, a careful review of the evidence on record of the case compels us to take exception to the aforesaid rule. The prosecution has failed to discharge its *onus* of proving, beyond reasonable doubt the guilt of accused-appellant for the crime of rape. Specifically, the evidence adduced by the prosecution does not conclusively establish the element of carnal knowledge.

4. CRIMINAL LAW; RAPE; ACCUSED CANNOT BE CONVICTED OF THE CRIME ABSENT DIRECT PROOF OF CARNAL KNOWLEDGE; CASE AT BAR.— Absent direct proof of carnal knowledge, accused-appellant cannot be convicted of rape. It appears that in the "Sinumpaang Salaysay" of the victim, she never claimed that accused-appellant's penis grazed or touched her private parts. According to her, he committed the following acts: *"Sinundot-sundot ang pekpek ko, dinilaan ang pekpek ko."*

5. ID.; ID.; PRESENCE OF DEEP HEALED LACERATION ON HYMEN OF VICTIM DOES NOT CONCLUSIVELY PROVE CARNAL KNOWLEDGE.— The presence of a deep healed laceration on the hymen of the victim does not conclusively prove carnal knowledge. As testified to by Dr. Suguitan, the laceration could have been caused by introduction of any of

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the following objects into the victim's vagina: (1) finger; (2) erect penis; or (3) any other blunt instrument that can be inserted in the vagina. Standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence proving carnal knowledge that rape may be deemed to have been established.

6. **REMEDIAL LAW; EVIDENCE; IN CRIMINAL CASES, SPECULATION AND PROBABILITIES CANNOT TAKE THE PLACE OF PROOF REQUIRED TO ESTABLISH THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT.**— [F]rom the testimony of Violeta, it is easy to speculate that the victim was raped. But in criminal cases, speculation and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment.

7. **CRIMINAL LAW; RAPE; REPUBLIC ACT NO. 8353 (THE ANTI-RAPE LAW OF 1997); INSERTION OF ONE'S FINGER INTO THE GENITAL OF ANOTHER CONSTITUTES RAPE THROUGH SEXUAL ASSAULT.**— Under the present law on rape, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353 (or the "The Anti-Rape Law of 1997" which took effect on October 22, 1997), and interpreted in *People v. Soriano,* insertion of one's finger into the genital of another constitutes "rape through sexual assault." This law, however, finds no application in the case at bar, considering that the governing law at the time of the commission of the crime on August 19, 1997 was Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, where insertion of one's finger into the genitals of another does not amount to rape.

8. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; ALTHOUGH THE INFORMATION CHARGED THE CRIME OF RAPE, ACCUSED CAN BE CONVICTED OF ACTS OF LASCIVIOUSNESS BECAUSE IT IS INCLUDED IN RAPE.**— In *Dulla v. Court of Appeals, et al.,* we held that although the information charged the crime of rape, accused-appellant can be convicted of acts of lasciviousness because it is included in rape. Rule 120, Sec. 4 of the Rules of Court states: "*Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint

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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 that which is proved."

9. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; ELEMENTS.— The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and 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.

10. ID.; REPUBLIC ACT NO. 7610 (THE CHILD ABUSE LAW); LASCIVIOUS CONDUCT, DEFINED.— Section 32, Article XIII, of the Implementing Rules and Regulations of RA 7610 or the Child Abuse Law defines lascivious conduct, as follows: "[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."

11. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES OF ACTS OF LASCIVIOUSNESS, THE LONE TESTIMONY OF VICTIM, IF CREDIBLE, IS SUFFICIENT TO ESTABLISH THE GUILT OF ACCUSED.— In cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Such is the testimony of victims who are young, immature, and have no motive to falsely testify against the accused, as in the instant case.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

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DECISION

YNARES-SANTIAGO, *J.*:

For automatic review is the decision[1] of the Regional Trial Court of Caloocan City, Branch 128, in Criminal Case No. C-54211, finding accused-appellant Nemesio Bon guilty beyond reasonable doubt of raping 6-year old Maricris Bonode, and imposing upon him the penalty of death.

The Information filed against accused-appellant reads:

> That on or about the 19th day of August 1997 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design and by means of force and intimidation and taking advantage of the innocence and minority of one MARICRIS BONODE, a minor of 6 years old, did then and there willfully, unlawfully and feloniously lie and have carnal knowledge with said MARICRIS BONODE, against her will and without her consent.
>
> Contrary to law.[2]

On November 9, 1998, accused-appellant pleaded not guilty.[3] Thereafter, trial on the merits followed.

