RECENT JURISPRUDENCE ON CRIMINAL LAW*

I. PRINCIPLES OF CRIMINAL LAW

A. *In Re: Correction/Adjustment of Penalty Pursuant to Republic Act No. 10951, In Relation to Hernan v. Sandiganbayan – Rolando Elbanbuena*[1]

With respect to felonies under the RPC, the Court has not hesitated to fully apply the amendments of R.A. No. 10951. In fact, it has recognized in *Hernan v. Sandiganbayan* that the reduction of penalties under the amendatory law constitutes an exceptional circumstance rendering the execution of final judgments in certain criminal cases, which may be affected by its retroactive application, unjust and inequitable.[2]

In this case, Rolando Elbanbuena was found guilty for three counts of the complex crime of Malversation of Public Funds through Falsification of Public or Commercial Documents, with said judgment attaining finality on August 10, 2000. Following the Court's ruling in *Hernan*, Elbanbuena sought the modification of the penalties in the judgment against him and prayed for his immediate release from incarceration.

The Office of the Solicitor General, however, commented that in applying R.A. No. 10951, the court must first modify and fix the actual penalty in view of the new law, and then determine if the accused has fully served the penalty as modified. This prompted the Court to issue the following guidelines for similar petitions to reopen final judgments, *viz.*:

> I. *Scope*. These guidelines shall govern the procedure for actions seeking (1) the modification, based on the amendments introduced by RA No. 10951, of penalties imposed by final judgments; and, (2) the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.
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> II. *Who may file*. The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

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* Cite as *Recent Jurisprudence on Criminal Law*, 93 PHIL. L.J. 942, [page cited] (2020).

[1] G.R. No. 237721, 875 SCRA 622, July 31, 2018.

[2] G.R. No. 217874, 874 SCRA 552, 577, Dec. 5, 2017.

III. *Where to file*. The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined. The case shall be raffled and referred to the branch to which it is assigned within three (3) days from the filing of the petition.

IV. *Pleadings*. (A) *Pleadings allowed*. The only pleadings allowed to be filed are the petition and the comment from the OSG. No motions for extension of time, or other dilatory motions for postponement, shall be allowed. The petition must contain a certified true copy of the Decision sought to be modified and, where applicable, the *mittimus* and/or a certification from the Bureau of Corrections as to the length of the sentence already served by petitioner-convict.

(B) *Verification*. The petition must be in writing and verified by the petitioner-convict himself.

V. *Comment by the OSG*. Within ten (10) days from notice, the OSG shall file its comment to the petition.

VI. *Effect of failure to file comment*. Should the OSG fail to file the comment within the period provided, the court, *motu proprio*, or upon motion of the petitioner-convict, shall render judgment as may be warranted.

VII. *Judgment of the court*. To avoid any prolonged imprisonment, the court shall promulgate judgment no later than ten (10) calendar days after the lapse of the period to file comment. The judgment shall set forth the following:

a. The penalty/penalties imposable in accordance with RA No. 10951;
b. Where proper, the length of time the petitioner- convict has been in confinement (and whether time allowance for good conduct should be allowed); and
c. Whether the petitioner-convict is entitled to immediate release due to complete service of his sentence/s, as modified in accordance with RA No. 10951. The judgment of the court shall be immediately executory, without prejudice to the filing before the Supreme Court of a special civil action under Rule 65 of the Revised Rules of Court where there is showing of grave abuse of discretion amounting to lack or excess of jurisdiction.

> VIII. *Applicability of the regular rules*. The Rules of Court shall apply to the special cases herein provided in a suppletory capacity insofar as they are not inconsistent therewith.

B. *Inmates of the New Bilibid Prison v. De Lima*[3]

The case resolves the issue on the legality of Section 4, Rule 1 of the Implementing Rules and Regulations of R.A. No. 10592,[4] which provides:

> Section 4. Prospective Application. – Considering that these Rules provide for new procedures and standards of behavior for the grant of good conduct time allowance as provided in Section 4 of Rule V hereof and require the creation of a Management, Screening and Evaluation Committee (MSEC) as provided in Section 3 of the same Rule, the grant of good conduct time allowance under the Republic Act No. 10592 shall be prospective in application.
>
> The grant of time allowance of study, teaching and mentoring and of special time allowance for loyalty shall also be prospective in application as these privileges are likewise subject to the management, screening and evaluation of the MSEC.[5]

The petitioners and intervenors in this case assail the validity of the prospective application of the grant of conduct time allowance (GCTA), time allowance for study, teaching and mentoring (TASTM), and special time allowance for loyalty (STAL), on the ground that they violate Article 22 of the RPC which provides for the retroactivity effect of penal laws insofar as favorable to persons guilty of a felony who are not a habitual criminal. The petitioners and intervenors raised arguments on the constitutionality of the subject IRR provision citing the rights to liberty and due process of law, the principle that penal laws beneficial to the accused are given retroactive effect, and the equal protection of law.

