



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 17, 2023 which reads as follows:

“G.R. No. 243266 (*Erwin Q. Villarante v. People of the Philippines*). — After a judicious study of the case, the Court resolves to **DENY** the instant Petition for Review on *Certiorari*¹ and **AFFIRM with MODIFICATION** the Decision² dated July 26, 2018 and the Resolution³ dated November 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40440 for failure of petitioner Erwin Q. Villarante (Villarante) to show any reversible error in the assailed decision or resolution.

To be held liable for lascivious conduct under Article III, Section 5(b) of Republic Act (RA) No. 7610,⁴ the following elements of Acts of Lasciviousness under Article 336 of the Revised Penal Code⁵ (RPC) must be met:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:
 - a. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; and
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and

¹ *Rollo*, pp. 43-70.

² *Id.* at 71-87. Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Ramon Paul L. Hernando (now a Member of the Court) and Jhosep Y. Lopez (also a Member of the Court).

³ *Id.* at 90-91. Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Ramon M. Bato, Jr. and Jhosep Y. Lopez.

⁴ 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.

⁵ Effective: January 1, 1932.

3. That the offended party is another person of either sex.⁶

In addition to the elements under Article 336 of the RPC, the following requisites for sexual abuse under Article III, Section 5(b) of RA No. 7610, must also be established, to wit:

1. The accused committed 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 eighteen (18) years of age.⁷

As aptly noted by the CA, there is no need to belabor needlessly on all the elements of the crime, because the main argument of Villarante in the subject petition is that there was no lewd design on his part in the perpetration of the complained acts that would indicate lasciviousness.

In praying for his acquittal, Villarante contends that his alleged acts of embracing, kissing, and touching the private complainants do not constitute intentional touching with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person, as defined in the implementing rules and regulation of RA No. 7610 in relation to Article 366 of the RPC.⁸ In addition, Villarante avers that the environmental circumstances where the supposed acts of embracing, kissing, and touching the private complainants were committed do not create an inference of lewdness or lascivious desire.⁹ Lastly, Villarante maintains that the charges against him were motivated by hatred and initiated by Elena Cumigad (Cumigad), a grade six class teacher, who had a professional grudge against his mother, Elenita Villarante, who is also the principal of the elementary school where he and Cumigad work.¹⁰

We are not convinced.

In *Barona v. People*,¹¹ the Court explained:

Lewd is defined as obscene, lustful, indecent, or lecherous. It signifies that form of immorality which has relation to moral impurity or that which is carried on in a wanton manner. It includes acts of making physical contact with the body of another person for the purpose of obtaining sexual gratification other than, or without intention of, sexual intercourse. What constitutes lewdness is determined from the circumstances surrounding each case. In *Amplayo v. People*, the Court expounded on the definition of the word "lewd," to wit:

⁶ *People v. Padlan*, 817 Phil. 1008, 1024 (2017).

⁷ *Id.* at 1025.

⁸ *Rollo*, p. 51.

⁹ *Id.* at 56.

¹⁰ *Id.* at 60.

¹¹ G.R. No. 249131, December 6, 2021.

The term “lewd” is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. **The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition.**¹² (Emphasis in the original; citations omitted)

The commission of the lascivious acts in a public place, in this case a school canteen, does not necessarily divest the same of lewd, obscene, or unchaste design. In fact, the Court has held that the number of students present at the school grounds, or other circumstances of time and place have no bearing on the probability of the crime having been committed. The graver offense of rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping.¹³

Moreover, case law dictates that factual findings of the trial court, particularly when affirmed by the CA, are binding on the Court barring arbitrariness and oversight of some fact or circumstance of weight and substance,¹⁴ of which there are none in this case. In this regard, We quote with favor the disquisition of the appellate court:

After a careful evaluation, the Court finds that the kissing of the lips of the private complainants, embracing them and touching of their thighs could not have signified any other intention but one having lewd or indecent design. We cannot overstate that the private complainants are all young, innocent and immature minors at the time of the incidents and it would be the height of incredulity to accept Villaranta’s [sic] claim that they were in some sort of relationship to justify the invocation of passion or other motives in the commission of the complained acts. Likewise, all the private complainants testified that they were either offered with money by Villarante or threatened with expulsion from their school. Suffice it to state, the use of reward and threat were alternatively adopted by Villarante to satisfy his own depraved lust for young boys, thus, lewd design is present.

The fact that the incidents happened in the canteen and/or in the principal’s office where other people are mingling around is inconsequential. It has been held that lust is no respecter of time and place. If rape can be committed in places where people congregate, even in the same room where other members of the family are sleeping, there is less reason to believe that a canteen or a principal’s office could serve as a deterrent for the

¹² *Id.*

¹³ *CICL XXX v. People*, G.R. No. 246146, March 18, 2021.

¹⁴ *People v. Monroyo*, 811 Phil. 802, 813-814 (2017).

commission of lascivious acts. In addition, the lurid acts committed by Villarante could be achieved in a fleeting moment without rousing the suspicion of anyone present in the same room who maybe also preoccupied with their own tasks and agenda.