The facts are as follows: The victim, Maricris Bonode, was at the time material to this case 6 years of age and living with her family at 128 Bearbrand Alley, Pangako Street, Bagong Barrio, Caloocan City. Also staying in their house was accused-appellant, the eldest brother of Violeta Bonode, the victim's mother.[4]

At about 3:00 in the afternoon of August 19, 1997, the victim was playing on the upper level of their house while Violeta

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[1] Penned by Judge Silvestre H. Bello, Jr.

[2] *Rollo*, p. 5.

[3] Records, p. 14.

[4] TSN, January 25, 1999, pp. 3-7.

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was downstairs washing their clothes. After Violeta finished her laundry, she went upstairs and saw accused-appellant lying on top of the victim. They were fully clothed when she saw them. He had his pants on while Maricris was wearing "*sando* and shorts." Upon seeing Violeta, accused-appellant immediately stood up and ran downstairs. Maricris also ran downstairs crying.[5]

Violeta asked her daughter about the incident but the latter refused to answer and just cried. The following morning, Violeta learned from her youngest daughter that accused-appellant sexually abused Maricris. When confronted, the victim told her that accused-appellant poked (*sinundot*) her private part.[6]

Violeta feared accused-appellant so she chose not to confront him about the incident. Instead, she transferred to Atimonan, Quezon with her family. Sometime in January 1998, Violeta learned that he was in jail for acts of lasciviousness committed on the daughter of her sister-in-law. Emboldened by his arrest, Violeta revealed to her husband that accused-appellant molested their daughter. Thus, a complaint for rape was filed against him.[7]

On January 21, 1998, Dr. Tomas D. Suguitan, Medico-Legal Officer of the PNP Crime Laboratory examined the victim. Said examination yielded the following results:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child. Breasts are underdeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed laceration at 5 o'clock position. External vaginal orifice admits tip of the examiner's smallest finger.

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[5] *Ibid.*, pp. 7-10; 29-30.

[6] *Id.*, pp. 10-11.

[7] *Id.*, pp. 35-49.

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CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of application of any form of violence.[8]

Testifying in his own behalf, accused-appellant denied the accusation against him and claimed that Violeta filed the rape case against him because she was influenced by her sister-in-law who filed a case for acts of lasciviousness against him. He narrated that he lived with the family of Maricris and that she and her 2 other sisters were close to him. At around 2:00 in the afternoon of August 19, 1997, when he went upstairs to sleep, the victim and her sisters followed and lay beside him. Later, the three children went downstairs. After some time, Maricris came back and lay on top of him with her face pressed to his chest. He heard a noise from the stairs, so he got up and lay Maricris on her back. It turned out that the noise came from Violeta, who looked angrily at him. Violeta must have thought that he abused her daughter because she saw him in the act of laying the victim on her back.[9]

In its decision of May 7, 2001, the trial court found accused-appellant guilty of rape committed on a child below seven (7) years of age. He was sentenced to suffer the penalty of death, pursuant to Article 335 of the Revised Penal Code as amended by Republic Act No. 7659. The dispositive portion of the decision reads:

WHEREFORE, in view of all the foregoing premises, the accused Nemesio Bon is found guilty beyond reasonable doubt and is hereby sentenced to death by lethal injection.

The accused is also ordered to pay Maricris Bon the amount of ₱50,000.00 as moral damages and ₱75,000.00 as civil indemnity. There shall be no subsidiary imprisonment in case of insolvency.

Further, he shall suffer all the accessory penalties attached to the penalty provided for by law.

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[8] Exhibit "D", *Rollo*, p. 106.

[9] TSN, March 13, 2000, pp. 2-11.

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The City Jail Warden of Caloocan City is hereby ordered to transfer the accused Nemesio Bon to the National Bilibid Prisons, Muntinlupa City for the service of his sentence.

Let the records of this case be forwarded to the Supreme Court for automatic review.

SO ORDERED.[10]

In view of the imposition of the death penalty, the case is now before us on automatic review, pursuant to Article 47 of the Revised Penal Code, as amended.

Under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,[11] the law in force at the time of the commission of the offense on August 19, 1997, 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 or demented. *Carnal knowledge* is defined as the act of a man having sexual intercourse or sexual bodily connections with a woman.[12] In *People v. Campuhan*,[13] we held that the touching of the external genitalia by the penis capable of consummating the sexual act should be understood as inherently part of the entry of the penis into the labia of the female organ and not mere touching alone of the mons pubis or the pudendum.

The general rule is that factual findings by the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could alter the result of the case.[14]

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[10] *Rollo*, p. 19.

[11] Republic Act No. 8353, or the Anti-Rape Law of 1997 took effect on October 22, 1997.

[12] *People v. Domantay*, 307 SCRA 1, 21 [1999]; citing *People v. Evangelista*, 282 SCRA 37 [1997]; *People v. Orita*, 184 SCRA 105 [1990].

