



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 8, 2023** which reads as follows:*

“**G.R. No. 219557 (XXX¹ v. People of the Philippines)**. —For review² is the January 22, 2015 Decision³ of the Court of Appeals (CA) in CA-G.R. CR No. 02112, which affirmed the October 16, 2012 Judgment⁴ of the Regional Trial Court (RTC), Branch [REDACTED]⁵ in Criminal Case No. CBU-89896, convicting petitioner XXX of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC); and the June 22, 2015 CA Resolution⁶ denying reconsideration thereof.

The Facts

At around 10:00 p.m. of August 15, 2010, then 12-year-old AAA⁷ went out of her house to purchase prepaid credits for her mobile phone when a certain Inting accosted her and invited her to a round of drinks.⁸ AAA was asked to purchase a bottle of Don Enrique liquor from a nearby *sari-sari* store

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. 3-21.

³ *CA rollo*, pp. 72-81. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamella Ann Abella Maxino.

⁴ *Records*, pp. 83-89. Penned by Presiding Judge Ester M. Veloso.

⁵ Geographical location is blotted out pursuant to Supreme Court Amended Administrative Circular No. 83-2015.

⁶ *CA rollo*, pp. 154-159. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamella Ann Abella Maxino.

⁷ “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]).

⁸ *CA rollo*, pp. 73-74.

on credit.⁹ The drinking spree then ensued, with XXX joining the group at around 11:00 p.m.¹⁰

Intoxicated after drinking about five glasses of liquor,¹¹ AAA felt that her body was heavy.¹² She blanked out while sitting on a bench.¹³ Unknown to her, XXX and his friends volunteered to bring AAA home.¹⁴ All three of AAA's drinking companions brought her to her room, but XXX stayed behind to allegedly fix AAA's sleeping position so that it would be more comfortable.¹⁵

At around 3:00 a.m. of August 16, 2010, AAA's older sister, BBB, awoke to prepare infant formula for her infant child.¹⁶ When she did not find any milk, BBB went to AAA's room to use AAA's cellphone and send a text message to their mother to buy milk.¹⁷

BBB opened the door of AAA's room and was surprised to see something white that was moving in the dark.¹⁸ BBB switched on the light and saw XXX naked, on top of AAA, and kissing her.¹⁹ BBB shouted at XXX's, "*Hoy! Unsa manang imo gibuhay ni AAA!*"²⁰ Alarmed, XXX quickly pulled up his shorts, got his jersey shirt, and fled from AAA's room.²¹ In the wake of the incident, XXX allegedly left behind an MP3 player and a pair of red rubber slippers.²² BBB tried to wake AAA up, but to no avail.²³

Startled by what transpired in the house, BBB tended to her baby then decided to go to the club where their mother worked.²⁴ BBB was crying and visibly trembling as she reported what she witnessed.²⁵ Apprised of the situation, they went back home and found AAA still asleep.²⁶ Despite several attempts to wake AAA, she remained unperturbed.²⁷ AAA's mother poured water on her, which finally woke her up.²⁸

⁹ Id. at 74.

¹⁰ Id.

¹¹ Id.

¹² TSN, June 7, 2011, p. 6.

¹³ Id. at 7.

¹⁴ CA rollo, p. 74.

¹⁵ Id. at 74-75.

¹⁶ Id. at 74.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Id. at 75.

²³ Id. at 74.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.



Upon waking, AAA was interrogated. However, AAA could not remember what happened in her room.²⁹ The last thing she remembered from that evening was sitting on a bench after her drinking spree with XXX and his friends.³⁰

BBB hurriedly reported the incident to the police on behalf of AAA.³¹ In the police station, BBB identified XXX as the person who was naked, on top of AAA, and kissing her.³² XXX was apprehended.³³

An Information³⁴ dated August 26, 2010 was filed charging XXX with Acts of Lasciviousness, the accusatory portion of which reads:

That on or about the 16th day of August 2010 at about 3:00 o'clock in the morning, in the City of ██████████, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there [commit] acts of lasciviousness upon [AAA], a [12-year-old] minor, by placing himself on top of her and kissing her, with lewd design without the consent and against the will of the complainant.

CONTRARY TO LAW.³⁵

Upon arraignment, XXX entered a plea of not guilty.³⁶ At the pre-trial conference, the prosecution and the defense agreed to the following stipulation of facts: (1) that on August 16, 2010, XXX was in ██████████; and (2) that at the time of the alleged commission of the offense, the offended party, AAA, was a minor.³⁷

During trial, the prosecution presented the respective affidavits of BBB³⁸ and AAA,³⁹ as well as an MP3 player⁴⁰ and a pair of red rubber slippers.⁴¹

On the other hand, XXX denied the accusations against him, gave a different version of the events, and claimed that he did not know why AAA and her family filed this case against him.⁴²

²⁹ Id.

³⁰ TSN, June 7, 2011, p. 7.

³¹ CA rollo, p. 75.

