



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **July 27, 2022** which reads as follows:*

“G.R. No. 259138* (XXX259138 v. PEOPLE OF THE PHILIPPINES).
— Before this Court is a Petition for Review on Certiorari¹ assailing the May 25, 2021 Decision² and February 9, 2022 Resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 43991, which affirmed the conviction of XXX259138 with modifications in the penalty and award of damages.

The antecedents follow.

XXX259138 was charged with acts of lasciviousness in relation to Section 5(b)⁴ of Republic Act (R.A.) No. 7610⁵ under the following Informations:

Criminal Case No. 11-42194 —

That on or about the 1st day of January 2011, in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did, then

* No unmodified version since the real name of the victim cannot be found in the *rollo*.

¹ *Rollo*, pp. 10–27.

² *Id.* at 32–41. Penned by Associate Justice Myra V. Garcia-Fernandez, with the concurrence of Associate Justices Louis P. Acosta and Bonifacio S. Pascua.

³ *Id.* at 43–44.

⁴ Child Prostitution and Other Sexual Abuse.

⁵ Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

and there, willfully, unlawfully and feloniously, commit lascivious conduct upon the person of AAA[259138], ten (10) years old, by touching her vagina while she was asleep, against her will and consent.

CONTRARY TO LAW.⁶

Crim. Case No. 11-42195 —

That on or about the 2nd day of March 2011, in the [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously, commit lascivious conduct upon the person of AAA[259138], ten (10) years old, by touching her breast while she was asleep, against her will and consent.

CONTRARY TO LAW.⁷

When arraigned, XXX259138 pleaded “Not Guilty.” Trial then ensued.

AAA259138 narrated that on January 1, 2011, she was sleeping in their house between her father, BBB259138, and her sister CCC259138’s boyfriend, XXX259138. She was awakened when she felt and saw XXX259138 touching her private part inside her shorts and panty. AAA259138 straightened her body and XXX259138 removed his hand. She then turned to her father and embraced him. AAA259138 did not tell anyone about the incident because she was afraid, and she thought that XXX259138 will not repeat what he did. However, on March 2, 2011, while AAA259138 was at home, XXX259138 touched her breast inside her T-shirt. AAA259138 immediately stood up and told CCC259138 what happened. The sisters then told their grandfather, and went to the police to report the incidents.⁸

For his part, XXX259138 denied the charges hurled against him. While he admitted being in the house of AAA259138 on January 1, 2011, he just ate hamburger with CCC259138, then left. On March 2, 2011, he did not go the AAA259138’s house because CCC259138 was already working in Pasig and he had no reason to go to her house. The complaint against him was filed after he broke up with CCC259138 and her family learned that XXX259138’s new girlfriend worked abroad. XXX259138 was informed by a police officer that AAA259138’s grandfather asked for ₱35,000.00.

In a Decision dated May 14, 2019,⁹ the Regional Trial Court of Antipolo City, Branch 73 (RTC) convicted XXX259138 as charged, and ruled that the prosecution proved all the elements of acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610. AAA259138 was 10 years old at the time of the

⁶ *Rollo*, p. 70.

⁷ *Id.* at 71.

⁸ *Id.* at 72.

⁹ *Id.* at 70–75.

commission of the crimes, being born on July 7, 2000, as evidenced by her Certificate of Live Birth. She narrated in a clear, categorical, and straightforward manner, and positively described how XXX259138 intentionally touched her. There was no evidence that AAA259138 was impelled by any improper motive to accuse XXX259138. The dispositive portion of the RTC Decision reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follow[s]:

1. **In Criminal Case No. 11-42194** – Accused [XXX259138] is hereby found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5(b) 2nd and 3rd phrases, Article III of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of from (*sic*) eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.
2. **In Criminal Case No. 11-42195** – Accused [XXX259138] is hereby found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5(b) 2nd and 3rd phrases, Article III of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of from (*sic*) eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) days of *reclusion temporal*, as maximum.

He shall serve the above-cited penalties successively, starting from the most severed down to the lightest. Mor[e]over, he is ORDERED to pay Php 50,000.00 as civil indemnity and another Php 50,000.00 as moral damages to the victims (*sic*), all [to earn interest] at the rate of 6% *per annum* reckoned from the finality of this Decision until fully paid.¹⁰

On appeal, XXX259138 argued that AAA259138's account of the alleged sexual abuse is highly improbable and uncorroborated. First, AAA259138 merely declared, “[h]inipuan nya ako,”¹¹ without providing other details pertaining to the commission of the crime. Second, XXX259138 could not have perpetrated the alleged crime considering the presence of BBB259138 and CCC259138, and that he was never left alone with AAA259138. Third, it is contrary to ordinary human behavior that AAA259138 failed to ask for help even though BBB259138 and CCC259138 were just within her reach. Fourth, it is more likely that the filing of the complaint was instigated by BBB259138 or AAA259138's grandfather, who, according to XXX259138, asked for ₱35,000.00 from him through the police officers. Lastly, BBB259138's testimony was mainly hearsay statements of information from AAA259138.¹² Thus, the prosecution failed to prove the elements of violation of Section 5(b) of R.A. No. 7610.¹³

On May 25, 2021, the CA modified the RTC's ruling as to the nomenclature of the crime. The CA ruled that XXX259138 is guilty of lascivious conduct under

¹⁰ Id. at 75.

¹¹ Id. at 19.

¹² Id. at 53–69.

¹³ Id. at 58–59.