[13] 329 SCRA 270, 279-280 [2000].

[14] *People v. Barrias*, 360 SCRA 150, 156 [2001].

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However, a careful review of the evidence on record of the case compels us to take exception to the aforesaid rule. The prosecution has failed to discharge its *onus* of proving, beyond reasonable doubt the guilt of accused-appellant for the crime of rape. Specifically, the evidence adduced by the prosecution does not conclusively establish the element of carnal knowledge. As testified to by the victim, accused-appellant removed her underwear, inserted his finger into and licked her vagina, thus:

Q. What did your uncle [do] to you?
A. He kissed my vagina.

Q. And after your uncle kissed your vagina, what did he do next if any?
A. He was pulling down my panty.

Q. What else did he do to your vagina?
A. *SINUNDOT PO.*

x x x x x x x x x

Q. You said your uncle "*SINUNDOT*" your vagina, what did he use when he *SINUNDOT* your vagina?
A. Hands, sir.

Q. When your uncle "*SINUNDOT*" your vagina with his finger, how did you feel?
A. *MASAKIT PO.*

x x x x x x x x x

Q. You said that your uncle kissed your vagina, how did he kiss your vagina?
A. He licked my vagina. "*DINILAAN PO.*"[15]

It is therefore clear from the foregoing testimony that accused-appellant did not have sexual intercourse or sexual bodily connections with the victim. Absent direct proof of carnal knowledge, accused-appellant cannot be convicted of rape.

It appears that in the "Sinumpaang Salaysay"[16] of the victim, she never claimed that accused-appellant's penis grazed or

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[15] TSN, September 28, 1999, pp. 4-5.

[16] Dated January 26, 1998, Exhibit "F", Records, p. 109.

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touched her private parts. According to her, he committed the following acts: "*Sinundot-sundot ang pekpek ko, dinilaan ang pekpek ko.*"

The presence of a deep healed laceration on the hymen of the victim does not conclusively prove carnal knowledge.[17] As testified to by Dr. Suguitan, the laceration could have been caused by introduction of any of the following objects into the victim's vagina: (1) finger; (2) erect penis; or (3) any other blunt instrument that can be inserted in the vagina.[18] Standing alone, a physician's finding that the hymen of the alleged victim was lacerated does not prove rape. It is only when this is corroborated by other evidence proving carnal knowledge that rape may be deemed to have been established.[19]

Likewise, the testimony of Violeta failed to establish the element of carnal knowledge. Violeta saw that accused-appellant was lying on tóp of the victim; and that accused-appellant and the victim were fully clothed. Note that she never witnessed any sexual act, thus:

Q. And what you saw precisely was that they were playing on August 19, 1997, when you went upstairs, is that [what] you imply?
A. No, sir.

Q. But you admit that Mr. Bon, your brother, was fully dressed?
A. Yes, sir.

Q. Also, his pants was on (*sic*)?
A. Yes, sir.

Q. And you also saw your daughter was fully dressed or clothed?
A. Yes, sir.

Q. Was she still in school uniform?
A. No more, sir.

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[17] *People v. Domantay, supra.*

[18] TSN, December 7, 1998, p. 6.

[19] *People v. Domantay, supra.*

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Q. What was she wearing at the down portion (sic)?
A. Maricris was wearing *sando* and shorts, sir.

Q. When you said Maricris was underneath your brother Nemesio, you did not see her face?
A. I saw her face, sir.

Q. What [was the] precise position of the body of the accused when for the first time you saw him on top of her?
A. He was lying down on top of my daughter, sir.

Q. When you saw first the lower portion of his body, both feet (sic)?
A. I saw his whole body, sir.

Q. You said the whole body, you also noticed where his hand [was]?
A. (Witness demonstrating that both hands of Nemesio was spread.)

Q. That is precisely what you saw and immediately, he stood up and went down, is that what you mean?
A. He suddenly stood up and he did not know what to do.

Q. Did [he] try to explain what he was doing?
A. I did not ask him because I got hurt, sir.[20]

Similarly, in *People v. Contreras*,[21] all that the prosecution was able to establish was the accused "sitting on the floor, his fly open, and his sex organ out, while [the victim] was sitting on his lap, facing him, her legs spread apart, and without any underwear on." In the said case, we ruled that since there was no direct evidence showing that the accused was able to insert his organ into the victim's vagina or that his penis made contact with the labia, he cannot be convicted of rape.

Verily, from the testimony of Violeta, it is easy to speculate that the victim was raped. But in criminal cases, speculation and probabilities cannot take the place of proof required to

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[20] TSN, January 25, 1999, pp. 29-31.

[21] 338 SCRA 622, 640 [2000].

