Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RODAN A. BANGAYAN,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 235610

Present:

LEONEN,
Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

September 16, 2020
MisPDCBatt

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DECISION

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 28, 2017 of the Court of Appeals finding Rodan Bangayan *y* Alcaide (Bangayan) guilty beyond reasonable doubt of violation of Section 5(b), Article III of Republic Act No. (R.A) 7610, the dispositive portion of which reads:

> **FOR THE STATED REASONS,** the appeal is **DENIED.** The assailed Decision of the Regional Trial Court is **AFFIRMED with MODIFICATION** that the award of damages is increased to Php 75,000.00 each as civil indemnity, moral damages and exemplary damages.
>
> **SO ORDERED.**[3]

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1 *Rollo*, pp. 11-24.

2 Penned by Associate Justice Mario V. Lopez (now a Member of this Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr.; id. 27-34.

3 Id. at 33.

Antecedents

The Information[4] against Bangayan alleges:

> That sometime in the month of January, [*sic*] 2012 at Brgy. San Ramos, Municipality of Nagtipunan, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, with intent to abuse, harass and degrade AAA[5], a twelve (12) year old minor at that time, and gratify the sexual desire of said accused, the latter did then and there, willfully, unlawfully and feloniously, had sexual intercourse with said AAA, in her dwelling against her will and consent.[6]

During trial, the prosecution presented three (3) witnesses, namely: (1) PO2 Rosalita Manilao (PO2 Manilao); (2) BBB;[7] and (3) Dr. Luis Villar (Dr. Villar). The following documents were likewise submitted in evidence: (1) Malaya at Kusang Loob na Salaysay of AAA;[8] (2) Malaya at Kusang Loob na Salaysay ni BBB;[9] (3) Medical Certificate issued by Dr. Villar;[10] and (4) Certificate of Live Birth of AAA.[11]

According to the prosecution's witnesses, on January 5, 2012, AAA's brother, BBB, upon arriving home from the farm, saw Bangayan laying on top of AAA. Bangayan and AAA were both naked from the waist down.[12] BBB shouted at Bangayan and told him that he would report what he did to AAA but the latter allegedly threatened to kill him if he tries to tell anyone.[13] AAA was born on December 14, 1999 and was more than 12 years old at the time of the incident.[14]

On April 24, 2012, AAA, accompanied by her aunt, CCC,[15] reported the incident to the police.[16] On the same date, Dr. Villar examined AAA. The pertinent portion of the Medico-Legal Report[17] revealed the following:

> Physical Examination Findings:
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> 1. Formed and developed areolar complexes.
> 2. Developed labia majora,
> 3. No recent hymenal injury but the edges are smooth and

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4 Records, pp. 2-3.
5 As decreed in *People v. Cabalquinto*, 533 Phil. 709 (2006), complainant's real name is withheld to effectuate the provisions of R.A. 7610 and its implementing rules, R.A. 9262 (Anti Violence Against Women and Their Children Act of 2004) and its implementing rules, and A.M. No. 04-10-11-SC (Rule on Violence Against Women and their Children).
6 Records, pp. 2-3.
7 Supra note 5.
8 Records, pp. 7-8.
9 Id. at 9-10.
10 Id. at 11.
11 Id. at 12.
12 TSN dated May 21, 2015, p. 14.
13 Id. at 15.
14 Records, p. 12.
15 Supra note 5.
16 Records, p. 6.
17 Id. at 11.

> the opening approximates the size of the index finger of the examiner.[18]

When Dr. Villar testified, he confirmed that AAA admitted to him that she had sexual intercourse with Bangayan on several occasions even prior to January 5, 2012.[19] He explained that the "opening" noted during his examination, as stated in item no. 3 of the physical findings, is not a normal occurrence. For a young patient like AAA, it should have been closed. He further testified that AAA was already pregnant when she was examined because her fundus is 15 centimeters in height and the presence of 151 beats per minute at the last lower quadrant of her abdomen was observed.[20] These indicate that, at the time of the examination, she was two (2) to three (3) months pregnant, which could be compatible with the claim that she had sexual intercourse with Bangayan in January 2012, the date stated in the information, or even before said date.[21]

