



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **January 23, 2023** which reads as follows:*

“UDK 17693 (Robel C. Soriano, petitioner v. People of the Philippines, respondent.) – The Court resolves to **REQUIRE** petitioner Robel C. Soriano (petitioner) to **FULLY COMPLY** with the Rules by paying the amount of ₱4,530.00 for docket/legal fees pursuant to Section 3, Rule 45 in relation to Section 5 (c), Rule 56 of the 2019 Amended Rules of Court and A.M. No. 17-12-09-SC, as the postal money orders were returned to sender due to wrong payee, within five (5) days from notice.

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court is the Decision² dated November 15, 2021 and the Resolution³ dated July 18, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 43509, which affirmed the Decision⁴ dated March 11, 2019 of the Regional Trial Court of [REDACTED], Pangasinan, Branch 68 (RTC) in Criminal Case No. L-10458 finding petitioner guilty beyond reasonable doubt of the crime of Lascivious Conduct, as defined and penalized under Section 5 (b) of Republic Act No. (RA) 7610,⁵ otherwise known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” as amended.

The Facts

This case stemmed from an Information⁶ filed before the RTC charging petitioner of Sexual Assault under Article 266-A (2) of the Revised Penal Code (RPC), as amended, the accusatory portion of which reads:

That on or about 5:00 o'clock in the afternoon of September 29, 2014 at Brgy. [REDACTED], Pangasinan and within the jurisdiction of

¹ *Rollo*, pp. 3-13

² *Id.* at 14-23. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Apolinario D. Bruselas, Jr. and Angelene Mary W. Quimpo-Sale, concurring.

³ *Id.* at 24-25.

⁴ *Id.* at 39-52. Penned by Judge Maria Laarni R. Parayno.

⁵ Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992.

⁶ *Rollo*, p. 39.

this Honorable Court, the above-named accused, with force and intimidation, did, then and there willfully, unlawfully and feloniously insert his fingers into the vagina of minor complainant [AAA17693],⁷ thirteen (13) years old (DOB: 06-25-2001), against her will and consent, to her damage and prejudice.

Contrary to Article 266-A of the Revised Penal Code as amended.⁸

The prosecution alleged that on September 29, 2014, AAA17693 – who was born on June 25, 2001, and hence, a 13-year-old minor at that time – was at petitioner's computer shop working on a school project. Thereat, petitioner approached AAA17693 and asked her where she bought her necklace, to which the latter replied that it was given by a friend. Petitioner then held the pendant of the necklace and suddenly placed his hand inside AAA17693's inner garment, slid his other hand inside her shirt, and mashed her breast. AAA17693 trembled from fright. AAA17693 stepped back and petitioner turned his back on her.⁹ A few moments later, petitioner sat beside AAA17693, inserted his hands into her short pants, and inserted his finger inside her vagina.¹⁰ AAA17693 felt pain and tried to remove petitioner's hand. AAA17693 did not shout as she feared petitioner might harm her. AAA17693 stood up, prompting petitioner to stop. Despite what happened, AAA17693 finished her project. AAA17693 asked petitioner to print her work as she badly needs the same. Before leaving, petitioner threatened AAA17693 not to report the incident to her parents, or else something might happen to them. A day after, AAA17693 informed her parents about her experience, prompting all of them to go to the police station to report the incident. AAA17693 explained that they reported the matter to the police on September 30, 2014, but it was only about a month later that she underwent a medical examination at Region 1 Medical Center in Dagupan City. AAA17693 identified petitioner in open court and said that she experienced mixed feelings of fear and anger every time she saw petitioner in the court room.¹¹

BBB17693, AAA17693's mother, testified that she learned about AAA17693's experience in the evening of September 30, 2014. After her husband arrived home, they all went to the police station to report the incident. The police informed AAA17693 and her parents that the incident will be

⁷ The identity of the victim or any information which could establish or compromise their identity, as well as those of her immediate family or household members shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

⁸ *Rollo*, p. 39.

⁹ *Id.* at 41.

¹⁰ *Id.* at 47.