The Court invalidated the assailed implementing rule citing the well-entrenched principle in criminal law: *favorabilia sunt amplianda adiosa restrigenda* (penal laws which are favorable to the accused are given retroactive effect).[6]

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[3] Inmates of the New Bilibid Prison v. De Lima [hereinafter "Inmates"], G.R. No. 212719, June 25, 2019.

[4] An Act Amending Articles 29, 94, 97, 98 and 99 of the Revised Penal Code, as amended.

[5] Rep. Act No. 10592 Rules & Regs., r. I, § 4.

[6] *Inmates*, G.R. No. 212719.

In disposing of the case, the Court held that while R.A. No. 10592 does not define a crime or offence or provide, prescribe or establish a penalty, it is nevertheless considered a penal law because it has for its purpose and effect of diminishing the punishment attached to a crime.[7] Since the reduction on the length of the penalty of imprisonment is beneficial to both detention and convicted prisoners, Article 22 of the RPC applies. The Court noted that the prospective application of the beneficial provisions of R.A. No. 10592 would be disadvantageous to the petitioners and those who are similarly situated because it would preclude the decrease in the penalty and lengthens their stay in prison; thus making more onerous the punishment for the crimes committed.[8]

Furthermore, the establishment of the MSECs, the recommending body for the grant of GCTA and TASTM,[9] does not justify the prospective application of R.A. No. 10592 since nowhere in the said amendatory law was the formation of the MSECs set as a precondition before the beneficial provisions are applied.[10] It must be noted as well that a Classification Board has been handling the functions of the MSEC and implementing the provisions of the RPC on time allowances and therefore, an administrative and procedural restructuring should not prejudice the substantive rights of the persons deprived with liberty.[11]

The Court did not give credence to the argument of the respondent implementing officers as regards the complexity of the retroactive implementation of R.A. No. 10592. According to the Court, the standard behavior in granting GCTA remains to be "good conduct" and what constitutes "good conduct" has been unchanged through the years despite various amendments to the law.[12] Hence, what MSEC is left to do is to use the same standard of behavior as provided by law for the grant of allowances and refer to existing prison records.[13]

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[7] *Id.* at 19-20.
[8] *Id.* at 20.
[9] Rep. Act No. 10592 Rules & Regs., r. V.
[10] *Inmates*, G.R. No. 212719.
[11] *Id.* at 22.
[12] *Id.*
[13] *Id.* at 23.

C. *Cahulogan v. People*[14]

In 2011, the accused bought soda products worth P50,000.00 from a driver who had stolen these goods from his employer. The true owner of the products then lodged a criminal complaint against the accused for the crime of Fencing under P.D. No. 1612. The trial court found the accused guilty and sentenced him with the penalty of imprisonment for 10 years and 1 day of *prisión mayor*, as minimum, to 15 years of *reclusion temporal*, as maximum.

The Court affirmed his conviction but, nonetheless, acknowledged the resulting inconsistency in criminal law principles brought about by recent changes in the RPC's penalties. Prior to the enactment of P.D. No. 1612, a person who intentionally derives profit from a crime of theft or robbery can only be prosecuted for the same crime as a mere accessory.[15] P.D. No. 1612 then allowed an accessory of the theft or robbery who profits from the effects of the crime to be prosecuted either under the provisions of the RPC for the crimes of robbery or theft in relation to Article 19 thereof, as an accessory; or under P.D. No. 1612 as a principal.

In providing for harsher penalties to act as a stronger deterrent, P.D. No. 1612 adopted the graduation of amounts provided in Article 309 of the RPC for the penalties of theft. The Court saw, however, that with the amendments introduced under R.A. No. 10951, a person guilty of Fencing, who in principle is but a mere accessory of theft or robbery, is punished more severely than a person who is guilty as principal of theft. For instance, under P.D. No. 1612, a person who fenced a property worth more than P12,000.00 but not exceeding P22,000.00 pesos is punished with *prision mayor;*[16] whereas a principal in a crime of theft for same value is punished with *prision correccional.*[17]

Applying these laws, and exemplifying the inconsistency and the resulting inequity, the accused was meted with imprisonment for the indeterminate period of four years, two months, and one day of *prisión correccional*, as minimum, to 15 years of *reclusion temporal*, as maximum. In the end, the Court still upheld the text of P.D. No. 1612, but called out the political branches to propose and make the necessary corrective measures in the special criminal laws.

