



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 21, 2022, which reads as follows:

“G.R. No. 230993 (XXX¹ v. *People of the Philippines*). — This Petition for Review on *Certiorari*² assails the September 23, 2016 Decision³ and the March 30, 2017 Resolution⁴ of the Court of Appeals (CA) in CA-G.R. CR No. 36191, both affirming the October 22, 2013 Decision⁵ of the Regional Trial Court (RTC) of [REDACTED],⁶ Branch 9, in Criminal Case No. 6542, which found petitioner XXX guilty beyond reasonable doubt of the crime of Lascivious Conduct defined and penalized under Article III, Section 5 (b) of Republic Act No. (RA) 7610,⁷ in relation to Sec. 2, par. (h) of its Implementing Rules and Regulations (IRR), and in relation further to Art. 336 of the Revised Penal Code (RPC).

The Factual Antecedents

On September 8, 2010, petitioner was charged with the crime of Lascivious Conduct in an Information⁸ which alleged:

That on or about the 5th day of July 2010 at around 3:30 o'clock in the afternoon, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the

¹ Initials were used to identify the accused-appellant pursuant to the Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017 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.”

² *Rollo*, pp. 11-26.

³ *Id.* at 28-36. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam (now a retired Member of this Court) and Francisco P. Acosta.

⁴ *Id.* at 38-39.

⁵ *Id.* at 54-67. Penned by Presiding Judge Carolina F. De Jesus.

⁶ Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

⁷ Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES.” Approved: June 17, 1992.

⁸ *Rollo*, pp. 28-29.

above-named accused, by means of force and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one [AAA],⁹ a two (2) year old girl, by touching the vagina of the said [AAA], against her will and consent, with intent to abuse, humiliate, harass, or degrade [sic] said [AAA], and to arouse and gratify his sexual desire, which acts debased, degraded or demeaned her intrinsic worth and dignity as a human being.

Contrary to law.¹⁰

Version of the Prosecution

On July 5, 2010, at about 3:30 p.m., AAA was playing with other kids. Her sister, BBB, was resting near AAA when she noticed petitioner approach AAA and touched the latter's leg.¹¹ BBB knew petitioner because they are barriomates and since the latter's wife, YYY, is her friend.¹² When petitioner noticed BBB looking at him, he immediately left the place.¹³ A few moments later, petitioner returned and again approached AAA.¹⁴ BBB discreetly went near them and stood behind petitioner.¹⁵ BBB then saw petitioner touching and mashing the private part of AAA,¹⁶ prompting BBB to grab AAA and slap petitioner.¹⁷ BBB called their mother, CCC, and informed her about the incident.¹⁸ They immediately proceeded to the police station and reported the incident.¹⁹

At around 4:10 p.m. of the same date, BBB, Police Officer 3 Isagani Zara, Senior Police Officer 1 Roberto Baldrias, and other police officers proceeded to [REDACTED].²⁰ Upon their arrival, BBB identified petitioner as the person who abused AAA.²¹ Immediately, the police officers arrested petitioner and brought him to the police station for further investigation.²² The following day, BBB and CCC returned to the police station to file a formal complaint.²³

⁹ "The identity of the victim or any information which could 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, Providing Penalties for its Violation, 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; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

¹⁰ *Rollo*, pp. 28-29.

¹¹ *Id.* at 29.

¹² *Id.* at 55.

¹³ *Id.* at 29.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 59.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 29-30.

Version of the Defense

The defense evidence tended to establish that petitioner was at the yard of ZZZ situated at [REDACTED].²⁴ They were having a conversation while having snacks, when petitioner noticed AAA playing nearby.²⁵ AAA used to approach him as he would usually give her whatever he was eating.²⁶ After they finished eating, AAA was still playing in the yard of ZZZ while BBB, her older sister was lying on a wooden bed under a tamarind tree about three meters away.²⁷ As he was fond of AAA, he approached her²⁸ from her back and lifted her.²⁹ He accidentally touched the lower abdomen of AAA, who, at that time, was wearing shorts.³⁰ He was surprised when BBB suddenly slapped and pushed him, causing him to fall on the ground.³¹ ZZZ tried to pacify them but CCC, the mother of AAA and BBB, hit the back of ZZZ.³² Petitioner vehemently denied the accusation imputed against him by BBB and CCC.³³

Ruling of the Regional Trial Court

The trial court convicted petitioner as charged. The dispositive portion of its Decision³⁴ reads:

WHEREFORE, the foregoing considered, this Court hereby finds accused [XXX] **GUILTY** beyond reasonable doubt of the crime of **Lascivious Conduct** defined and penalized under Article III, Section 5 (b) of Republic Act No. 7610 in relation to Section 2, paragraph (h) of its Implementing Rules and Regulations x x x and sentences him to suffer the indeterminate penalty of imprisonment for **Thirteen (13) Years, Eight (8) Months and One (1) Day of Reclusion Temporal Minimum**, as **minimum**, to **Sixteen (16) Years and Ten (10) Months of Reclusion Temporal Medium**, as **maximum**, and to pay victim AAA the amount of **Fifteen Thousand (P15,000.00)** as moral damages. With costs.

SO ORDERED.³⁵

Ruling of the Court of Appeals

The appellate court did not find any reason to disturb the findings of the RTC. It found that the prosecution established the elements of the crime, to wit:

²⁴ Id. at 30.

²⁵ Id.

²⁶ Id.

²⁷ Id. at 60.

²⁸ Id. at 30.

²⁹ Id.

³⁰ Id. at 60.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id. at 54-67. Penned by Presiding Judge Carolina F. De Jesus.

³⁵ Id. at 66-67.

