



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 14 February 2022 which reads as follows:

“**UDK-17056 (Raymund Bird v. People of the Philippines)**. – Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated June 30, 2021 of the Court of Appeals (CA) in CA-G.R. CR-No. 03468. The CA affirmed with modification the Joint Decision³ dated February 21, 2019 of Branch 58, Regional Trial Court (RTC), ██████████, Negros Occidental in Criminal Case Nos. RTC-17-6601 and RTC-17-6602. The RTC convicted petitioner Raymund Bird (petitioner) of two counts of Acts of Lasciviousness⁴ under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b) of Republic Act No. (RA) 7610, otherwise known as the *Special Protection of Children against Abuse, Exploitation and Discrimination Act*.

Acting on petitioner’s Urgent Motion for Extension of Time to File Petition for Review [on *Certiorari*],⁵ the Court resolves to **GRANT** petitioner’s motion for extension of 10 days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

However, petitioner’s filing of the instant petition on September

¹ *Rollo*, pp. 3-9.

² *Id.* at 13-31; penned by Associate Justice Roberto Patdu Quiroz with Associate Justices Marilyn B. Lagura-Yap and Nancy C. Rivas-Palmones, concurring.

³ Not attached to the *rollo*.

⁴ Incorrectly termed as Lascivious Conduct under Section 5(b) of RA 7610 by the RTC; modified to Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610 to conform with *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁵ Incorrectly termed as Urgent Motion for Extension of Time to File Petition for Review Under Rule 65; *rollo*, pp. 35-36.

17, 2021 was already seven days beyond the requested period of extension of 10 days from August 31, 2021. Resultantly, the assailed CA Decision had already attained finality.⁶

Furthermore, the instant petition suffers from the following infirmities: (1) failure of petitioner's counsels to indicate their contact details pursuant to the Court *En Banc* Resolution dated July 10, 2007 in A.M. No. 07-6-5-SC; (2) failure of petitioner's counsels to indicate or update their Mandatory Continuing Legal Education Certificate of Compliance or Certificate of Exemption in the pleadings as required under Bar Matter No. 1922 which was promulgated by the Court via *En Banc* Resolution dated June 3, 2008;⁷ and (3) lack of a CD/verified declaration that the petition is complete or a soft copy of the pleading via email pursuant to the Court's Efficient Use of Paper Rule.

In any case, the core issue raised in the petition is factual.

Petitioner puts in issue the credibility of AAA and argues that her testimony was full of "false memories" suggested to her by BBB.⁸

Evidently, petitioner essentially asks the Court to revisit and re-evaluate the RTC's assessment of AAA's credibility, the probative weight of her testimony, and the conclusions drawn from the RTC's factual findings.⁹

It must be stressed that a petition for review on *certiorari* under

⁶ Section 2, Rule 45 of the Rules of Court provides:

SECTION 2. *Time for filing; extension.* – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

⁷ "The Court further Resolved, upon the recommendation of the Committee on Legal Education and Bar Matters, to REQUIRE practicing members of the bar to INDICATE in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records."

⁸ *Rollo*, p. 7.

⁹ *Id.* at 7-8.

Rule 45 of the Rules of Court shall raise only questions of law.¹⁰ Factual questions are not the proper subject of an appeal by *certiorari*.¹¹

The evaluation of the credibility of witnesses and their testimonies is best undertaken by trial judges, who have the unique opportunity to observe the witnesses firsthand and to note their demeanor and conduct on the witness stand.¹² For this reason, their findings on such matters, absent any arbitrariness or oversight of material facts, are final and conclusive upon the Court and will not be disturbed on appeal.¹³ Given the foregoing considerations, the Court conforms to the congruent findings of both the RTC and CA and gives full credence to AAA's testimony that petitioner subjected her to sexual abuse on March 19 and 24, 2017.¹⁴

However, pursuant to *People v. Tulagan*,¹⁵ the Court modifies the nomenclature of the crime from Lascivious Conduct under Section 5(b) of RA 7610 to *Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of RA 7610*.

