



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **September 28, 2022** which reads as follows:*

**“G.R. No. 258744 (People of the Philippines v. XXX258744).** — The Court resolves to:

1. **NOTE** and **GRANT** the Manifestation and Motion<sup>1</sup> dated August 26, 2022 of the Office of the Solicitor General (OSG), stating that they will no longer file a supplemental brief, and adopting its Brief for the Appellee<sup>2</sup> dated June 26, 2020; with reservation of its right to file supplemental brief in response to any supplemental brief that appellant XXX258744<sup>3</sup> may file which raises new issues or matters that have not been dealt with by plaintiff-appellee in its brief for the appellee;

2. **NOTE** the Letter<sup>4</sup> dated August 17, 2022 of CSO4 Cesar T. Grecia, Inmate Documents and Processing Division, Bureau of Corrections, Muntinlupa City, confirming the confinement of appellant at the New Bilibid Prison, Muntinlupa City on April 26, 2019; and

3. **NOTE** the Manifestation<sup>5</sup> (in lieu of supplemental brief) dated September 9, 2022 of the Public Attorney’s Office, adopting its appellant’s brief filed before the Court of Appeals as its supplemental brief as the same had adequately and exhaustively discussed all the issues pertinent to the case.

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<sup>1</sup> *Rollo*, pp. 46–47.

<sup>2</sup> *CA rollo*, pp. 85–100.

<sup>3</sup> 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 R.A. No. 760, “An Act providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;” R.A. 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.

<sup>4</sup> *Rollo*, p. 49.

<sup>5</sup> *Id.* at 50–52.

This appeal<sup>6</sup> assails the Decision<sup>7</sup> of the Court of Appeals in CA-G.R. CR-HC No. 12938 dated November 10, 2020 affirming with modification the conviction of appellant for two (2) counts of lascivious conduct under Section 5(b) of Republic Act No. 7610 (RA 7610).<sup>8</sup>

### **The Facts**

Under separate Informations<sup>9</sup> both dated December 27, 2013, appellant was charged with two (2) counts of acts of lasciviousness in relation to RA 7610 committed against his minor daughter, AAA258744, thus:

#### **Criminal Case No. 13250-14**

That on or about the 11<sup>th</sup> day of December 2011, in the [REDACTED], Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by lust, with the use of intimidation and taking advantage of his moral ascendancy over his daughter [AAA258744], fourteen (14) years old (born on July 7, 1997), did then and there, willfully, unlawfully and feloniously touch the breasts and vagina of the latter, against her will and consent, thereby debasing, degrading and demeaning her intrinsic worth and integrity as a child, to her damage and prejudice.

CONTRARY TO LAW.<sup>10</sup>

#### **Criminal Case No. 13251-14**

That on or about the 25<sup>th</sup> day of May 2012, in the [REDACTED], Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by lust, did then and there, willfully, unlawfully and feloniously touch the breasts of his daughter [AAA258744], fourteen (14) years old (born on July 7, 1997), while the latter was sleeping, against her will and consent, thereby debasing, degrading and demeaning her intrinsic worth and integrity as a child, to her damage and prejudice.

CONTRARY TO LAW.<sup>11</sup>

On arraignment, appellant pleaded not guilty to both charges.<sup>12</sup> Joint trial ensued.

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> Penned by Associate Justice Florencio M. Mamauag, Jr., and concurred in by Associate Justices Japar B. Dimaampao (now a member of this Court) and Zenaida T. Galapate-Laguilles; *id.* at 8–20.

<sup>8</sup> Otherwise known as The Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

<sup>9</sup> Record, pp. 1 & 3.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Rollo*, p. 9.