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[14] G.R. No. 225695, 860 SCRA 86, Mar. 21, 2018.

[15] REV. PEN. CODE, art. 19(1).

[16] Pres. Dec. No. 1612 (1979), §3(a).

[17] Rep. Act. No. 10951 (2017), §81.

II. CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

A. *People v. Dela Peña*[18]

The Court in *Dela Peña* was presented with an interesting question on the applicability of the law on piracy[19] if committed within a river bank.

The prosecution had established in the trial court that three men, one of them appellant Maximo Dela Peña, suddenly blocked and boarded a pump boat, which was at the time sailing near the mouth of a river located in Samar.[20] These men tied the passengers therein and took possession of the dried coconuts, jewelries, and even the engine of the boat.[21]

On appeal, the appellant asked the Supreme Court if he was properly convicted of the crime charged considering that the Information "did not state that the vessel in question was in Philippine waters."[22] Hence, he asserted, an essential element of the crime is lacking.[23]

The Court rejected appellant's argument and affirmed his conviction, noting that the information properly alleged that the crime happened "along the river bank of Barangay San Roque, Municipality of Villareal, Province of Samar."[24]

"Philippine waters" is pertinently defined under Presidential Decree (P.D.) No. 532 as "[A]ll bodies of water, such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the seabed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction."[25] It is clear, the Court concluded, that a river falls within the

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[18] People v. Dela Peña [hereinafter "Dela Peña"], G.R. No. 219581, 853 SCRA 565, Jan. 31, 2018.

[19] Pres. Dec. No. 532 or the Anti-Piracy and Anti-Highway Robbery Law of 1974 (1974).

[20] *Dela Peña*, 853 SCRA at 569.

[21] *Id.*

[22] *Id.* at 573.

[23] *See* Pres. Dec. No. 532 (1974), §2(d).

[24] *Dela Peña*, 853 SCRA at 573.

[25] §2(a).

definition of "Philippine waters,"[26] and piracy as punishable under P.D. No. 532 can be committed therein.

III. CRIMES AGAINST PUBLIC INTERESTS

A. *Ombudsman v. Santidad*[27]

This recent case illustrates an instance where the pronouncement of the Court in *Arias v. Sandiganbayan*[28] is inapplicable to exculpate a public officer from criminal liability for the violation of the anti-graft and corruption law. The case likewise discusses the nature of the offense of Falsification of Public Documents by a public officer under the RPC.

The accused was a public officer, being then the Director of the Procurement Supply and Property Management Service of the Department of Transportation and Communications (DOTC). He was charged with a violation of Article 171, paragraph 4 or Falsification of Public Documents by a public officer under the RPC and R.A. No. 3019[29] for having signed invoice receipts of property (IRP) purporting to transfer government vehicles to the rightful beneficiaries. Upon investigation, none of the recipients who acknowledged and signed the IRPs have actually received the subject vehicles. He was likewise administratively charged before the Office of the Ombudsman for Serious Dishonesty.

The Ombudsman found him administratively liable for Serious Dishonesty, while the Sandiganbayan found him guilty of Reckless Imprudence resulting to Falsification of Public Documents for having acted negligently when he failed to ascertain for himself the veracity of the narrations in the IRPs.

On appeal, Santidad invoked the doctrine in *Arias*, contending that he signed the IRPs after relying in good faith on the supporting documents which showed that the subject vans were delivered to the DOTC.[30] He asserted that to impute that his negligence sprouted from his omission to

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[26] *Dela Peña*, 853 SCRA at 574.

[27] Ombudsman v. Santidad [hereinafter "Santidad"], G.R. No. 207154, Dec. 5, 2019.

[28] Arias v. Sandiganbayan [hereinafter "Arias"], G.R. No. 81563, 180 SCRA 309, Dec. 19, 1989.

[29] The Anti-Graft and Corrupt Practices Act.