¹¹ *Id.* at 41.

entered in the police blotter once the police receives the result of AAA17693's medical examination. BBB17693 testified that AAA17693 underwent the medical examination on October 23, 2014.¹²

Dr. Brenda Tumacder (Dr. Tumacder) also testified that she conducted the genital examination of AAA17693 on October 23, 2014. Dr. Tumacder found healed lacerations in AAA17693's hymen, which could have been caused by a finger or an erect penis. She also found whitish and foul-smelling vaginal discharge, which may have resulted from an irritation, infection, or by a digital or penile insertion.¹³

Police Officer 2 Melanie Quezada testified that she recorded the incident as Entry No. 449 in the police blotter on October 27, 2014.¹⁴

In defense, petitioner denied sexually assaulting AAA17693. Petitioner alleged that on September 29, 2014, his cousin who is a teacher, Jackelyn Campos (Jackelyn), arrived at the computer shop at around 5:42 p.m. and asked him to prepare her school report. A few minutes later, AAA17693 also arrived at the shop and wanted to use the computer with the printer, which is in the extension area of the computer shop. Petitioner told AAA17693 that she had to wait for her turn as he was finishing Jackelyn's report. After completing Jackelyn's work, petitioner left AAA17693 in the computer shop as he went outside to feed his animals. At around 6:00 p.m., a little girl came to avail of petitioner's printing services. AAA17693 offered the use of the computer so that the little girl's pictures could be printed, after which, the little girl paid and left. Petitioner then went outside again to check the chicken feed and left AAA17693, who continued working on her project for about two (2) hours. While petitioner was cooking in the kitchen, AAA17693 called him and requested him to print her project. After the printing job was done, AAA17693 paid him and went home. After AAA17693 left, two (2) more customers arrived and used the computer for about an hour. Petitioner further alleged that AAA17693 only filed the charge because of the insulting words he uttered against AAA17693's father a year ago.¹⁵

In support of petitioner's defense, his uncle, Antonio Soriano, testified that his house is just beside petitioner's computer shop, and that he did not notice any untoward incident inside or outside of his house during that evening of September 29, 2014. He, however, testified that a concrete wall separates his house and the computer shop which prevents him from hearing the sound from the computer shop.¹⁶ The defense also presented the testimonies of: (a) Hover Soriano, petitioner's cousin, who testified that his house is beside petitioner's computer shop, and that in the evening of September 29, 2014, he

¹² Id. at 42.

¹³ Id. at 43.

¹⁴ Id.

¹⁵ Id. at 43-45.

¹⁶ Id. at 45.

was outside of his house and he did not notice any untoward incident in petitioner's computer shop;¹⁷ and (b) Michael Quisora, another cousin of petitioner, who testified that in the evening of September 29, 2014, he was in the middle of the road when he saw AAA17693 come out of the computer shop at around 8:00 p.m., and that AAA17693 even greeted him.¹⁸

The RTC Ruling

In a Decision¹⁹ dated March 11, 2019, the RTC found petitioner guilty beyond reasonable doubt of violation of Section 5 (b) of RA 7610. Accordingly, the RTC sentenced him to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. Petitioner was ordered to pay a fine of ₱10,000.00 pursuant to Section 31 (f) of RA 7610; and pay the victim ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages.²⁰

In convicting petitioner, the RTC appreciated AAA17693's testimony that petitioner violated her person by mashing her breast and inserting his finger into her vagina. The RTC stated that AAA17693's revelation of her ordeal, coupled with her voluntary submission to a genital examination and her willingness to undergo a public trial where AAA17693 would have to give the details of the incident, cannot be simply dismissed for being a mere fabrication, especially where there was no showing that AAA17693 was impelled by any sinister motive to accuse and testify against petitioner. The RTC declared that AAA17693's testimony passed the test of credibility; hence, AAA17693's testimony should be given full faith and credence.²¹

The RTC also ruled that people, including victims of rape, react differently to emotional stress as no standard form of behavior can be expected from someone who has just been violated. Hence, the fact that AAA17693 finished her work and asked petitioner to print her project despite the abuse, does not destroy AAA17693's credibility.²²

On the other hand, the RTC rejected petitioner's defense of denial as this paled in comparison with AAA17693's positive identification of petitioner as the perpetrator of the crime. The RTC noted petitioner's admission that the computer shop was closed when he and AAA17693 were at the extension area of the computer shop, which bolsters AAA17693's testimony that she was alone at that time. Moreover, the RTC gave scant consideration to petitioner's claim that it was impossible for him to have

¹⁷ Id.

¹⁸ Id. at 45.

¹⁹ Id. at 39-52.