The prosecution presented AAA258744, her mother, BBB258744, and the nanny, Marciana Gorospe Anzo (Anzo).<sup>13</sup> The defense, on the other hand, presented the lone testimony of appellant.<sup>14</sup>

### *Prosecution's Version*

AAA258744 testified that on December 11, 2011, when she was 14 years old, she was roused from sleep when she felt someone touching her nipple. Through the light coming from the window, she was able to clearly see that it was appellant who was touching her breast under her shirt. She immediately turned her back on him as she did not know what to do. He then went downstairs.<sup>15</sup>

Since that night, he repeated the perverted act so frequently that she could no longer recall all the exact times and dates when the inappropriate fondling happened. She started going to sleep wearing a bra to deter the unwanted molestation. There was also a time when appellant inserted his hand inside her shorts and touched her private part.<sup>16</sup>

AAA258744 never shouted for help because she was afraid of her father as he had a history of violent behavior, but she did recall an instance when she had the courage to sway his hand away. Appellant never said anything while he was touching her, but there were times whenever he got very drunk and he would apologize to her for what he did.<sup>17</sup>

At 10 o'clock in the evening of May 25, 2012, appellant again sat by her bedside near her head and touched both of her breasts despite the fact that her nanny and younger sibling were sleeping in the same room. This was the last time he molested her.<sup>18</sup>

A few days later, AAA258744 finally confided in BBB258744 because she was growing more frightened as the incidents had become more frequent.<sup>19</sup>

BBB258744 immediately confronted appellant who did not deny the accusation. He merely replied, "*Sinabi na pala sa[']yo? Alam mo na pala?*" BBB258744 immediately packed up and left with their children.<sup>20</sup>

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<sup>13</sup> *Id.* at 9–11.

<sup>14</sup> *Id.* at 32.

<sup>15</sup> *Id.* at 27.

<sup>16</sup> *Id.* at 28.

<sup>17</sup> *Id.* at 28.

<sup>18</sup> *Id.* at 27.

<sup>19</sup> *Id.* at 25–26.

<sup>20</sup> *Id.* at 26.

Anzo was surprised when she was called to testify in the case because she thought appellant was a good man. She recalled, however, that AAA258744 began to act strange starting December 2011. She (AAA258744) appeared frightened of appellant and never wanted to stay inside the house to avoid him.<sup>21</sup>

The prosecution offered in evidence AAA258744's certificate of live birth<sup>22</sup> which showed that she was born on July 17, 1997. Hence, she was only 14 years old on December 11, 2011 and May 25, 2012.

### ***Defense's Version***

Appellant denied the accusations. He testified that he is a responsible father who gave his family a good life.<sup>23</sup>

He could no longer recall where he was on December 11, 2011, but it was possible that he was in the house with AAA258744. On May 25, 2012, he was also in the house with BBB258744 and their children who were sleeping on the second floor of their house. He had access to that room but he did not go there that night.<sup>24</sup>

### **The Ruling of the Trial Court**

By Decision<sup>25</sup> dated January 25, 2019, the trial court rendered a verdict of conviction, thus:

WHEREFORE, the foregoing premises considered, accused [XXX258744] is hereby found:

#### **For Criminal Case No. 13250-14:**

GUILTY beyond reasonable doubt of the crime of ACTS OF LASCIVIOUSNESS in relation to Section 5(b) of R.A. 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

He is likewise ordered to pay the victim civil indemnity in the amount of P20,000.00 and moral damages in the amount of P30,000.00.

#### **For Criminal Case No. 13251-14:**

GUILTY beyond reasonable doubt of the crime of ACTS OF LASCIVIOUSNESS in relation to Section 5(b) of R.A. 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua*.

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<sup>21</sup> *Id.* at 36–37.

<sup>22</sup> *Id.* at 32.

<sup>23</sup> *Id.* at 34.

<sup>24</sup> *Id.* at 34–35.

<sup>25</sup> Penned by Judge Mary Charlene V. Hernandez-Azura; *id.* at 23–42.

He is likewise ordered to pay the victim civil indemnity in the amount of P20,000.00 and moral damages in the amount of P30,000.00.