[30] *Santidad*, G.R. No. 207154.

verify the contents, correctness, and completeness of each and every supporting document of the IRPs would be irrational and illogical.[31]

In upholding the administrative liability of Santidad, the Court held that reliance to the pronouncement in *Arias* is untenable. In *Arias*, it was held that a head of office can rely on his subordinates to a reasonable extent, and there has to be some reason shown why any particular voucher must be examined in detail. [32] Accordingly, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.[33]

In this case, the Court noted the presence of peculiar circumstances that should have alerted Santidad to exercise a higher degree of circumspection, and to necessarily conduct a detailed examination and make a careful scrutiny of the documents submitted to him by his subordinates.[34] The peculiar circumstances found by the Court were: 1) the incompleteness and irregularity of the Certificate of Acceptance on its face, 2) discrepancy on the type and number of vehicles appearing on the Inspection Report, 3) discrepancy of the amount in the disbursement vouchers and the approved budget, 4) realignment of budget and inability of the contractor to deliver which would have entailed a preparation of another set of documents and probable disqualification of the winning bidder-contractor, and 5) spurious face value of the IRPs.[35] According to the Court, the documents contained "red flags that should have aroused a reasonable sense of suspicion or curiosity on him and which should have prompted him to exercise proper diligence if only to determine that he was not conforming to a fraudulent transaction."[36]

Nonetheless, the Court found the conviction for Reckless Imprudence resulting to Falsification of Public Documents improper. The Court explained that the same is an intentional felony committed by means of "*dolo*" or "malice" and thus, could not result from imprudence, negligence, lack of foresight or lack of skill.[37]

Under Article 171 of the RPC which defines and penalizes falsification of public documents, the perpetrator must perform the

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[31] *Id.* at 10-11.
[32] *Id.* at 15. *See also Arias*, 180 SCRA at 315-16.
[33] *Santidad*, G.R. No. 207154.
[34] *Id.*
[35] *Id.* at 11-12.
[36] *Id.* at 11.
[37] *Id.*

prohibited act with deliberate intent in order to incur criminal liability. Thus, the elements of falsification of public documents are as follows: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) he falsifies a document by committing any of the acts enumerated in Article 171 of the RPC.[38]

Furthermore, to warrant conviction for falsification of public documents by making untruthful statements in a narration of facts under Article 171, paragraph 4 of the RPC, it must be established beyond reasonable doubt that 1) the offender makes in a public document untruthful statements in a narration of facts; 2) that he has a legal obligation to disclose the truth of the facts narrated by him; and 3) the facts narrated by him are absolutely false.[39]

In view of the foregoing, falsification of public documents could not be committed by means of culpa. This felony also falls under the category of *mala in se* offenses which requires the attendance of criminal intent.[40] Being an intentional crime, falsification of public documents is conceptually incompatible with the element of imprudence obtaining in quasi-crimes.[41] It goes without saying that a deliberate intent to do an unlawful act is inconsistent with the idea of a felony committed by means of *culpa*. Hence, the crime of falsification of public documents could not be committed by means of reckless imprudence.[42]

IV. COMPREHENSIVE DANGEROUS DRUGS ACT

A. *People v. Sullano*[43]

The so-called war on drugs has led some of the authorities to be creative in invoking the Comprehensive Dangerous Drugs Act of 2002, as amended. *Sullano* depicts an attempt by the authorities to breathe a broad reading of some of the law's penal provisions in their unrelenting quest to purge illegal use of regulated narcotics.

The City Director of Butuan Police Office conducted a random drug test of 50 police officers, including accused PO1 Johnny K. Sullano.

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[38] *Id.* at 17.
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] G.R. No. 228373, 858 SCRA 274, Mar. 12, 2018.

Sullano's test showed a positive result for presence of methamphetamine. He was subsequently charged for violation of Section 15 of R.A. No. 9165. This provision allows criminal sanctions on "a person *apprehended or arrested*, who is found to be positive for use of any dangerous drug, after a confirmatory test."[44]

Sullano's criminal case was dismissed, however, on demurrer to evidence because the requirement of "apprehension or arrest" was conspicuously absent, for he merely voluntarily submitted himself to the random drug test. The People, meanwhile, appealed its case all the way to the Supreme Court on the theory that Section 15 must be read in conjunction with Section 36 of the law. The latter provision requires members of the police, *inter alios*, to undergo an annual mandatory drug test. Furthermore, the last paragraph thereof states that "[i]n addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act.[45]

The Court sustained Sullano's position on a textual reading of the *sine qua non* requirement of prior apprehension or arrest before a suspect found to be positive for use of dangerous drug can be prosecuted under Section 15. Furthermore, in responding to the People's theory, the Court narrowly construed the last paragraph of Section 36 to mean that the penalty of six months of rehabilitation for first time offenders provided in Section 15 should likewise apply to the groups of individuals required to undergo a mandatory drug test and found positive for use under Section 36. This interpretation tapers an expansive reading of the two provisions consistent with the principle that penal laws shall be strictly construed against the State.