²⁰ Id. at 52.

²¹ Id. at 47-48.

²² Id. at 48.

committed rape considering that his uncle and cousins were near his computer shop during that time. The RTC explained that rape can happen even in the most unlikely places. Likewise, in view of AAA17693's categorical statement that it was petitioner who sexually abused her, the RTC rejected petitioner's allegation that the lacerations in AAA17693's hymen was caused by AAA17693's sexual intercourse with her boyfriend.²³

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In a Decision²⁴ dated November 15, 2021, the CA affirmed the RTC ruling. The CA held that all the elements of sexual abuse is present in this case, *viz.*: (a) the accused commits an 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. In this case, the CA found that: petitioner committed lascivious conduct when he inserted his finger inside AAA17693's vagina; AAA17693 was subjected to sexual abuse; and AAA17693 was proven to be 13 years old when the incident happened.²⁵

The CA was not swayed by petitioner's arguments that AAA17693's behavioral response after the alleged sexual assault is contrary to ordinary conduct and human experience; and that it was impossible for him to commit the crime, as corroborated by his witnesses who testified that they did not notice any untoward incident during the time of the incident. The CA reiterated that lust is no respecter of time and place.²⁶

The CA also ruled that the alleged inconsistency in the dates, *i.e.*, September 30, 2014 and October 27, 2014, as to when the incident was reported to the police, did not destroy AAA17693's credibility, and that the delay in reporting the incident does not mean that the charge is fabricated. Finally, the CA also rejected petitioner's claim that the charge against him was merely concocted because of a previous altercation between petitioner and AAA17693's father.²⁷

Petitioner filed a motion for reconsideration,²⁸ which the CA denied in a Resolution²⁹ dated July 18, 2022; hence, this petition.

²³ Id. at 49-50.

²⁴ Id. at 14-23.

²⁵ Id. at 19-20.

²⁶ Id. at 21.

²⁷ Id. at 21.

²⁸ Not attached to the *rollo*.

²⁹ *Rollo*, pp. 24-25.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed petitioner's conviction for lascivious conduct, as defined and penalized under Section 5 (b) of RA 7610.

The Court's Ruling

The petition is without merit.

At the outset, it must be stressed that "in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."³⁰

Guided by the foregoing consideration, the Court affirms with modification petitioner's conviction, as will be explained hereunder.

To recapitulate, the original charge against petitioner is sexual assault, as defined and penalized under Article 266-A (2) of the RPC. The essential elements of this crime are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and (3) that the act of sexual assault is accomplished by using force or intimidation, among others.³¹ In this regard, case law instructs that for purposes of this provision, a finger is deemed as an "instrument," and as such, the insertion of one's finger into the genital or anal orifice of another constitutes rape by sexual assault.³²

It bears stressing that rape cases are, more often than not, solely decided based on the credibility of the testimony of the private complainant. As such, for the Court to affirm a conviction for rape (whether by sexual intercourse or by sexual assault), the version of the events as narrated by the victim should

³⁰ *People v. Bernardo*, G.R. No. 242696, November 11, 2020 [Per J. Perlas-Bernabe, Second Division], citing *Arambulo v. People*, 857 Phil. 828, 836 (2019) [Per J. Perlas-Bernabe, Second Division].

³¹ *People v. Caoili*, 815 Phil. 839, 883 (2017) [Per J. Tijam, *En Banc*]; and *People v. Alfredo*, 653 Phil. 435, 451-452 (2010) [Per J. Velasco, Jr., First Division].

³² *De Castro v. Hon. Fernandez*, 544 Phil. 606, 613 (2007) [Per J. Carpio, Second Division].

be credible and be believed beyond reasonable doubt. Thus, in evaluating the credibility of witnesses, the Court should abide by the following guidelines: (a) the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand as from its vantage point, the trial court is in the best position to determine the truthfulness of witnesses; (b) absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded; and (c) the rule is even more stringently applied if the CA concurred with the RTC.³³

Moreover, in *Ricalde v. People*,³⁴ the Court, through Associate Justice (now Senior Associate Justice) Marvic M.V.F. Leonen, held that full weight and credit are accorded to testimonies of child victims as their "[y]outh and immaturity are generally badges of truth and sincerity."³⁵

Here, the courts *a quo* correctly ruled that the prosecution – through the positive, candid, and categorical testimony of AAA17693, who was just 13 years old when the incident happened, as well as the corroborating testimonies of BBB17693 and Dr. Tumacder – had established beyond reasonable doubt that petitioner indeed inserted his finger into AAA17693's vagina through force and intimidation. Given the foregoing, the Court finds no cogent reason to reverse the RTC's assessment of AAA17693's credibility, which was affirmed by the CA. Absent any evidence that such assessment was tainted with arbitrariness or oversight of a fact of consequence or influence – especially so when affirmed by the CA – it is entitled to great weight, if not conclusive and binding on the Court.³⁶ As such, petitioner's criminal liability must be sustained.