On October 2, 2012, AAA gave birth to a baby boy.[22]

Notably, during arraignment on September 4, 2014, the counsel of Bangayan manifested that AAA, who was then 14 years old, executed an Affidavit of Desistance[23] stating that she has decided not to continue the case against Bangayan because they "are living [together] as husband and wife and was blessed with a healthy baby boy."[24] Thus, the Regional Trial Court (RTC) ordered that the Office of the Municipal Social Welfare Development Officer conduct a case study on AAA.[25]

On May 4, 2015, their second child was born.[26]

Ruling of the Regional Trial Court

After trial, the RTC of Maddela, Quirino, Branch 38 rendered its Decision[27] dated April 11, 2016, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered finding RODAN BANGAYAN y ALCAIDE GUILTY beyond reasonable doubt of violation of Section 5 (b), Article III of Republic Act 7610 and sentences him to an imprisonment of **14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum.** However, his preventive imprisonment shall be fully credited to him in the service of sentence pursuant to Article 29 of the Revised Penal Code, as amended.

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18 Id.
19 TSN dated June 16, 2015, p. 5.
20 Id. at 4
21 Id. at 5.
22 Id. at 41.
23 Id. at 24.
24 Id.
25 Id. at 5-6; records, p. 28.
26 TSN dated November 18, 2015, p. 9.
27 Penned by Executive Judge Menrado V. Corpuz; records, pp. 103-110.

> Accused is ordered to pay [AAA] the amount of 1] **PHP 50,000.00 as civil indemnity** with interest of 6% per annum from finality of the decision until fully paid.
>
> With the category of the accused as a national prisoner, the Clerk of Court is directed to prepare the corresponding mittimus or commitment order for his immediate transfer to the Bureau of Corrections and Penology, Muntinlupa City, pursuant to SC Circular No. 4-92-A dated April 20, 1992.
>
> **SO ORDERED.**[28] (Emphasis in the original)

In convicting Bangayan, the RTC found that the prosecution was able to establish the elements of Section 5(b), Article III of R.A. 7610. Bangayan had sexual intercourse with AAA who was born on December 14, 1999 and was 12 years, one (1) month, and 14 days old at the time of the incident.[29] For the RTC, the moral ascendancy or influence of Bangayan over AAA is beyond question due to their age gap of 15 years, and the fact that he is her brother-in-law, he being the brother of the husband of her older sister.[30] The RTC ruled that it will not matter if AAA consented to her defloration because as a rule, the submissiveness or consent of the child under the influence of an adult is not a defense in sexual abuse.[31] The RTC also considered the Affidavit of Desistance AAA executed as hearsay evidence because she did not testify regarding its execution. The RTC added that an Affidavit of Desistance is like an Affidavit of Recantation which the court does not look with favor.[32]

On appeal,[33] Bangayan impugned the findings of the RTC and argued that the trial court gravely erred in finding that the defense failed to prove by clear and convincing evidence that he is not criminally liable for the act complained of. [34] Bangayan argued that he had proven, by clear and convincing evidence, that he is in a relationship with AAA and that the act complained of was consensual.[35] Bangayan maintained that their persisting relationship should be taken into account and be considered an absolutory cause.[36] He averred that this is similar to Article 266-C of R.A. 8353, or the Anti-Rape Law of 1997, on the effect of pardon where the subsequent valid marriage of the offended party to the offender shall extinguish the criminal action or the penalty imposed. While there is no valid marriage to speak of yet, they were clearly living together as husband and wife as evidenced by the birth of their second child. Bangayan asserted that it would be in the best interest of their growing family to acquit him and allow him to help with rearing their children.[37]

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28 Id. at 110.
29 Id. at 107.
30 Id. at 108.
31 Id.
32 Id. at 109.
33 *Rollo*, pp. 40-50.
34 Id. at 46-49.
35 Id. at 47-48.
36 Id. at 48.
37 Id. at 49.