V. CRIMES AGAINST PERSONS

A. *People v. Udang*[46]

This case dealt with the relation of rape under the Revised Penal Code (RPC) and sexual abuse as penalized in Republic Act (R.A.) No. 7610, *vis-à-vis* the principle of double jeopardy.

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[44] Rep. Act No. 9165 (2002), §15. (Italics supplied).

[45] §36.

[46] People v. Udang [hereinafter "Udang"], G.R. No. 210161, 850 SCRA 426, Jan. 10, 2018.

The appellant Bienvenido Udang was charged with two cases for violation of Article 266-A of the RPC *in relation* to Section 5(b) of R.A. No. 7610. He was accused of sexually abusing a minor less than 14 years old on two instances. The trial court found Udang guilty only of rape under the RPC, reasoning that to also charge him for sexual abuse under R.A. No. 7610 for the same act, will violate his right against double jeopardy—as a single criminal act would then be prosecuted twice. It should be noted, however, that the two Informations did not charge him with rape and sexual abuse simultaneously, but only with rape *in relation* to R.A. No. 7610, as the victim involved was then a minor.[47] The trial court concluded that all elements of rape have been clearly established based on the victim's testimony.

Although the Supreme Court affirmed Udang's conviction on appeal, it graciously responded to the trial court's disquisition on the right of the accused not to be put twice on double jeopardy. The relevant question posed is whether an accused can be charged with rape under Article 266-A(1) of the RPC *and* sexual abuse under Section 5(b) of R.A. No. 7610 without violating his right against double jeopardy.

Answering affirmatively, the Court compared the elements of both crimes and concluded that these crimes are not the same. For instance, the elements of rape by sexual intercourse are: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation.[48] Compare these with the elements of Section 5(b), R.A. No. 7610: (a) The accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child, whether male or female, is below 18 years of age.[49] As an example, the Court said that the element of "force or intimidation" in rape differs from "coercion or influence" in sexual abuse. Thus, Udang can be charged of both offenses arising from the same act.

The Court recognized, however, that its asserted doctrine in *Udang*, that "charging an accused with rape, under the [RPC], and with sexual abuse, under [R.A.] No. 7610, in case the offended party is a child 12 years old and above, will not violate the right of the accused against double jeopardy,"[50] is, nevertheless, contrary to what it said in *People v. Abay* that "if the victim is 12 years or older, the offender should be charged with *either* sexual abuse under

[47] *Id.* at 431-33.

[48] *See* People v. Espera, 718 Phil. 680, Oct. 2, 2013.

[49] People v. Villacampa, G.R. No. 216057, 850 SCRA 75, 89, Jan. 8, 2018.

[50] *Udang*, 850 SCRA at 430-31.

Section 5(b) of [R.A.] 7610 or rape under Article 266-A [...] of the [RPC,] [as] the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced."[51]

To remove this inconsistency, the Court proceeded to jettison this particular doctrine in *Abay* saying, quite emphatically, that it "*must therefore be abandoned.*"[52] This declaration of the Court, however, is unconstitutionally suspect in light of the constitutional edict—most familiar to the Court—that "no doctrine or principle of law laid down by the [Supreme Court] in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.[53]" *Udang* was rendered by the Court's third division so it cannot plausibly modify or reverse, much less explicitly "abandon" a particular doctrine in *Abay* as well as other cases that relied upon it.[54]

The Court then shifted gears and nonetheless concluded that the Informations against Udang actually charged him of sexual abuse, not of rape, as can be gleaned by reading the material allegations therein. The Informations clearly alleged Udang as having sexually abused the victim, thus, debasing, degrading, or demeaning the child's intrinsic worth or value.

B. *AAA v. BBB*[55]

This case involved a legal battle between a married couple, AAA and BBB.[56] The wife, AAA, filed a complaint against BBB for the alleged abuses inflicted upon her and their children as effects of BBB's supposed infidelity while working in Singapore.[57] BBB was subsequently indicted for violation of Section 5(i) of R.A. No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004 for the emotional and mental anguish wrought upon his wife and children.