At this juncture, it bears emphasizing that in *People v. Tulagan (Tulagan)*,³⁷ the Court, through Associate Justice (now former Chief Justice) Diosdado M. Peralta, threshed out the "applicable laws and [consequent penalties] 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 the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the Revised Penal Code, as amended by [Republic Act No. (RA)] 8353 and Section 5(b) of [RA] 7610."³⁸ For this purpose, *Tulagan* provided a comprehensive table stating the proper nomenclature of crimes involving sexual abuse against children, to wit:³⁹

³³ *People v. Amarela*, 823 Phil. 1188, 1200-1201 (2018) [Per J. Martires, Third Division].

³⁴ 751 Phil. 793 (2015) [Per J. Leonen, Second Division].

³⁵ *Id.* at 805; citations omitted.

³⁶ *People v. Cadano, Jr.*, 729 Phil. 576, 585 (2014) [Per J. Perlas-Bernabe, Second Division]; citation omitted.

³⁷ 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

³⁸ *Id.* at 248.

³⁹ *Id.* at 248-249.

Age of Victim: Crime Committed:	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances	18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed	Sexual Abuse under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: <i>reclusion perpetua</i> except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Article 266-B of the RPC: <i>reclusion perpetua</i>	Rape under Article 266-A(1) of the RPC: <i>reclusion perpetua</i>
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Sexual Assault under Article 266-A(2) of the RPC: <i>prision mayor</i>

Pursuant to *Tulagan*, the proper nomenclature of the crime that petitioner committed is “*Lascivious Conduct under Section 5 (b) of RA 7610*” which has the prescribed penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Taking into consideration the Indeterminate Sentence Law and the absence of any modifying circumstances, the courts *a quo* correctly sentenced him to suffer the penalty of imprisonment for an

indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. However, consistent with prevailing jurisprudence, the fine imposed against petitioner pursuant to Section 31 (f) of RA 7610 should be increased to ₱15,000.00.⁴⁰ At this point, it is well to clarify that such imposition of fine shall not earn any legal interest. In *People v. Dapitan*,⁴¹ the Court, through Senior Associate Justice Estela M. Perlas-Bernabe, clarified that “while fine is among the pecuniary liabilities which may be imposed against a convict, it is not considered as a civil liability from which an award of interest may spring.”⁴²

Finally, and still in accordance with *Tulagan*, petitioner’s civil liability *ex delicto* (i.e., the monetary awards due to AAA17693), should be adjusted to ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with legal interest of six percent (6%) per annum from finality of this ruling until full payment.

FOR THESE REASONS, the petition is **DENIED**. The Decision dated November 15, 2021 and the Resolution dated July 18, 2022 of the Court of Appeals in CA-G.R. CR No. 43509 are **AFFIRMED with MODIFICATIONS**. Petitioner Robel C. Soriano is hereby found **GUILTY** beyond reasonable doubt of the crime of *Lascivious Conduct under Section 5 (b) of Republic Act No. 7610*. He is sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and to pay a fine in the amount of ₱15,000.00. He is also **ORDERED** to pay AAA17693 the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with legal interest of six percent (6%) per annum from finality of this ruling until full payment.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court

23 NOV 2023

⁴⁰ *People v. Pueyo*, G.R. No. 192327, February 26, 2020 [Per J. Hernando, Second Division]; and *People v. IPI*, G.R. No. 230222, June 22, 2020 [Per J. Inting, Second Division].

⁴¹ G.R. No. 253975, September 27, 2021 [Per SAJ Bernabe, Second Division].

⁴² Id.; citations omitted.

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 68
[REDACTED], Pangasinan
(Crim. Case No. L-10458)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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*with copy of CA Decision dated November 15, 2021
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