



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 9, 2022 which reads as follows:

“**UDK 17168 (Jupiter Vidad y Gabrillo, *Petitioner* vs. People of the Philippines, *Respondent*)**. – Before the Court is a Petition for Review¹ under Rule 45 seeking the reversal of the Decision² dated September 10, 2019 and the Resolution³ dated June 10, 2021 of the Court of Appeals (CA) in CA-G.R. CR No. 41757. The CA affirmed the Decision dated May 4, 2018 of Branch 209, Regional Trial Court (RTC) of Mandaluyong City in Criminal Case No. MC09-2920-FC that found petitioner Jupiter Vidad y Gabrillo (petitioner) guilty of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b),⁴ Article III of Republic Act No. (RA) 7610.

The Antecedents

An Information⁵ was filed on February 27, 2009 that charged petitioner with violation of Section 5(b) of RA 7610, as follows:

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76-A

¹ *Rollo*, pp. 3-21.

² *Id.* at 26-39; penned by Associate Justice Ramon A. Cruz with Associate Justices Celia C. Librea-Leagogo and Germano Francisco D. Legaspi, concurring.

³ *Id.* at 43-44.

⁴ Section 5. *Child Prostitution and Other Sexual Abuse*. – x x x .
x x x x .

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse: *Provided*, That when the victims 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;

⁵ *Id.* at 45-46.

In or about the period comprising the month[s] of April 2006 until August 2008, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd design through coercion or intimidation, being then [a] music teacher of the victim [AAA],⁶ a minor eight (8) years of age, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of said [AAA], that is in the course of their piano lessons, and while the accused and the minor victim were by themselves inside the piano room, said accused kissed the minor in his mouth and used his tongue, touched his anus and genital area[,] stroked the penis of the minor and thereafter directed the said minor victim to do the same acts to him, against the will and consent of the victim which acts debased, degraded or demeaned the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW.⁷

When arraigned, petitioner pleaded not guilty.⁸

Trial ensued.

Version of the Prosecution

The prosecution presented the following as witnesses: the victim (AAA); his mother, his father, and Mariano Gemora, Jr., (Gemora) founder of the music school which AAA attended.⁹

AAA, who was 13 years old when he testified, relayed in open court that he was around 6 or 7 years old when petitioner touched his buttocks and penis while they were inside the room where he was taking piano lessons. According to AAA, petitioner asked him to kiss petitioner and touch the latter's private parts. At the time, he was scared and did not know what to do.¹⁰

- over -

76-A

⁶ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances. *People v. AAA* (G.R. No. 248777, July 7, 2020).

⁷ Id. at 45.

⁸ Id. at 27.

⁹ Id. at 28.

¹⁰ Id. at 29.

Meanwhile, AAA's mother, father, and Gemora recounted in their respective testimonies that sometime in 2008, AAA individually told them about what petitioner did to him. AAA told them that petitioner unzipped AAA's pants and fondled his private parts; petitioner took out his own genitals from his pants and asked AAA to touch, rub, and place the genitals inside his mouth. This happened several times inside the piano room.¹¹

Version of the Defense

For the defense, Ma. Concepcion Queyquep testified that she met petitioner at a music camp in 2007; she knows him to be a good and God-fearing person who is very active in church. She also described the piano room to be three meters wide, with a door, and a glass window that is 1½ meters wide. Thus, teachers and students passing by the corridor would see whatever that would happen inside the piano room.¹²

Petitioner also testified that because the piano room could be seen by the public, it was impossible for him to commit the complained acts. He asserted that Gemora instigated the filing of the case because Gemora was in the process of adopting AAA. Gemora purportedly prodded AAA's mother and father to harass him after Gemora discovered that he started to mentor his own talents for musical shows.¹³

The RTC Ruling

On May 4, 2018, the RTC rendered its Decision as follows:

1. Finding the accused JUPITER VIDAD y GABRILLO, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5(b), Article III of R.A. 7610 and thereby sentences him to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period as maximum.

- over -

76-A

¹¹ Id. at 28.

¹² Id. at 29-30.

¹³ Id. at 30.



2. ORDERING the accused, JUPITER VIDAD y GABRILLO, to pay the victim, AAA, moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

No costs.

SO ORDERED.¹⁴

The CA Ruling

Petitioner filed an appeal and raised as grounds the failure of the Information¹⁵ to state the approximate date of the commission of the alleged offense and the failure of the prosecution to establish its elements.¹⁶

The CA denied the appeal in its Decision¹⁷ dated September 10, 2019, the *fallo* of which reads:

WHEREFORE, premises considered, the appeal is hereby DISMISSED, and the Decision dated May 4, 2018 of the Regional Trial Court of Mandaluyong City, Branch 209, in Criminal Case No. MC09-2920-FC, is AFFIRMED.