³² Id.

³³ Id.

³⁴ Records, pp. 1-2.

³⁵ Id. at 1.

³⁶ CA rollo, p. 73.

³⁷ Id.

³⁸ Exhibits "D" and "D-1," records, p. 85.

³⁹ Exhibits "E" and "E-1," records, p. 86.

⁴⁰ Exhibit "B," records, p. 85.

⁴¹ Exhibit "C," records, p. 85.

⁴² CA rollo, p. 75.

Ruling of the Regional Trial Court

In its Judgment⁴³ dated October 16, 2012, the RTC ruled that the prosecution was able to prove beyond reasonable doubt the elements of the crime of Acts of Lasciviousness under Art. 336 of the RPC.⁴⁴ The RTC gave full credence to the testimonies of BBB and AAA.⁴⁵ Hence, the dispositive portion of the RTC's Judgment reads:

WHEREFORE, the court finds the accused [XXX] guilty beyond reasonable doubt of the crime of Acts of Lasciviousness and sentences him to suffer the penalty of imprisonment of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum.

SO ORDERED.⁴⁶

Aggrieved, XXX filed a Motion for Reconsideration, but the same was denied in an Order dated January 17, 2013.⁴⁷

Thereafter, XXX appealed to the CA, arguing that the prosecution utterly failed to establish his guilt beyond reasonable doubt.⁴⁸

Ruling of the Court of Appeals

On January 22, 2015, the CA affirmed *in toto* the RTC's Judgment convicting XXX for Acts of Lasciviousness.⁴⁹ The dispositive portion reads:

WHEREFORE, the appeal is hereby **DENIED**. The Judgment dated October 16, 2012 and Order dated January 17, 2013 of Branch ■, Regional Trial Court, ■ in Criminal Case No. CBU-89896 are **AFFIRMED in toto**.

SO ORDERED.⁵⁰

XXX filed a Motion for Reconsideration,⁵¹ but it was denied in a Resolution dated June 22, 2015.⁵²

Discontented, XXX filed this Petition⁵³ before Us.

⁴³ Records, pp. 83-89.

⁴⁴ CA *rollo*, p. 75.

⁴⁵ Records, pp. 83-89.

⁴⁶ Id. at 89.

⁴⁷ CA *rollo*, p. 76.

⁴⁸ Id.

⁴⁹ Id. at 72-81.

⁵⁰ Id. at 80.

⁵¹ Id. at 82-85.

⁵² Id. at 157-158. Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Gabriel T. Ingles and Pamella Ann Abella Maxino.

⁵³ *Rollo*, pp. 3-21.

Issue

The issue before this Court is whether accused-appellant is guilty of the crime of Acts of Lasciviousness under Art. 336 of the RPC.

Our Ruling

The Petition is denied. Accordingly, the conviction of XXX beyond reasonable doubt is sustained. However, in accordance with prevailing jurisprudence, there is a need to modify the designation of the offense and the corresponding penalty.

At the outset, We find no cogent reason to depart from the factual findings of the RTC, as affirmed by the CA. In *Cruz v. People*,⁵⁴ We ruled that the Court does not take cognizance of factual issues, let alone calibrate anew the evidence already assessed and evaluated by the trial court.⁵⁵ Accordingly, “the Court accords the highest respect to the factual findings of the trial court, its assessment of the credibility of witnesses, and the probative weight of their testimonies and the conclusions drawn from its factual findings, more so when the same are affirmed by the CA.⁵⁶ Judicial experience has shown, indeed, that the trial courts are in the best position to decide issues of credibility of witnesses, having themselves heard and seen the witnesses and observed firsthand their demeanor and deportment and the manner of testifying under exacting examination.”⁵⁷

In its Decision, the appellate court ruled that XXX should be convicted of the crime of Acts of Lasciviousness under Art. 336 of the RPC, as follows:

At first impression, the crime committed would have been child abuse under Section 5 (b), Art. III of Republic Act No. 7610. However, in the light of the allegations in the Information which did not allege coercion and intimidation, neither were these established during trial, the crime is acts of lasciviousness under Art. 336 of the [RPC] in view of the case of [*Olivarez*] v. *Court of Appeals*.⁵⁸

The crime of Acts of Lasciviousness under Art. 336 of the RPC reads:

ART. 336. *Acts of lasciviousness.* – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

We agree with the trial court and the appellate court that lascivious conduct was committed against a minor. However, there is a need to modify

⁵⁴ 745 Phil. 54 (2014).

⁵⁵ *Id.* at 66.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Rollo*, p. 80. Citations omitted.

the designation of the offense and the corresponding penalty in light of prevailing jurisprudence.