The penalties of imprisonment shall be simultaneously served by the accused while the civil indemnity shall earn interest at the rate of six percent 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>26</sup>

### Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for convicting him despite the prosecution's alleged failure to establish all the elements of acts of lasciviousness. AAA258744's testimony was incredible because she could have shouted for help since she had the means and opportunity to do so. Too, he had no moral ascendancy over her because he was not armed, nor did he utter threatening words to intimidate her. His denial should be given more weight in light of her incredible and improbable testimony.<sup>27</sup>

For its part, the OSG maintained that the prosecution sufficiently proved appellant's guilt. Notably, AAA258744's narration of events was supported by BBB258744's testimony. Too, AAA258744's testimony clearly established that appellant took advantage of his relationship with her as her father. The mere fact that there were other persons present in the house does not rule out that a crime was committed. AAA258744 cannot be faulted for failing to struggle or cry out because victims of abuse react to similar situations differently. Finally, her credible testimony deserves greater weight than appellant's bare denial.<sup>28</sup>

### The Ruling of the Court of Appeals

By Decision<sup>29</sup> dated November 10, 2020, the Court of Appeals affirmed but increased the civil indemnity and moral damages to conform with recent jurisprudence. It also deleted the pronouncement that the penalties of imprisonment shall be served simultaneously, noting that penalties consisting in deprivation of liberty cannot be served simultaneously, viz.:

**WHEREFORE**, the appeal is **DENIED**. The Decision dated January 25, 2019 of the Regional Trial Court, Branch 22 of Imus, Cavite, in Criminal Cases Nos. 13250-14 and 13251-14, is hereby **AFFIRMED WITH MODIFICATIONS**:

1. In **Criminal Case No. 13250-14**, We find the accused-appellant **GUILTY** of **Lascivious Conduct under Section 5**

<sup>26</sup> *Id.* at 41-42.

<sup>27</sup> Brief for the Accused-Appellant; CA *rollo*, pp. 37-53.

<sup>28</sup> Brief for the Appellee; CA *rollo*, pp. 82-100.

<sup>29</sup> *Rollo*, pp. 8-20.

(b) of RA 7610, and hereby sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim, [AAA258744], the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱15,000.00 as fine, all with interest at the rate of 6% per annum from the date of finality of this decision until fully paid.

2. In **Criminal Case No. 13251-14**, We find the accused-appellant **GUILTY** of **Lascivious Conduct under Section 5(b) of RA 7610**, and hereby sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim, [AAA258744], the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱15,000.00 as fine, all with interest at the rate of 6% per annum from the date of finality of this decision until fully paid.

**SO ORDERED.**<sup>30</sup>

### The Present Appeal

Appellant now seeks anew a verdict of acquittal.<sup>31</sup> Both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### Ruling

We affirm.

To sustain a verdict of conviction for lascivious conduct under Section 5(b) of RA 7610, the following elements must be proved: (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; and (3) the child, whether male or female, is below 18 years of age.<sup>32</sup>

“Lascivious conduct” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.<sup>33</sup> Meanwhile, “sexual abuse” includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another

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<sup>30</sup> *Id.* at 19.

<sup>31</sup> *Rollo*, p. 3.

<sup>32</sup> *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019, 914 SCRA 162, 176.

<sup>33</sup> Section 2(h), RA 7610.

person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.<sup>34</sup>

Here, all the elements of lascivious conduct under Section 5(b) of RA 7610 were clearly established. The prosecution was able to prove that AAA, having been born on July 7, 1997 as evidenced by her Certificate of Live Birth,<sup>35</sup> was below 18 years old during the material times alleged in the Informations, *i.e.* December 11, 2011 and May 25, 2012. Appellant used his moral influence and ascendancy as a father to perpetuate lascivious conduct on his daughter, who was only a minor. Notably, though there is no showing that he employed persuasion, inducement, enticement, or coercion to make AAA258744 engage in lascivious conduct, his moral influence or ascendancy as her biological father takes the place of violence or intimidation.

Notably, AAA258744 was only 14 years old when her own father molested her. It is settled that youth and immaturity are generally badges of truth and sincerity. It is highly improbable that a young girl such as AAA258744 would concoct such a horrid story against her own father, accuse him of a crime, and subject herself and her family to the humiliation and ordeal of a public trial unless she is impelled by a genuine desire to expose the truth and seek the justice she so greatly deserves.<sup>36</sup>

Against AAA258744's positive testimony, appellant only offered denial. We have pronounced time and again that denial is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.<sup>37</sup>

### ***Penalties***

Pursuant to *People v. Caoili*,<sup>38</sup> considering AAA258744 was over 12 but under 18 years of age at the time of the commission of the lascivious act, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Since the crime was committed by AAA258744's father, the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as acts of lasciviousness, relationship is always aggravating. With the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period, *i.e.*, *reclusion perpetua*. This

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<sup>34</sup> Section 2(g), RA 7610.