SO ORDERED.¹⁸

The CA held that the precise date of the commission of the offense need not be proven as long as it is shown that the offense was committed at any date within the statute of limitations. The CA found that the period stated in the Information¹⁹ was sufficient given that the acts complained of were committed not just once, but in several instances during AAA's piano lessons. The CA further held that petitioner's right to be informed of the charge against him was not violated as he was duly informed by the recital of facts in the Information; and that the prosecution sufficiently established the elements of Acts of Lasciviousness in relation to Section 5(b) of RA 7610.²⁰

The CA denied petitioner's Motion for Reconsideration on June 10, 2021.²¹

- over -

76-A

¹⁴ As culled from the CA Decision; *id.* at 26-27.

¹⁵ *Id.* at 45-46.

¹⁶ *Id.* at 31-32.

¹⁷ *Id.* at 26-39.

¹⁸ *Id.* at 39.

¹⁹ *Id.* at 45-46.

²⁰ *Id.* at 34-38.

²¹ *Id.* at 43-44.

The Petition

Petitioner is now before the Court and argues that the CA erred in holding that the allegation as to the date of the commission of the offense “[i]n or about the period comprising the months of April 2006 until August 2008” is sufficient and compliant with Sections 6²² and 11,²³ Rule 110 of the Rules of Court.²⁴

Petitioner asserts that while a statement of a date within a period may be sustained as valid, a statement of a period that is so indefinite and uncertain does not give the accused the information required by law.²⁵ He adds that the failure of the prosecution to allege with particularity the date of the commission of the offense led it to exaggerate its evidence in order to cover up its procedural error.²⁶

The Issue

The issue to be resolved is whether the Information²⁷ stating that the offense was committed “in or about the period comprising the months of April 2006 until August 2008” is sufficient and compliant with Sections 6 and 11, Rule 110 of the Rules of Court.

Our Ruling

The petition is denied for lack of merit. The CA Decision and Resolution are affirmed with modification.

The Court notes that the petition suffers from several procedural infirmities: the expiration of the reglementary period cannot be determined since the date of posting of the petition was not indicated; the postal money order as payment for docket and other legal fees were returned to sender for being stale; the verification of the petition and certification on non-forum shopping is machine copy only; it

- over -

76-A

²² Sec. 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place wherein the offense was committed.

x x x x.

²³ Sec. 11. *Date of commission of the offense.* – It is not necessary to state in the complaint or information the precise date at which the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

²⁴ Id. at 10.

²⁵ Id.

²⁶ Id. at 14.

²⁷ Id. at 45-46.

lacks a certified true copy of the assailed decision; and there is no verified declaration of the petition for review on *certiorari* pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC (Re: Proposed Rules on E-Filing and Re: Proposed Rule for the Efficient Use of Paper).

But even on the merits, the petition must fail.

An information under Section 6, Rule 110 of the Rules of Criminal Procedure is deemed sufficient if it states the following: the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. Section 11 of the same Rule similarly provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense.²⁸

Following these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged.²⁹ It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense.³⁰ The complaint will be sustained if the evidence shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action.³¹

In crimes where the date of commission is not a material element, it is not necessary to allege such a date with absolute specificity or certainty in the information. What the Rules of Court require is that the date of commission be approximated, for the sake of properly informing the accused.³²

Here the Court agrees with the CA that the statement “[i]n or about the period comprising the months of April 2006 until August 2008” in the Information complies with the requirement of Rule 110.

In *People v. Cutamora*,³³ the Court found sufficient and complete the information which stated the approximate time of the commission of the offense of rape as sometime “in the year 1990 up to 1993.”

- over -
76-A

²⁸ *People v. Teodoro*, 622 Phil. 328, 343 (2009).

²⁹ *Fianza v. People*, 815 Phil. 379, 393 (2017).

³⁰ *People v. Teodoro*, *supra* note 28.

³¹ *Fianza v. People*, *supra* note 29.

³² *People v. Delfin*, 738 Phil. 811, 817 (2014).

³³ 396 Phil. 405 (2000).

There, the Court explained that the dates of the commission of the crimes were not “vague and ambiguous” or “too indefinite” so as to deprive the accused of their right to be informed of the charges against them. The Court also noted that the victims were minors, and as such, they were not expected to closely monitor the dates of their defilement.³⁴

It is sufficient that the acts or omissions constituting the offense be stated in the information in ordinary and concise language, not necessarily in the language used in the statute, but in terms sufficient for a person of common understanding to know what offense is being charged and for the court to pronounce judgment.³⁵

In the case, the Information specifically charged petitioner with violation of Section 5(b) of RA 7610. It also stated that the victim, AAA, was a minor of eight years of age and that petitioner committed acts of lasciviousness upon AAA, in the course of their piano lessons from April 2006 to August 2008, when he “kissed the minor in his mouth and used his tongue, touched his anus and genital area[,] stroked the penis of the minor and thereafter directed the said minor victim to do the same acts to him, against the will and consent of the victim which acts debased, degraded or demeaned the intrinsic worth and dignity of the child as a human being.”³⁶

A child is considered subjected to “other sexual abuse,” as contemplated by Section 5(b) of RA 7610, when the child indulges in lascivious conduct under the coercion or intimidation, or influence of any adult. The allegations in the Information that petitioner committed lascivious conduct³⁷ were sufficient to apprise him of the nature of the criminal act with which he was charged to enable him to prepare his defense.