As to the allegation that the cases filed against Villaranta [sic] were all planned and directed by Mrs. Elina Cumigad, we find the same specious. Regardless of the professional relationship said teacher had with Villaranta's [sic] mother, we find it highly unlikely that the private complainants would bravely take the witness stand to testify against Villaranta [sic] and be subjected to public ridicule or humiliation on the mere prodding of their teacher.¹⁵

Significantly, the trial court found the testimonies of private complainants to be straightforward, categorical, and convincing. It is settled that:

the assessment of the credibility of witnesses is within the province of the trial court. All questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office. **The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal.** In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.¹⁶ (Emphases supplied)

Indeed, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions based on its findings are generally binding and conclusive upon the Court, especially so when affirmed by the appellate court. With more reason shall this principle apply in testimonies given by child witnesses, considering that their youth and immaturity are generally badges of truth and sincerity. While there are recognized exceptions to the rule, the Court finds no substantial reason to overturn the congruent conclusions of the trial court and CA on the matter of the private complainants' credibility.¹⁷

The foregoing considered, the Court finds no reversible error in the trial court's judgment of conviction, as affirmed by the CA, against Villarante. The CA Decision and Resolution are therefore affirmed, albeit with modification relative to the designation of the offenses and the award of damages, as discussed in further detail below.

¹⁵ *Rollo*, pp. 83-84.

¹⁶ *People v. Dagsa*, 824 Phil. 704, 718-719 (2018).

¹⁷ *People v. Ordaneza*, G.R. No. 250640, May 5, 2021.

Nevertheless, in light of the ruling in the case of *People v. Tulagan*,¹⁸ where this Court took the opportunity to reconcile the provisions on Acts of Lasciviousness, Rape, and Sexual Assault under the RPC, as amended by RA No. 8353¹⁹ vis-à-vis Sexual Intercourse and Lascivious Conduct under Section 5(b) of RA No. 7610, to fortify the earlier decisions of the Court and doctrines laid down on similar issues, and to clarify the nomenclature and the imposable penalties of said crimes, as well as damages in line with existing jurisprudence,²⁰ the designation of the offenses subject of Criminal Case Nos. 5768-SPL to 5771-SPL should be Lascivious Conduct under Section 5(b) of RA No. 7610, and not Acts of Lasciviousness under Article 336 of the RPC, considering that the respective victims were 12 years old at the time of the commission of the crime.

Consistent with *Tulagan*, if the victim is exactly 12 years of age, or more than 12 but below 18 years of age, or is 18 years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the crime should be designated as Lascivious Conduct under Section 5(b) of RA No. 7610, and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.²¹

As regards the award of damages, *Tulagan* pertinently dictates that the award of civil indemnity, moral damages, and exemplary damages in Lascivious Conduct under Section 5(b) of RA No. 7610 shall be ₱50,000.00 respectively, if penalty imposed is within the range of *reclusion temporal* medium, or ₱75,000.00 if penalty imposed is *reclusion perpetua*. Meanwhile, for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA No. 7610, *Tulagan* dictates the award of civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 respectively.²²

Applying the foregoing to the case at bench, insofar as Villarante was sentenced to suffer the indeterminate penalty of eight years and one day of *prision mayor* as minimum to seventeen years, four months, and one day of *reclusion temporal* as maximum for Criminal Case Nos. 5768-SPL to 5771-SPL, the amounts of moral damages and civil indemnity for each count of the offense should be increased to ₱50,000.00 respectively. In addition, Villarante should be made liable to pay exemplary damages in the same amount. As regards Villarante's conviction for Acts of Lasciviousness under Article 336 of the RPC in relation to RA No. 7610 in Criminal Case No. 5772-SPL, he should likewise be made liable to pay moral damages, civil indemnity, and exemplary damages of ₱50,000.00 respectively.

¹⁸ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

¹⁹ Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES." Approved September 30, 1997.

²⁰ *People v. Tulagan*, supra.

²¹ Id.

²² Id.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated July 26, 2018 and the Resolution dated November 21, 2018 of the Court of Appeals in CA-G.R. CR No. 40440, which found Erwin Q. Villarante guilty beyond reasonable doubt, are hereby **AFFIRMED with MODIFICATION**, as follows:

1. In Criminal Case Nos. 5768-SPL to 5771-SPL, Erwin Q. Villarante is found guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) of RA No. 7610, and is sentenced to suffer the indeterminate penalty of eight years and one day of *prision mayor* as minimum, to 17 years, four months, and one day of *reclusion temporal* as maximum for each count. Accordingly, he is **ORDERED to PAY** each of the private complainants in the subject criminal cases the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.
2. In Criminal Case No. 5772-SPL, Erwin Q. Villarante is found guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the RPC in relation to RA No. 7610, and is sentenced to suffer the indeterminate penalty of 12 years and one day of *reclusion temporal* as minimum, to 16 years, five months, and nine days of *reclusion temporal* as maximum. Accordingly, he is **ORDERED to PAY** the private complainant in the subject criminal case the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

Legal interest of six percent per annum is imposed on all damages awarded from the date of finality of this Resolution until fully paid.

SO ORDERED.” *Hernando, J., no part; Dimaampao, J., designated additional Member per Raffle dated October 10, 2022.*

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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