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establish the guilt of the accused beyond reasonable doubt. Suspicion, no matter how strong, must not sway judgment.[22]

Under the present law on rape, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353 (or the "The Anti-Rape Law of 1997" which took effect on October 22, 1997), and interpreted in *People v. Soriano*,[23] insertion of one's finger into the genital of another constitutes "rape through sexual assault." This law, however, finds no application in the case at bar, considering that the governing law at the time of the commission of the crime on August 19, 1997 was Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, where insertion of one's finger into the genitals of another does not amount to rape.

Nevertheless, accused-appellant is not completely without liability. In *Dulla v. Court of Appeals, et al.*,[24] we held that although the information charged the crime of rape, accused-appellant can be convicted of acts of lasciviousness because it is included in rape. Rule 120, Sec. 4 of the Rules of Court states:

> *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 that which is proved.

The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise

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[22] *People v. Tayag*, 329 SCRA 491, 500 [2000]; citing *People v. Balderas*, 276 SCRA 470 [1997].

[23] G.R. Nos. 142779-95, August 29, 2002.

[24] 326 SCRA 32, 47 [2000].

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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.

Section 32, Article XIII, of the Implementing Rules and Regulations of RA 7610 or the Child Abuse Law defines lascivious conduct, as follows:

"[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."

In the case at bar, all the elements of the offense were established, making accused-appellant liable for the crime of acts of lasciviousness, as defined and penalized under Article 366 of the Revised Penal Code in relation to R.A. No. 7610 or the Child Abuse Law.[25] As evidenced by her birth certificate,[26] the victim was 6 years of age at the time of the commission of the offense on August 19, 1997, having been born on November 3, 1991. Accused-appellant's acts of removing the victim's underwear, inserting his finger into and licking her vagina, and lying on top of her, constitute lascivious conduct intended to arouse or gratify his sexual desire. Indeed, the victim's testimony that accused-appellant performed the said lecherous acts should be given full faith and credence. In cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused. Such is the testimony of victims who are young, immature, and have no motive to falsely testify against the accused, as in the instant case.[27]

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[25] *People v. Jalosjos*, G.R. Nos. 132875-76, November 16, 2001; *People v. Cadag*, 356 SCRA 508, [2001].

[26] Records, p. 110.

[27] *People v. Dichoson*, 352 SCRA 56, 66 [2001]; citing *People v. Acala*, 307 SCRA 330 [1999]; *People v. Abordo*, 258 SCRA 571 [1996]; *People v. Fraga*, 330 SCRA 669 [2000]; *People v. Molina*, 53 SCRA 495 [1973].

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Article III, Section 5, of Republic Act No. 7610, provides:

Child Prostitution and other Sexual Abuse. — Children, whether male or female, who for money or 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 x x x x x

(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, paragraphs 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;* x x x. (Emphasis supplied)

Considering that the victim in the instant case was only 6 years old[28] at the time the crime was committed, accused-appellant should be meted the penalty of *reclusion temporal* in its medium period. In the absence of any mitigating or aggravating circumstance, the penalty shall be imposed in its medium period, which has a range of fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[29] Notwithstanding that R.A. No. 7610 is a special law, accused-appellant may enjoy the benefits of the Indeterminate Sentence Law.[30] Thus, he shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by the Code. The penalty next lower in degree is *prision mayor*, the range of which is from

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[28] Birth Certificate, Exhibit "G", Records, p. 110.

[29] *Dulla v. Court of Appeals, supra.*

[30] *People v. Jalosjos, supra,* citing *People v. Simon*, 234 SCRA 555 [1994].

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six (6) years and one (1) day to twelve (12) years. Hence, for the crime of acts of lasciviousness, accused-appellant shall suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.[31]

In line with current jurisprudence, accused-appellant is liable to pay the victim the amount of ₱30,000.00 as moral damages.[32]

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Caloocan City, Branch 128, in Criminal Case No. C-54211, finding accused-appellant guilty beyond reasonable doubt of rape and sentencing him to death, is *MODIFIED*. Accused-appellant Nemesio Bon is found guilty beyond reasonable doubt of the crime of acts of lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code, in relation to Article III, Section 5 (b), of Republic Act No. 7610, and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum, and to pay the victim, Maricris Bonode the amount of ₱30,000.00 as moral damages.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.,* concur.

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[31] *Dulla v. Court of Appeals, et al., supra.*

[32] *People v. Solmoro, Jr.*, G.R. Nos. 139187-94, November 27, 2002; citing *People v. Pajarillo*, G.R. Nos. 143755-58; *People v. Santos*, G.R. Nos. 135254-56, November 13, 2001; citing *People v. Velasquez*, 352 SCRA 457, 483 [2001].