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Ruling of the Court of Appeals

In a Decision[38] dated June 28, 2017, the Court of Appeals denied Bangayan's appeal and affirmed with modification his conviction. The award of civil indemnity, moral damages, and exemplary damages were each increased to ₱75,000.00.[39]

In affirming Bangayan's conviction, the Court of Appeals held that the elements of sexual abuse under Section 5, Article III of R.A.7610 were established as follows: (1) BBB positively identified Bangayan as the person who had sexual intercourse with his minor sister and AAA was confirmed to be 2-3 months pregnant at the time of her medical examination; (2) AAA was subjected to sexual abuse under the coercion and influence of Bangayan because he was already 27 years old or 15 years her senior, thus making her vulnerable to the cajolery and deception of adults; and (3) It was proven that, at the time of the incident, she was only 12 years and one (1) month old – a minor not capable of fully understanding or knowing the nature or import of her actions.[40]

The Court of Appeals emphasized that consent of the child is immaterial in cases involving violation of Section 5, Article III of R.A. 7610. It was held that the Sweetheart Theory is a defense in acts of lasciviousness and rape that are felonies against or without the consent of the victim. It operates on the theory that the sexual act was consensual. However, for purposes of sexual intercourse and lascivious conduct in child abuse cases under R.A. 7610, the Court of Appeals ruled that the Sweetheart Theory defense is unacceptable.

Petitioner's Motion for Reconsideration[41] was denied in a Resolution[42] dated October 24, 2017. Hence, this petition for review.

Bangayan filed the instant Petition for Review[43] on January 5, 2018, assailing the Decision of the Court of Appeals dated June 28, 2017 and its subsequent Resolution dated October 24, 2017. He insists that he was able to prove by clear and convincing evidence that he should not be held criminally liable for the act complained of because they were in a relationship at the time of its commission.[44] For Bangayan, the fact that they were allowed to be together after the alleged sexual abuse and that AAA conceived their second child right after the complaint was filed in court negate the claim that AAA was unwilling.[45] Bangayan posits that his continuing relationship with AAA

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38 Supra note 2.
39 *Rollo*, p. 33.
40 Id. at 30-33.
41 Id. at 85-88.
42 Penned by Associate Justice Mario V. Lopez (now a Member of this Court), with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr.; id. at 36-37.
43 Id. at 11-24.
44 Id. at 19.
45 Id. at 20.

should be considered an absolutory cause.[46] Invoking the best interest of their family, Bangayan prays that he be acquitted and be allowed to help raise their family.

Meanwhile, the People of the Philippines, through the Office of the Solicitor General, manifested that it is no longer filing a Comment and is merely adopting its Brief for the Plaintiff-Appellee previously filed with the Court of Appeals.[47]

Issue

The issue to be resolved in this case is whether Bangayan may use as a defense the consent of AAA and his on-going relationship with her which had already produced two children to exonerate himself from the charge of violation of Section 5(b), Article III of R.A. 7610.

Ruling of the Court

The petition is meritorious. The records of this case show that the prosecution failed to establish all the elements of sexual abuse contemplated under Section 5(b), Article III of R.A. 7610[48] which provides:

> Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
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> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
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> (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
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> (1) Acting as a procurer of a child prostitute;
> (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
> (3) Taking advantage of influence or relationship to procure a child as prostitute;
> (4) Threatening or using violence towards a child to engage him as a prostitute; or
> (5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.
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> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or

46 Id.
47 Id. at 108.
48 R.A. 7610, Sec. 5.

> 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 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;[49]
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> The following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female is below eighteen (18) years of age.[50] This paragraph "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.[51]

Pursuant to the Implementing Rules and Regulations of R.A. 7610, "sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.[52] The present case does not fall under any of the circumstances enumerated. Therefore, not all the elements of the crime were present to justify Bangayan's conviction.

In explicitly stating that children deemed to be exploited in prostitution and other sexual abuse under Section 5 of R.A. 7610, refer to those who engage in sexual intercourse with a child "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group,"[53] it is apparent that the intendment of the law is to consider the condition and capacity of the child to give consent.