The case of *People v. Tulagan*⁵⁹ (*Tulagan*) prescribed guidelines regarding the proper designation or nomenclature of acts constituting sexual assault and the corresponding penalty depending on the victim's age.⁶⁰ In *Tulagan*, We discussed that when the victim of lascivious conduct is 12 years of age but below 18 years of age, as in this case, then the crime should be designated as Lascivious Conduct.⁶¹ Thus, We ruled:

Meanwhile, **if acts of lasciviousness or lascivious conduct are committed with a child who is 12 years old** or less than 18 years old, the ruling in *Dimakuta* is also on point:

Under Section 5, Article III of R.A. No. 7610, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult. This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. x x x.

x x x x

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

x x x x

3. If the victim is exactly twelve (12) years of age, x x x, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

x x x x

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. x x x.⁶² (Emphases supplied)

⁵⁹ 849 Phil. 197, 383-385 (2019).

⁶⁰ *People v. XXX*, G.R. No. 238405, December 7, 2020.

⁶¹ *People v. Tulagan*, supra. Citations omitted.

⁶² Id. at 226-229.

Based on the discussion in *Tulagan*, XXX should be convicted of the offense Lascivious Conduct under Sec. 5 (b), Art. III of Republic Act No. (RA) 7610.⁶³ The relevant provision of the law states:

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 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; x x x.

To sustain a conviction for Lascivious Conduct under RA 7610, the confluence of the following essential elements must be established: (1) that the offender commits the act of sexual intercourse or lascivious conduct; (2) that 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.⁶⁴

In the case at bar, the trial court and appellate court ruled that XXX was seen naked, on top of AAA, and kissing her. His behavior was nothing less than lewd. Undoubtedly, XXX committed lascivious conduct upon AAA while she was clearly unconscious and then a 12-year-old minor.

“Lascivious conduct” is defined as “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.”⁶⁵

⁶³ 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.

⁶⁴ *People v. Tulagan*, supra note 57. Citations omitted.

⁶⁵ *Carbonell v. People*, G.R. No. 246702, April 28, 2021, citing Sec. 2 (h) of the Implementing Rules and Regulations of RA 7610.

In *Tulagan*, We held that the term “*other sexual abuse*” is a broad term that includes all other acts of sexual abuse other than prostitution, to wit:

The term “other sexual abuse,” on the other hand, is construed in relation to the definitions of “child abuse” under Section 3, Article I of R.A. No. 7610 and “sexual abuse” under Section 2 (g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “sexual abuse” includes 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. Thus, **the term “other sexual abuse” is broad enough to include all other acts of sexual abuse other than prostitution. Accordingly, a single act of lascivious conduct is punished under Section 5 (b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances. In contrast, when the victim is under 12 years old, the proviso of Section 5(b) states that the perpetrator should be prosecuted under Article 336 of the RPC for acts of lasciviousness, whereby the lascivious conduct itself is the sole element of said crime.** x x x.⁶⁶ (Emphasis supplied)

Applying the foregoing, XXX committed lascivious acts and other sexual abuse on AAA, who was 12 years old at the time.

Consequently, the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law, the maximum term of the sentence shall be taken from the medium period, or from 17 years, four (4) months, and one (1) day to 20 years, owing to the absence of any mitigating or aggravating circumstance.⁶⁷ On the other hand, the minimum term of the indeterminate penalty shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, or from eight (8) years and one (1) day to 14 years and eight (8) months.⁶⁸

Thus, the penalty to be imposed is the indeterminate penalty of imprisonment ranging from a period of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum.⁶⁹

As to the damages, *Tulagan* instructs that when the offense of Lascivious Conduct under RA 7610 is imposed within the range of *reclusion temporal* in its medium period, it merits the award of civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each.⁷⁰ Legal

⁶⁶ *People v. Tulagan*, supra note 57 at 256-257.

⁶⁷ *Id.* at 383-385.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 396. Citations omitted.

interest of six percent (6%) per *annum* is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

WHEREFORE, the petition is **DENIED**. The assailed January 22, 2015 Decision by the Court of Appeals in CA-G.R. CR No. 02112 is **AFFIRMED with MODIFICATIONS**. Petitioner XXX is **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5 (b), Article III of Republic Act No. 7610 and is sentenced to suffer the indeterminate penalty of imprisonment ranging from a period of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. Petitioner XXX is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. The monetary awards shall earn interest at the rate of six percent (6%) per *annum* from date of finality of this Resolution until fully paid.

The copy of the Resolution dated February 14, 2022 sent to the petitioner at 333-6D, Victor Village, Punta Princesa, 6000 Cebu City, which was returned to this Court on January 30, 2023 unserved with postal notation: "RTS-not found," is **NOTED**; and the petitioner's filing of manifestation if he is willing to submit the case for resolution based on the pleadings is **DISPENSED WITH**.

SO ORDERED." *Rosario, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

339 & 425
FEB 17 2023

XXX
Petitioner
333-6D, Victor Village II
Punta Princesa, 6000 Cebu City

Court of Appeals
6000 Cebu City
(CA-G.R. CR No. 02112)

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

The Hon. Presiding Judge
Regional Trial Court, Branch 6
6000 Cebu City
(Crim. Case No. CBU-89896)

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