1. That the offender commits any act of lasciviousness or lewdness; and
2. That it is done under any of the following circumstances:
 - a. By using force or intimidation;
 - b. When the offended woman is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under twelve (12) years of age.³⁶

It was proven by the prosecution that accused-appellant committed an act of lechery by intentionally touching, either directly or indirectly, the genitalia of the 2-year-old victim.

Further, the CA upheld the credibility of BBB's testimony, which prevails over the denial presented by the defense.

The dispositive portion of the Decision reads:

WHEREFORE, the **APPEAL** is **DENIED**. Hence, the RTC Decision dated October 22, 2013 in Criminal Case No. 6542 is **AFFIRMED**.

SO ORDERED.³⁷

Aggrieved, petitioner filed this instant petition.

Our Ruling

The petition lacks merit.

The case of *Uddin v. People*³⁸ sets the parameters in determining whether there is a violation of Section 5 (b), Article III of RA 7610, to wit:

The essential elements of Section 5 (b), Article III of RA 7610 are:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.³⁹

As to the first element, par. (h), Sec. 2 of the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse,

³⁶ Id. at 32, citing *Sombilon, Jr. v. People*, 617 Phil. 187, 195-196 (2009), citing *People v. Victor*, 441 Phil. 798, 811 (2002).

³⁷ Id. at 35.

³⁸ G.R. No. 249588, November 23, 2020, citing *People v. Dagsa*, 824 Phil. 704, 721 (2018).

³⁹ Id.

humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) the victim was either exploited in prostitution or subjected to sexual abuse; and (b) the victim is a child as defined under RA 7610.⁴⁰

In this case, all the above elements are clearly present.

The first element is satisfied when the prosecution established the fact that accused-appellant intentionally touched AAA's buttocks and vagina.

Petitioner's assertion that the touching of the victim's lower abdomen/pelvic area was unintentional, is self-serving. ZZZ's alleged corroboration does not inspire belief as he was about three meters away from where the accused-appellant and the victim were situated. Further, the usual and natural way of lifting a child is through a child's armpits, and not through the buttocks and pelvic area.

Clearly, petitioner's touching of the buttocks and vagina of the 2-year old minor who is not capable of fully understanding one's actions, constitutes "other sexual abuse." In *Carlos v. AAA*,⁴¹ the Court explained thus:

Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "child exploited in prostitution and other sexual abuse." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

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.

To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."

⁴⁰ Id.

⁴¹ G.R. No. 243034, June 28, 2021.

This Court finds that accused-appellant's actuations may be classified as "coercion" and "influence" within the purview of Section 5, Article III of RA 7610. First, the most crucial element is private complainant's minority. It is undisputed that private complainant was only 13 years old at the time of the commission of the crime and is, hence, considered a child under the law. In this respect, private complainant was not capable of fully understanding or knowing the import of her actions and in consequence, remained vulnerable to the cajolery and deception of adults, as in this case.⁴²

Finally, the third element is satisfied since AAA was only 2 years of age at the time of the commission of the crime.

The defense further claims that BBB's testimony bore certain inconsistencies. However, these alleged inconsistencies pertained only to collateral or trivial matters and have no bearing on petitioner's culpability.⁴³ In this case, both the RTC and the CA found BBB's testimony to be more credible compared to petitioner's bare denial.⁴⁴ We find no reason to disturb the aforementioned findings of the lower courts.

However, there is a need to modify the nomenclature of the crime committed as well as the imposable penalty. Pursuant to *People v. Caoili*,⁴⁵ the crime committed is Acts of Lasciviousness under Art. 336 of the RPC in relation to Sec. 5 (b) of RA 7610. Moreover, the proper imposable penalty should be 13 years, eight months, and one day of *reclusion temporal* minimum, as minimum, to 16 years and five months of *reclusion temporal* medium, as maximum, there being no aggravating or mitigating circumstances attendant to the case.

The monetary awards likewise need to be modified. Petitioner is ordered to pay the victim civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each.⁴⁶ All these monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this Resolution until full payment. In addition, a fine in the amount of ₱15,000.00 is imposed pursuant to Section 31(f) of RA 7610.⁴⁷

WHEREFORE, the appeal is hereby **DISMISSED**. The September 23, 2016 Decision and the March 30, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 36191 are **AFFIRMED** with **MODIFICATION** in that petitioner is found guilty of Acts of Lasciviousness under Art. 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610, and is sentenced to suffer the penalty of 13 years, eight months and one day of *reclusion temporal*, minimum, as

⁴² Id.

⁴³ *Pig-ed v. People*, G.R. No. 253202, January 18, 2021.

⁴⁴ *People v. DDD*, G.R. No. 233323, August 26, 2020.

⁴⁵ 815 Phil. 839 (2017)

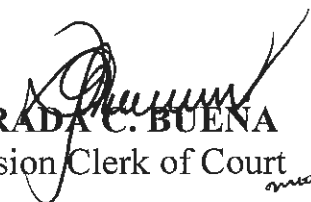
⁴⁶ *XXX v. People*, G.R. No. 254096, February 17, 2021; *XXX v. People*, G.R. No. 253966, January 25, 2021.

⁴⁷ *People v. XXX*, G.R. No. 253323, November 11, 2021.

minimum, to 16 years and five months of *reclusion temporal* medium, as maximum. Moreover, he is ordered to pay AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each, with interest at the rate of six percent (6%) per *annum* from date of finality of this Resolution until fully paid. In addition, petitioner is ordered to pay a fine in the amount of ₱15,000.00.

SO ORDERED.” *Gesmundo, C.J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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PUBLIC ATTORNEY’S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Court of Appeals (x)
1000 Manila
(CA-G.R. CR No. 36191)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 9
Balayan, 4213 Batangas
(Crim. Case No. 6542)

The Director General
Bureau of Corrections
1770 Muntinlupa City

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