The Regional Trial Court of Pasig City quashed the information, holding that it has no jurisdiction over the crime charged as the alleged

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[51] G.R. No. 177752, 580 SCRA 235, 240, Feb. 24, 2009. (Italics supplied, footnotes omitted.)

[52] *Udang*, 850 SCRA at 451. (Emphasis supplied).

[53] CONST. art. VIII, §4(3).

[54] *See Udang*, 850 SCRA at 451, n. 90 (listing cases that cited *Abay*'s doctrine).

[55] AAA v. BBB [hereinafter "AAA"], G.R. No. 212448, 851 SCRA 33, Jan. 11, 2018.

[56] The title of the case, where the names of parties have been deliberately concealed, is pursuant to Rep. Act. No. 9262 (2004), §44.

[57] *AAA*, 851 SCRA at 38-39.

extra-marital affair of BBB happened in Singapore.[58] AAA filed a petition for review on *certiorari*, bringing to fore the main issue as to "whether or not Philippine courts are deprived of territorial jurisdiction over a criminal charge of psychological abuse under R.A. No. 9262 when committed through marital infidelity and the alleged illicit relationship took place outside the Philippines."[59]

Ruling in favor of Philippine courts' jurisdiction, the Supreme Court said that R.A. No. 9262 does not limit abuses against women and children to physical violence alone, but in fact has perceptively recognized other forms of abuses such as psychological violence, as is readily apparent under Section 3(a), paragraph C, thereof.[60]

Under Section 5(i) of R.A. No. 9262, the elements of psychological violence are: (1) The offended party is a woman and/or her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.[61]

In applying the said provision to the case at bar, the Court pointed out that, contrary to the analysis of the trial court, the criminal provision does not punish BBB's act of marital infidelity *per se*, which concededly occurred outside the Philippines. Instead, said marital infidelity is no more than the means that could possibly result to psychological violence and inflict emotional or mental anguish[62] What the law contemplates, therefore, is the commission of psychological violence against the woman or child.

A fortiori, Section 7 of R.A. No. 9262 gives the complainant the option to file the case in the Regional Trial Court where the crime or any of its elements was committed, in the absence of a Family Court. Thus, acts punishable under R.A. No. 9262 may be classified as continuing or transitory crimes. In this case, the elements of psychological violence as well as

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[58] *Id.* at 39-40.
[59] *Id.* at 45.
[60] *Id.* at 46.
[61] *Id.* at 48, *citing* Dinamling v. People, 761 Phil. 356, June 22, 2015.
[62] *Id.* at 49.

emotional or mental anguish may occur in different places.[63] For AAA, she need only allege, at least, that the emotional or mental anguish occurred in the place where she resides, which in this case is Pasig City.[64] Hence, the trial court clearly had the jurisdiction to try the criminal case charged despite BBB's insistence that the allegation of marital infidelity occurred in Singapore.

C. *People v. XXX*[65]

The Supreme Court, in this case, held that the terms "common-law spouse" and "step-parent" are distinct terms bearing different legal meanings, which may not be used interchangeably. Thus, an allegation that the accused is the common-law spouse of the victim's mother must be sufficiently established.

The accused XXX was charged with a violation of Section 5(b), Article III of R.A. No. 7610, Statutory Rape, and Rape under Article 266-A, paragraph 1(d) of the RPC. The complainant AAA, then a 14-year-old girl at the time of the commission of the crime, alleged in the Informations that the accused was her stepfather.

While upholding the conviction, the Court highlighted the distinction between the terms "common-law spouse" and "step-parent" by turning the discussion on the qualifying circumstances attending the offense charged.

The trial court convicted the accused of qualified rape in view of the qualifying circumstances of minority and relationship—the accused being the common law spouse of the victim's mother. However, the Informations reveal that XXX was alleged as the stepfather of AAA.[66] Because of this, the Court agreed with the Court of Appeals that XXX may only be convicted of simple rape, due to the absence of proof that he was in fact AAA's stepfather.[67] Furthermore, the fact that the prosecution was able to establish that XXX was the common-law spouse of AAA's mother does not help because such circumstance was not alleged in the Information.[68]

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[63] *Id.* at 51.
[64] *Id.*
[65] G.R. No. 240441, Dec. 4, 2019.
[66] *Id.* at 15.
[67] *Id.*
[68] *Id.*