Section 5(b) of R.A 7610 qualifies that when the victim of the sexual abuse is under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code.[54] This means that, regardless of the presence of any of the circumstances enumerated and consent of victim under 12 years of age, the perpetrator shall be prosecuted under the Revised Penal Code. On the other hand, the law is noticeably silent with respect to situations where a child is between 12 years old and below 18 years of age and engages in sexual intercourse not "for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group." Had it been the

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49 Id.

50 Id.

51 *People v. Gaduyon*, 720 Phil. 750 (2013).

52 Section 2(g), 10-1993 Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (R.A. 7610).

53 R.A. 7610, Sec. 5.

54 R.A. 7610, Sec. 5.

intention of the law to absolutely consider as sexual abuse and punish individuals who engage in sexual intercourse with "children" or those under 18 years of age, the qualifying circumstances enumerated would not have been included in Section 5 of R.A. 7610.

Taking into consideration the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, We reconcile the apparent gap in the law by concluding that the qualifying circumstance cited in Section 5(b) of R.A. 7610, which "punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse," leave room for a child between 12 and 17 years of age to give consent to the sexual act. An individual who engages in sexual intercourse with a child, at least 12 and under 18 years of age, and not falling under any of these circumstances, cannot be held liable under the provisions of R.A. 7610. The interpretation that consent is material in cases where victim is between 12 years old and below 18 years of age is favorable to Bangayan. It fills the gap in the law and is consistent with what We have explained in the case of *People v. Tulagan*,[55] to wit:

> However, considering the definition under Section 3(a) of R.A. No. 7610 of the term "children" which refers to persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, **We find that the opinion in *Malto,* that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape or acts of lasciviousness to those victims who are within the range of 12 to 17 years old, and even those 18 years old and above under special circumstances who are still considered as "children" under Section 3(a) of R.A. No. 7610. While *Malto* is correct that consent is immaterial in cases under R.A. No. 7610 where the offended party is below 12 years of age, We clarify that consent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances.** Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse **either** "due to money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group."
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> x x x x
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> If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due

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55 G.R. No. 227363, March 12, 2019.

> to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335 of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, **if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed**, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority," like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337 or simple seduction under Article 338.[56] (Emphasis and underscoring supplied; citations omitted)

We are not unmindful that in *Tulagan*, the accused inserted his finger into a nine-year-old girl's vagina and had sexual intercourse with her. Nevertheless, the vital discussion made by the Court with respect to the capacity of a victim aged between 12 years old and below 18 years of age to give rational consent to engage in sexual activity (sexual consent) cannot simply be disregarded. Though it may be considered *obiter dictum*, the principle laid down in the majority opinion, speaking through the *ponencia* of then Associate Justice Diosdado Peralta, now Chief Justice, remains relevant and crucial to the resolution of the present case because it clearly outlined the essential elements of the offense. The discussion of the Court in *Tulagan* should serve as a guide in resolving situations identified by the Court to be potential sources of conflicting interpretations. The fact that *Tulagan* did not involve a victim between 12 years old and below 18 years old should not dissuade the Court from applying a principle that aims to clarify and harmonize conflicting provisions due to an apparent gap in the law.

Recently, in *Monroy v. People*,[57] We adopted the ruling in *Tulagan*, to wit:

> x x x [I]t bears to point out that "**consent of the child is material and may even be a defense in criminal cases" involving the aforesaid violation when the offended party is 12 years old or below 18 years old**, as in AAA's case. The concept of consent under Section 5 (b), Article III of RA 7610 peculiarly relates to the second element of the crime - that is, the act of sexual intercourse is performed with a child exploited in prostitution or subjected to other sexual abuse. A child is considered "exploited in prostitution or subjected to other sexual abuse" when the child is predisposed to indulge in sexual intercourse or lascivious conduct because

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56 Id.

57 G.R. No. 235799, July 29, 2019.

> of money, profit or any other consideration or due to the coercion of any adult, syndicate, or group.
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> x x x x[58] (Emphasis supplied; citations omitted)

Therefore, it is now clear that consent is a material factor in determining the guilt of Bangayan.