Section 5(b) of R.A. No. 7610. In addition, XXX259138 was fined in the amount of ₱15,000.00, and ordered to pay additional ₱50,000.00 as exemplary damages for each count.¹⁴ XXX259138 moved for reconsideration,¹⁵ but was denied.¹⁶

Hence, the petition before this Court. XXX259138 reiterated the contentions made in his appeal brief. The Court resolves to **DENY** the Petition for failure to sufficiently show that the CA committed any reversible error in its May 25, 2021 Decision¹⁷ and February 9, 2022 Resolution.¹⁸

All the elements of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of R.A. No. 7610, are present in this case. The prosecution showed that XXX259138, on two separate occasions, intentionally touched AAA259138's vagina and breast inside her clothing. AAA259138 positively identified XXX259138 as her molester and her testimony was given in a clear, candid, and categorical manner, worthy of weight and credence. AAA259138's minority was duly proved by the presentation of her birth certificate showing her date of birth as July 7, 2000. Thus, at the time of the commission of the crimes, she was only 10 years of age.¹⁹

¹⁴ Id. at 32-41. The dispositive portion of the CA's May 25, 2021 Decision reads:

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court of Antipolo City, Branch 73 dated May 14, 2019 is **AFFIRMED with MODIFICATION**.

In Criminal Case No. 11-42194, accused-appellant [REDACTED] is found guilty beyond reasonable doubt of lascivious conduct under Section 5 (b), Article III of Republic Act No. 7610 and sentenced to suffer the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is also ordered to pay the victim the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as exemplary damages, and P15,000.00 as fine.

In Criminal Case No. 11-42195, accused-appellant [REDACTED] is found guilty beyond reasonable doubt of lascivious conduct under Section 5 (b), Article III of Republic Act No. 7610 and sentenced to suffer the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum. Accused-appellant is also ordered to pay the victim the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as exemplary damages, and P15,000.00 as fine. Legal interest of six percent (6%) per annum is imposed on all damages and fines awarded in both cases from the date of finality of this decision until fully paid.

SO ORDERED. (Underscoring supplied.)

¹⁵ Id. at 45-52.

¹⁶ Id. at 43-44. In its February 9, 2022 Resolution, the CA resolved [REDACTED] motion for reconsideration as follows:

This Court finds the motion to be mere reiteration of the matters raised in accused-appellant's brief dated January 31, 2020 which were studied, considered and passed upon by this Court in rendering the decision sought to be reconsidered. No new valid and justifiable reason was raised by accused-appellant to convince this Court to amend, much less, set aside its findings.

WHEREFORE, the motion for reconsideration is **DENIED**.

SO ORDERED.

¹⁷ Id. at 32-41. Penned by Associate Justice Myra V. Garcia-Fernandez, with the concurrence of Associate Justices Louis P. Acosta and Bonifacio S. Pascua.

¹⁸ Id. at 43-44.

¹⁹ Id. at 83.

However, in accordance with prevailing jurisprudence, it is proper to modify the nomenclature of the crime and the penalties imposed. Pursuant to *People v. Tulagan*,²⁰ the proper designation of the offense committed in this case is Acts of Lasciviousness, in relation to Section 5(b) of R.A. 7610. Under Section 5(b) of R.A. 7610, the prescribed penalty for lascivious conduct, when the victim is under 12 years of age, shall be *reclusion temporal* in its medium period, or fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstance attendant in the commission of the crimes, the maximum term of the indeterminate penalty shall be taken from the medium period of the prescribed penalty ranging from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months, and nine (9) days.²¹ On the other hand, the minimum term shall be taken from the penalty next lower in degree than that prescribed, that is, *reclusion temporal* in its minimum period, with a range of twelve (12) years and one (1) day to fourteen (14) years, and eight (8) months.

Finally, pursuant to *Nacar v. Gallery Frames*,²² legal interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this Resolution until full payment.

FOR THESE REASONS, the Petition is **DENIED**. The Decision dated May 25, 2021 and Resolution dated February 9, 2022 of the Court of Appeals in CA-G.R. CR No. 43991 are **AFFIRMED with MODIFICATION**. XXX259138 is found **GUILTY** of two (2) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610, and is sentenced to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum, for each count.

As imposed by the Court of Appeals, XXX259138 is **ORDERED** to **PAY** a **FINE** in the amount of ₱15,000.00 for each count, and to **PAY** the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages, for each count. All monetary awards due to AAA259138 shall earn legal interest at the rate of 6% *per annum* from the date of finality of this Resolution until fully paid.

The Court resolves to **GRANT** petitioner's motion for extension of fifteen (15) days from the expiration of the reglementary period within which to file a petition for review on *certiorari*.

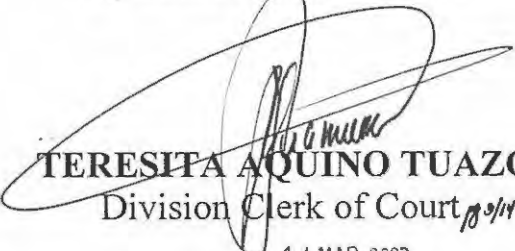
SO ORDERED."

²⁰ G.R. No. 227363, March 12, 2019.

²¹ *Quimvel y Braga v. People*, 808 Phil. 889, 937 (2017).

²² 716 Phil. 267 (2013).

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *pp/14*
14 MAR 2023

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

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

*XXX259138 (reg)
Petitioner
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 73
Antipolo City
(Crim. Case Nos. 11-42194 & 11-42195)

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Supreme Court, Manila

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Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 43991

*with a copy of the CA Decision dated May 25, 2021
Please notify the Court of any change in your address.
GR259138. 7/27/2022B(108)URES

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