It should also be mentioned that objections relating to the form of the complaint or information cannot be made for the first time on appeal. If the accused found the information insufficient, he should have moved before arraignment either for a bill of particulars for him to be properly informed of the exact date of the alleged offense, or for the quashal of the information on the ground that it did not conform with the prescribed form. By failing to pursue either remedy, the

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76-A

³⁴ Id. at 415.

³⁵ *Fianza v. People*, *supra* note 29, at 394.

³⁶ *Rollo*, p. 45.

³⁷ See *rollo*, p. 45.

accused is deemed to have waived his objection to any formal defect in the information.³⁸ As petitioner allowed himself to be arraigned and entered a plea of not guilty, he is deemed to have waived his right to object to the information on the ground of an error as to the time of the alleged offense.³⁹

As for the elements of the offense, the RTC found petitioner guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610. This was affirmed by the CA⁴⁰ and the Court finds no reason to deviate from their uniform findings.

The elements of Acts of Lasciviousness under Article 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness; (b) the lascivious act is done under any of the following circumstances: (1) by using force of intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; or (3) when the offended party is under twelve (12) years of age; and (c) the offended party is another person of either sex.⁴¹

On the other hand, sexual abuse, as defined under Section 5(b), Article III of RA 7610, has three elements: (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 is below eighteen (18) years old.⁴²

In the case at bar, petitioner's lascivious act consisted of touching AAA's anus or buttocks, kissing him on the mouth, forcing AAA to kiss him back, and fondling AAA's genitalia.⁴³ There is also influence and power in this case as petitioner was AAA's piano teacher.⁴⁴

It is well established that the trial court's assessment of the credibility of witnesses deserves great respect and even finality when affirmed by the CA.⁴⁵ This is in recognition of the fact that trial courts

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76-A

³⁸ *People v. Teodoro*, *supra* note 28, at 344.

³⁹ See *People v. Ibañez*, 551 Phil. 137, 144-145 (2007).

⁴⁰ *Rollo*, pp. 36-38.

⁴¹ *Fianza v. People*, *supra* note 29, at 389-390.

⁴² *Id.* at 390.

⁴³ *Rollo*, p. 28.

⁴⁴ *Id.* at 27.

⁴⁵ *Joaquin v. People*, G.R. No. 244570, February 17, 2021.

are better hoisted to observe the demeanor and deportment of witnesses on the stand, making their assessment of a witness's credibility far superior to that of appellate tribunals.⁴⁶

The RTC, as affirmed by the CA, imposed upon petitioner the penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum. Considering that the penalty is in accord with jurisprudence,⁴⁷ the Court upholds it.

However, modification as to the amount of damages that petitioner should pay AAA should be made in view of recent rulings. As held in *People v. XXX*⁴⁸ and in *Joaquin v. People*,⁴⁹ an accused who committed Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 is liable to pay civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each. The amounts awarded shall be subject to legal interest rate of six percent (6%) *per annum* from the finality of the Resolution until full payment.

In addition, petitioner is likewise ordered to pay a fine in the amount of ₱15,000.00 pursuant to Section 31(f),⁵⁰ Article XII of RA 7610.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated September 10, 2019 and the Resolution dated June 10, 2021 of the Court of Appeals in CA-G.R. CR No. 41757 are

- over -
76-A

⁴⁶ *People v. XXX*, G.R. No. 233661, November 6, 2019.

⁴⁷ *Fianza v. People*, *supra* note 28, at 396-397; *Joaquin v. People*, *supra* note 44. In *Fianza v. People*, the Court explained by way of a footnote:

The penalty for violation of Section 5 (b), Article III of RA 7610 is *reclusion temporal* in its medium period which 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, the minimum of the penalty should be taken from *reclusion temporal* in its minimum period, or anywhere from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, and the maximum should be *reclusion temporal* in its medium period. In relation thereto, Article 64 of the RPC provides that when the penalty prescribed by law contains three periods (such as *reclusion temporal*) and in the absence of aggravating or mitigating circumstances, the penalty shall be imposed in its medium period. See *Quimvel v. People*, G.R. No. 214497, April 18, 2017, citing *People v. Santos*, 753 Phil. 637 (2015).

⁴⁸ *Supra* note 46, citing *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁴⁹ *Supra* note 45.

⁵⁰ Section 31. *Common Penal Provisions.* –

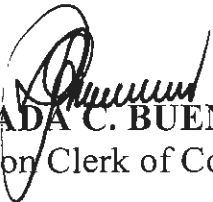
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(f) A fine to be determined by the Court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or and immediate member of his family if the latter is the perpetrator of the offense.

AFFIRMED with **MODIFICATION** in that petitioner Jupiter Vidar y Gabrillo is hereby **ORDERED** to pay AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each which amounts shall be subject to legal interest rate of six percent (6%) *per annum* from finality of the Resolution until full payment; and a **FINE** in the amount of ₱15,000.00.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m 7/4*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

76-A

JUL 19 2022

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