<sup>35</sup> *Rollo*, p. 32.

<sup>36</sup> *People v. XXX*, G.R. No. 235662, July 24, 2019, 910 SCRA 394.

<sup>37</sup> *People v. Batalla*, G.R. No. 234323, January 7, 2019, 890 SCRA 127, 140.

<sup>38</sup> 815 Phil. 839, 896–897 (2017).

is in consonance with Section 31(c) of RA 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia*, the parent of the victim.<sup>39</sup>

As for the monetary awards, *People v. Tulagan*<sup>40</sup> decrees that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua*, the victim is entitled to civil indemnity, moral damages, and exemplary damages each in the amount of ₱75,000.00, regardless of the number of qualifying or aggravating circumstances present.

These amounts shall earn six percent (6%) legal interest *per annum* from finality of this Resolution until fully paid.

Likewise, pursuant to Section 31(f) of RA 7610<sup>41</sup> a fine may be imposed on the perpetrator, which jurisprudence pegs at ₱15,000.00.<sup>42</sup>

**FOR THESE REASONS**, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated November 10, 2020 in CA-G.R. CR-HC No. 12938 is **AFFIRMED**.

In **Criminal Case No. 13250-14**, appellant XXX258744 is found **GUILTY** of **LASCIVIOUS CONDUCT** under **Section 5(b) of Republic Act No. 7610** and sentenced to *reclusion perpetua* and to pay a **FINE** of ₱15,000.00. He is directed to pay AAA258744 the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

In **Criminal Case No. 13251-14**, appellant XXX258744 is found **GUILTY** of **LASCIVIOUS CONDUCT** under **Section 5(b) of Republic Act No. 7610** and sentenced to *reclusion perpetua* and to pay a **FINE** of ₱15,000.00. He is directed to pay AAA258744 the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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

**SO ORDERED.**” (LOPEZ, M., J., on official business)

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<sup>39</sup> *Id.*

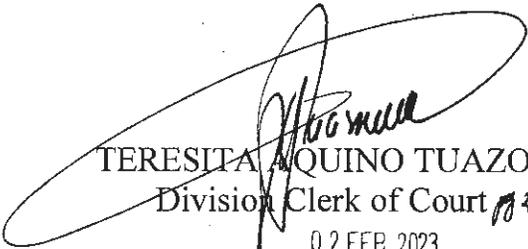
<sup>40</sup> G.R. No. 227363, March 12, 2019, 896 SCRA 307.

<sup>41</sup> Section 31. *Common Penal Provisions*. – xxx

(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 any immediate member of his family if the latter is the perpetrator of the offense.

<sup>42</sup> *Supra* note 36.

By authority of the Court:

  
 TERESITA AQUINO TUAZON  
 Division Clerk of Court *ff 42*  
 02 FEB 2023

OFFICE OF THE SOLICITOR GENERAL (reg)  
 134 Amorsolo Street  
 1229 Legaspi Village  
 Makati City

PUBLIC ATTORNEY'S OFFICE (reg)  
 Special & Appealed Cases Service  
 Department of Justice  
 5<sup>th</sup> Floor, PAO-DOJ Agencies Building  
 NIA Road corner East Avenue  
 Diliman, 1104 Quezon City

XXX258744 (reg)  
 Accused-Appellant  
 c/o The Director  
 Bureau of Corrections  
 1770 Muntinlupa City

THE DIRECTOR (reg)  
 Bureau of Corrections  
 1770 Muntinlupa City

\*CSO4. CESAR T. GRECIA (reg)  
 Assistant Officer-in-Charge  
 Inmate Documents and Processing Division  
 Bureau of Corrections  
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
 Regional Trial Court, Branch 22  
 Imus, Cavite  
 (Crim. Case Nos. 13250-14 & 13251-14)

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COURT OF APPEALS (x)  
 Ma. Orosa Street  
 Ermita, 1000 Manila  
 CA-G.R. CR-HC No. 12938

\*For this resolution only  
*Please notify the Court of any change in your address.*  
 GR258744. 9/28/2022B(94)URES(m)