In *Monroy*,[59] then 28-year-old accused was charged with violation of Section 5 (b) Article III of R.A. 7610 for inserting his penis into the vagina of a 14-year-old. The Court acquitted the accused on reasonable doubt, finding that the sexual intercourse that transpired between the accused and the 14-year-old was consensual and that the case against the accused is based merely on trumped-up allegations meant as retaliation. In *Monroy*, the accused was 14 years older or twice the age of the alleged victim yet the Court found that she was not subjected to other sexual abuse due to the coercion of an adult as they were in a relationship. Similarly, in the present case, Bangayan was more or less 15 years older than AAA. While difference in age may be an indication of coercion and intimidation and negates the presence of sexual consent, this should not be blindly applied to all instances of alleged sexual abuse cases. Therefore, the Court must not be restricted in identifying the presence of coercion and intimidation by a simple mathematical computation of the age difference.

The sweeping and confusing conclusions in the case of *Malto v. People*[60] and the application of contract law in determining the relevance of consent in cases under R.A. 7610 is not proper. We had the opportunity to shed light on this matter in *People v. Tulagan*[61] where We observed that:

> We take exception, however, to the sweeping conclusions in *Malto* (1) that "a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse" and (2) that "consent of the child is immaterial in criminal cases involving violation of Section 5, Article III of RA 7610" because they would virtually eradicate the concepts of statutory rape and statutory acts of lasciviousness, and trample upon the express provisions of the said law.[62]

Accordingly, the Court deems it prudent to rectify the difference between the concept of consent under contract law and sexual consent in criminal law which determines the guilt of an individual engaging in a sexual relationship with one who is between 12 years old or below 18 years of age. These are concepts that are distinct from each other and have differing legal implications.

The law limits, to varying degrees, the capacity of an individual to give

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58 *Monroy v. People*, G.R. No. 235799, July 29, 2019.
59 G.R. No. 235799, July 29, 2019.
60 560 Phil. 119 (2007).
61 G.R. No. 227363, March 12, 2019.
62 Id.

consent. While in general, under the civil law concept of consent, in relation to capacity to act, all individuals under 18 years of age have no capacity to act, the same concept cannot be applied to consent within the context of sexual predation. Under civil law, the concept of "capacity to act" or "the power to do acts with legal effects"[63] limits the capacity to give a valid consent which generally refers to "the meeting of the offer and the acceptance upon the thing and the case which are to constitute the contract."[64] To apply consent as a concept in civil law to criminal cases is to digress from the essence of sexual consent as contemplated by the Revised Penal Code and R.A. 7610. Capacity to act under civil law cannot be equated to capacity to give sexual consent for individuals between 12 years old and below 18 years of age. Sexual consent does not involve any obligation within the context of civil law and instead refers to a private act or sexual activity that may be covered by the Revised Penal Code and R.A. 610.

More importantly, Our earlier pronouncement regarding consent in *Malto* failed to reflect teenage psychology and predisposition. We recognize that the sweeping conclusions of the Court in *Malto* failed to consider a juvenile's maturity and to reflect teenagers' attitude towards sex in this day and age. There is a need to distinguish the difference between a child under 12 years of age and one who is between 12 years old and below 18 years of age due to the incongruent mental capacities and emotional maturity of each age group. It is settled that a victim under 12 years old or is demented "does not and cannot have a will of her own on account of her tender years or dementia; thus, a child or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil."[65] As such, regardless of the willingness of a victim under 12 years old to engage in any sexual activity, the Revised Penal Code punishes statutory rape and statutory acts of lasciviousness. On the other hand, considering teenage psychology and predisposition in this day and age, We cannot completely rule out the capacity of a child between 12 years old and below 18 years of age to give sexual consent.

Consequently, although We declared in *Malto* that the Sweetheart Theory is unacceptable in violations of R.A. 7610 since "a child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person,"[66] We deem it judicious to review the Decision of the court a *quo* and reiterate Our recent pronouncements in *Tulagan* and *Monroy* and clarify the ambiguity created in the *Malto case* in resolving the case at bar.