The Court emphasized that the terms "stepfather" and "common-law spouse" are two distinct terms that may not be used interchangeably. A stepdaughter is a daughter of one's spouse by previous marriage, while a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken is the offspring.[69] As such, the allegation that the victim is the stepdaughter of the accused requires competent proof and should not be easily accepted as factually true. The bare contention that the accused was married to the victim's mother is not enough, in the same manner that the victim's reference to the accused as her stepfather will not suffice. The best evidence of such relationship is the marriage contract.[70]

In this case, although the prosecution proved that the accused was in fact CCC's common-law spouse, this circumstance was not specified in the Information and therefore this cannot be appreciated against him.[71]

D. *People v. Tulagan*[72]

In this case, the Supreme Court took efforts to reconcile the provisions on Acts of Lasciviousness, Rape, and Sexual Assault under the RPC, as amended by R.A. No. 8353,[73] *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5(b) of R.A. No. 7610.[74]

The accused was charged and convicted of the crimes of sexual assault and statutory rape as defined under Article 266-A, paragraph 2 and 1(d) of the RPC, in relation to Article 266-B. The Court upheld the conviction; however, it made modifications as to the nomenclature of the crime, the penalty imposed, and the damages awarded.

As to the legislative history of anti-rape and child abuse laws, the Court discussed that prior to the effectivity of R.A. No. 8353 on October 22, 1997, acts constituting sexual assault under paragraph 2, Article 266-A of the RPC were punished as acts of lasciviousness under Article 334 of the RPC.[75] To be convicted of this felony, the following elements must be established: 1) that the offender commits any act of lasciviousness or

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[69] *Id. citing* People v. Hermocilla, G.R. No. 175830, 527 SCRA 296, 304, July 10, 2007.

[70] *Id. citing* People v. Abello, 582 SCRA 378, Mar. 25, 2009.

[71] *Id.*

[72] People v. Tulagan [hereinafter "Tulagan"], G.R. No. 227363. Mar. 12, 2019

[73] The Anti-Rape Law of 1997.

[74] The Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[75] *Tulagan*, G.R. No. 227363.

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 12 years of age.[76]

Subsequently, R.A. No. 7610 took effect on June 17, 1992, and provided for a specific definition for the term "lascivious conduct."[77] Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punishable under Article 336 of the RPC, but were transferred as a separate crime of "sexual assault" under Article 266-A, paragraph 2 of the RPC.[78]

The Court observed, however, that the term "rape by sexual assault" is a misnomer, because it is inconsistent with the traditional concept of rape which is carnal knowledge of a woman without her consent.[79] Sexual assault is a broader term which includes acts that gratify sexual desire, while the classic rape is particular and involves only the reproductive organs of a woman and a man. Furthermore, rape is severely penalized compared to sexual assault due to the possibility of unwanted procreation.[80]

The Court reviewed the deliberation of the House Representatives and found that it was not the intention of the legislature to redefine the traditional concept of rape; but rather, to merely upgrade the specific acts constituting acts of lasciviousness from a crime against chastity to a crime against persons as a matter of public policy and interest, in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent the extinguishment of criminal liability through express pardon by the offended party.[81]

In view of the foregoing, the Court summarized in the instant case the applicable laws, nomenclature of the offense, 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 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:

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[76] Sombillon, Jr. v. People, G.R. No. 175528, 601 SCRA 405, 414, Sept. 30, 2009.

[77] *See* Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

[78] *Tulagan*, G.R. No. 227363.

[79] *Id.*

[80] *Id.*

[81] *Id.* at 11.

1) For Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse:
    a. Where the victim is under 12 years old or demented, the nomenclature is "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period;
    b. Where the victim is 12 years old or below 18, or 18 under special circumstances, the nomenclature is "Lasciviousness Conduct under Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua;*
2) For Sexual Assault committed against children exploited in prostitution or other sexual abuse:
    a. Where the victim is under 12 years old or demented, the nomenclature is "Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period;
    b. Where the victim is 12 years old or below 18, or 18 under special circumstances, the nomenclature is "Lascivious Conduct under Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua;*
3) For Sexual Intercourse committed against children exploited in prostitution or other sexual abuse:
    a. Where the victim is under 12 years old or demented, the nomenclature is "Rape under Article 266-A(1) of the RPC," with imposable penalty of *reclusion perpetua*, provided that where the victim is below 7 years old, the imposable penalty is death;
    b. Where the victim is 12 years old or below 18, or 18 under special circumstances, the nomenclature is "Sexual Abuse under Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*;
4) For Rape by carnal knowledge:

a. Where the victim is under 12 years old or demented, the nomenclature is "Rape under Article 266-A(1) of the RPC in relation to Article 266-B of the RPC," with imposable penalty of *reclusion perpetua*, provided that where the victim is below 7 years old, the imposable penalty is death;
b. Where the victim is 12 years old or below 18, or 18 under special circumstances, the nomenclature is "Rape under Article 266-A(1) of the RPC in relation to Article 266-B of the RPC," with imposable penalty of *reclusion perpetua*;
c. Where the victim is 18 years old and above, the nomenclature is "Rape under Article 266-A(1) of the RPC," with imposable penalty of *reclusion perpetua*;

5) For Rape by sexual assault:
a. Where the victim is under 12 years old or demented, the nomenclature is "Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period;
b. Where the victim is 12 years old or below 18, or 18 under special circumstances, the nomenclature is "Lascivious Conduct under Section 5(b) of R.A. No. 7610," with imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*;
c. Where the victim is 18 years old and above, the nomenclature is "Sexual Assault under Article 266-A(2) of the RPC," with imposable penalty of *prision mayor*.[82]

These guidelines were culled by the Court from its rulings in *People v. Dimakuta*,[83] *People v. Quimvel*,[84] and *People v. Caoili*.[85] The Court likewise considered the policy of R.A. No. 7610 which is to "provide stronger deterrence and special protection to children from all forms of abuse,

[82] *Id.* at 29-30.
[83] G.R. No. 206513, 773 SCRA 228 (2015).
[84] G.R. No. 214497, 823 SCRA 192 (2017).
[85] G.R. No. 196848, 835 SCRA 107 (2017).

neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development."[86] These clarifications on the designation in the Information of the specific statute violated seek to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[87]

With regard to the element of "exploited under prostitution and other sexual abuse," the Court clarified once and for all that in construing such element, guidance must be sought from the provision of Section 5(b), Article III and Section 3, Article I of R.A. No. 7610.[88] Furthermore, the element of "exploited in prostitution" under Section 5(b) Article III of R.A. 7610 contemplates four scenarios namely: (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.[89] It is also emphasized that the same element does not cover a male child.[90]

On the other hand, the term "other sexual abuse" should be 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.[91] In view of the foregoing provisions, "other sexual abuse" is a broad term enough to include all other acts of sexual abuse other than prostitution.[92]

In relation to this, the majority is of the opinion that R.A. No. 7610 does not protect only a special class of children, i.e.: those who are "exploited in prostitution or subjected to other sexual abuse," but rather, it covers all crimes against them that are already punished by existing laws.[93] This interpretation is consistent with the policy "to provide stronger deterrence and special protection to children from all forms of abuse,

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[86] *Tulagan*, G.R. No. 227363.
[87] *Id.* at 31.
[88] *Id.* at 34.
[89] *Id.* at 35.
[90] *Id.*
[91] *Id.*
[92] *Id.* at 36.
[93] *Id.* at 37.

neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development."[94]

On the subject of damages, the Court provided the following guidelines for the sake of consistency and uniformity:

> 1) For Acts of Lasciviousness under Article 336 of the RPC where the victim is of legal age, the award of civil indemnity, moral damages and exemplary damages is at P20,000.00, respectively;
> 2) For Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610 where the victim is a child under 12 years old or is demented, the award of civil indemnity, moral damages and exemplary damages is at P50,000.00, respectively;
> 3) For Sexual Abuse or Lascivious Conduct under Section 5(b) of R.A. No. 7610 where the victim is a child 12 years old and below 18, or above 18 under special circumstances:
>   a. If the penalty imposed is *reclusion perpetua*, the award of civil indemnity, moral damages and exemplary damages is at P75,000.00, respectively;
>   b. If the penalty imposed is within the range of *reclusion temporal* medium, the award of civil indemnity and moral damages is at P50,000.00, respectively;
> 4) For Sexual Assault under Article 266-A(2) of the RPC where the victim is of legal age, the award of civil indemnity, moral damages and exemplary damages is at P30,000.00, respectively;
>
> 5) For Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610 where the victim is a child under 12 years old or is demented, the award of civil indemnity, moral damages and exemplary damages is at P50,000.00, respectively.[95]

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[94] *Id.*

[95] *Id.* at 62-63.

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