As regards the penalty, Section 5(b),¹⁶ Article III of RA 7610 provides that the penalty for Acts of Lasciviousness if committed against a child subjected to other sexual abuse, and the victim is under 12 years of age shall be *reclusion temporal* in its medium period.¹⁷

¹⁰ *Bartolome v. People*, G.R. No. 227951, June 28, 2021.

¹¹ *Julian v. People*, G.R. No. 250827 (Notice), March 2, 2020, citing *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017.

¹² *Id.*

¹³ *Id.*

¹⁴ *Rollo*, pp. 24-30.

¹⁵ *Supra* note 4.

¹⁶ Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

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

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape 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;

¹⁷ Ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Applying the Indeterminate Sentence Law,¹⁸ the CA correctly affirmed petitioner's sentence of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, for each count.¹⁹

However, in accordance with prevailing jurisprudence, the Court modifies the monetary awards in favor of AAA. Pursuant to *People v. Tulagan*,²⁰ the amount of civil indemnity, moral damages, and exemplary damages awarded in cases of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of RA 7610, should be ₱50,000.00 each.²¹

As such, the awards for each count of violation of Section 5(b), Article III of RA 7610 should be increased as follows: (1) civil indemnity from ₱20,000.00 to ₱50,000.00; (2) moral damages from ₱15,000.00 to ₱50,000.00; and (3) exemplary damages from ₱15,000.00 to ₱50,000.00.

Moreover, petitioner should be ordered to pay a fine equivalent to ₱15,000.00 pursuant to Section 31(f), Article XII of RA 7610 and prevailing jurisprudence.²²

All monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.²³

Being an Australian citizen,²⁴ petitioner shall be deported immediately after service of sentence and forever barred from entry to the country pursuant to Section 31(d)²⁵ of RA 7610.

¹⁸ See *Quimvel v. People*, 808 Phil. 889 (2017), the Court applied the Indeterminate Sentence Law when it imposed the penalty on the accused who was similarly charged with acts of lasciviousness.

¹⁹ See *Tizon v. People*, G.R. No. 251328 (Notice), September 8, 2020.

²⁰ *Supra* note 4.

²¹ See also *Aspril v. People*, G.R. No. 249882 (Notice), December 9, 2020.

²² *XXX v. People*, G.R. No. 254096 (Notice), February 17, 2021.

²³ *Agustin v. People*, G.R. No. 249036 (Notice), March 2, 2020.

²⁴ See Petition for Review; *rollo*, pp. 3-4.

²⁵ Section 31. *Common Penal Provisions*. —

x x x x

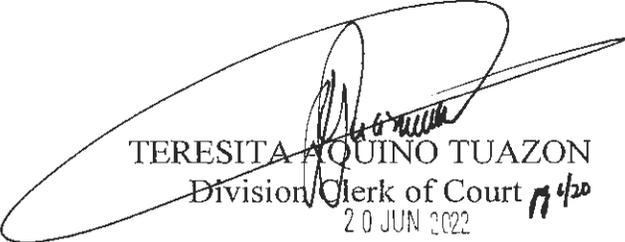
(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

ACCORDINGLY, the petition is **DENIED**. The Decision dated June 30, 2021 of the Court of Appeals in CA-G.R. CR-No. 03468 is **AFFIRMED** with **MODIFICATION**. Petitioner Raymund Bird is declared **GUILTY** beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum, for each count. He is further ordered to pay AAA the following amounts: ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages. He is further directed to pay a fine of ₱15,000.00.

All monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this Resolution until fully paid.

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court 77 4/20
20 JUN 2022

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THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 58
San Carlos City, Negros Occidental
(Crim. Case Nos. RTC-17-6601 & RTC 17-6602)

COURT OF APPEALS (reg)
Visayas Station
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CA-G.R. CR No. 03468

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Supreme Court, Manila

*with a copy of the CA Decision dated 30 June 2021

Please notify the Court of any change in your address.

UDK-17056. 2/14/2022(251)URES.

/s/