Where the age of the child is close to the threshold age of 12 years old, as in the case of AAA who was only 12 years and one month old at the time of the incident, evidence must be strictly scrutinized to determine the presence of sexual consent. The emotional maturity and predisposition of a juvenile,

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63 CIVIL CODE OF THE PHILIPPINES, Art. 37.
64 CIVIL CODE OF THE PHILIPPINES, Art. 1319.
65 *People v. Tulagan*, supra note 55.
66 Id.

whose age is close to the threshold age of 12, may significantly differ from a child aged between 15-18 who may be expected to be more mature and to act with consciousness of the consequences of sexual intercourse.

In this case, there are special circumstances that reveal the presence consent of AAA. The sexual congress between Bangayan and AAA was not limited to just one incident. They were in a relationship even after the incident alleged in the Information and had even produced two (2) children. To Our mind, these are not acts of a child who is unable to discern good from evil and did not give consent to the sexual act.

We also note that the conclusion of the RTC that:

> x x x [T]he moral ascendancy or influence of the accused over the victim is beyond question because of their 15 year age gap, not to mention that the former is also her brother-in-law, he being the brother of the husband of her older sister.[67]

is erroneous. Contrary to the ruling of the RTC, it cannot be said that Bangayan exercised moral ascendancy over AAA simply because of their 15-year age gap and the fact that he is her "brother-in-law." Following the concept of brother-in-law in its ordinary sense, Bangayan is not AAA's brother-in-law because a brother-in-law refers only to a wife's brother or a sister's husband. It does not include a brother of the husband of AAA's older sister.

We must take into account Bangayan's defense that, at the time of the incident, he and AAA were lovers. The conduct of Bangayan and AAA, which is the subject of the Information against him, is not the sexual abuse punished by the law. While placed in an unusual predicament, We recognize that Bangayan and AAA are in a relationship that had produced not just one (1) offspring but two (2). While AAA was a child, as defined under R.A. 7610, being under 18 years of age at the time she and Bangayan engaged in sexual intercourse, there was no coercion, intimidation or influence of an adult, as contemplated by the law. AAA consented to the sexual act as reflected in her conduct at the time of the commission of the act and her subsequent conduct shown in the records.

AAA did not testify during the trial. Had she testified, the trial court would have been able to confirm the veracity of the allegations in the sworn statement[68] she executed and the statements she allegedly made to Dr. Villar during her medical examination on April 24, 2012. We cannot simply accept the statement of Dr. Villar that AAA admitted to him that she had sexual intercourse with Bangayan even before 2012.[69] This statement is hearsay as he has no personal knowledge of it. Moreover, this is not even alleged in the Information[70] filed against him.

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67 Records, p. 108.
68 Id. at 7-8.
69 TSN dated June 16, 2015, p. 5.
70 Id. at 2-3.

Furthermore, Section 34 of Rule 132 of the Rules provides:

> Section. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

In *Gumabon v. Philippine National Bank*,[71] the Court explained that formal offer "means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence." In the absence of a formal offer, courts cannot take notice of the evidence even if this has been previously marked and identified.[72]

The Social Case Study Report[73] reflecting the evaluation of Social Welfare Officer III Theresa A. Mauricio (Mauricio) on AAA's social, emotional, and intellectual development cannot be admitted nor be given any credence by the Court. Mauricio made the following recommendations in her report:

> Based on the above information, the client suffered multiple emotional crisis that hampered her growth and development. She has the time, knowledge, potentials and abilities that could enhance her total development. However, as early as 7 years old, she had crisis due to role confusion.
>
> Being abused, she was unable to develop her unique values or personality. She was not allowed the opportunities to acquire friends, develop skills and knowledge through formal education.
>
> Living together with the perpetuator [sic] could support her longing for a parental figure. He served as support for her existence but considering his weaknesses such as from abusing her, the lack for sense of responsibility and assertiveness as lack of resources should affect the future of the minor and son. He could not provide the basic needs such as food, shelter and education with his disposition in life.
>
> The minor had the CHANCE to grab the opportunities of the PRESENT and the FUTURE once she is AWAY with her perpetuator [sic]. Support from relatives is highly recommended for direction.
>
> The honored court is then requested for favorable action that will promote the general welfare of the minor-[AAA] and her family.[74]

A careful study of the records reveals that the RTC received the Social

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71 G.R. No. 202514, July 25, 2016.
72 Id.
73 Records, pp. 30-40.
74 Id. at 40.

Case Study Report dated September 25, 2014 on October 8, 2014. Although the testimony of the social worker was included in the Pre-Trial Order,[75] the document was never properly identified, authenticated by the social worker who prepared the report, and included in the formal offer of evidence.[76] The social worker never testified in open court and the defense was never given an opportunity to test her credibility and verify the correctness and accuracy of her findings. To Our mind, giving credence to evidence which was not formally offered during trial would deprive the other party of due process. Thus, evidence not formally offered has no probative value and must be excluded by the court.

Even assuming that the Social Case Study Report was properly presented and formally offered, it cannot be made the basis for establishing the absence of AAA's sexual consent. The report did not accurately reflect the living condition and the state of her relationship with Bangayan. It did not negate the presence of AAA's sexual consent at the time the alleged offense was committed. Noticeably, she was already pregnant with their second child when she was interviewed for the Social Case Study Report and later gave birth while he was incarcerated.[77] The contemporaneous and subsequent acts of AAA, which are more consistent with the claim of Bangayan that AAA consented to the sexual encounter, outweigh the contents of the Social Case Study Report which are not yet verified. It is worthy to note that even when Bangayan was presented in the witness stand, AAA was present in court,[78] presumably to show support for him. AAA conceived a second child with Bangayan despite the charge against him. Both children were conceived before he was incarcerated.[79] She did not testify against Bangayan even if she was present during the hearings. These acts of AAA, and the Affidavit of Desistance she executed, when taken as a whole, bolsters the claim of Bangayan that they were in a relationship when the act complained of was committed and even lived together without the benefit of marriage after the case against him was filed. Her acts are consistent with the claim of Bangayan that their relationship existed at the time of commission of the act complained, during trial, and even continued after he was convicted by the lower court. To Our mind, these factors are clear manifestations that she was not subjected to any form of abuse, and prove that she consented to the act complained of. Applying the ruling in *Tulagan* there is no crime committed because AAA freely gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved. Due to the prosecution's failure to establish and prove beyond reasonable doubt the requisites for the charge of violation of Section 5(b) of R.A. 7610, Bangayan must be acquitted.

Section 2 of R.A. 7610 states that:

> x x x [T]he "best interests of children shall be the paramount consideration in all actions concerning them, whether

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75 Id. at 49.
76 TSN dated August 3, 2015, pp. 1-6.
77 TSN dated November 18, 2015, p. 9.
78 Id. at 8.
79 Id. at 9.

> undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child.

In this exceptional situation, We are not prepared to punish two individuals and deprive their children from having a normal family life simply because of the minority of AAA at the time she began dating Bangayan. The benefits of living in a nuclear family to AAA and their two (2) children outweigh any perceived dangers of the on-going romantic relationship Bangayan has with AAA who is 15 years younger than him. This arrangement is more favorable to the welfare of both parties as they are planning to get married.[80] We verified from the records that Bangayan was single at the time he gave his personal circumstances when he testified in court.[81] This is more consistent with the principle of upholding the best interests of children as it gives Bangayan an opportunity to perform his essential parental obligations and be present for their two (2) children.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 11, 2016 of the Regional Trial Court of Maddela, Quirino, Branch 38, in Criminal Case No. 38-510 as well as the Decision dated June 28, 2017 of the Court of Appeals in CA-G.R. CR No. 38723 are hereby **REVERSED** and **SET ASIDE**. Petitioner Rodan A. Bangayan is **ACQUITTED**. He is **ORDERED** to be **IMMEDIATELY RELEASED** unless he is being held for some other valid or lawful cause. The Director of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

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80 TSN dated November 18, 2015, p. 9.

81 Id. at 2-4.

WE CONCUR:

I dissent. See separate opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

Please see Separate Concurring Opinion

ALEXANDER G. GESMUNDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
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.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.

DIOSDADO M. PERALTA
Chief Justice