



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 20, 2023** which reads as follows:*

“G.R. No. 246181 (Clemente Cariño* v. People of the Philippines). – This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated September 12, 2018 and the Resolution³ dated March 18, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 38046. The CA Decision denied the appeal filed by petitioner Clemente Cariño (Cariño) from the Decision⁴ dated April 29, 2015 of the Regional Trial Court (RTC) of Laoag City, Branch 11, which in turn found Cariño guilty beyond reasonable doubt of violation of Section 10, Article VI of Republic Act (RA) No. 7610.⁵

After a judicious study of the case, the Court resolves to **DENY** the petition for failure to sufficiently show that the CA committed any reversible error in its Decision and its Resolution as to warrant the exercise of the Court’s appellate jurisdiction.

Sec. 3(a), Art. I of RA No. 7610 defines “children” as “person[s] below 18 years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.”

* Clemente P. Cariño in other parts of the *rollo*.

¹ *Rollo*, pp. 11-30.

² *Id.* at 31-47. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Mario V. Lopez (now a Member of the Court) and Ronaldo Roberto B. Martin.

³ *Id.* at 49-50. Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Mario V. Lopez (now a Member of the Court) and Ronaldo Roberto B. Martin.

⁴ *Id.* at 68-95. Penned by Judge Perla B. Querubin.

⁵ Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” otherwise known as the “SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT.” Approved: June 17, 1992.

On the other hand, Sec. 3(b), Art. I defines “child abuse” as the maltreatment, whether habitual or not, of the child which includes any of the following:

1. Psychological and physical abuse, neglect, cruelty, sexual abuse, and emotional maltreatment;
2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of [his or her] basic needs for survival, such as food and shelter; or
4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of [his or her] growth and development or in [his or her] permanent incapacity or death.

Sec. 10(a), Art. VI of RA No. 7610, under which Cariño was charged, provides:

Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation, and Other Conditions Prejudicial to the Child's Development. –

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

In *Araneta v People*,⁶ We explained:

[T]he provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the acts prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Sec. 10(a), Article VI of Republic Act No. 7610 if he [or she] commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.⁷

Cariño contends that the prosecution failed to establish AAA's⁸ age since no birth certificate was presented and the other documents were inconsistent and inconclusive. He maintains that the baptismal certificate and

⁶ 578 Phil. 876 (2008).

⁷ *Id.* at 884-885.

⁸ The identity of the victim is replaced by fictitious initials in accordance with Supreme Court Amended Administrative Circular No. 83-2015 dated September 5, 2017.

scholastic records were not identified by the parish priest and the school personnel who respectively issued the same.⁹

One of the elements of the offenses committed under RA No. 7610 is that the offended party is a minor. In order to prove the minor's age, the best evidence is their original birth certificate.¹⁰

In *People v. Belen*¹¹ (*Belen*), We reiterated the guidelines We outlined in *People v. Pruna*¹² on how to appreciate age as an element of the crime or as a qualifying circumstance, to wit:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that [he or she] is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that [he or she] is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that [he or she] is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

⁹ *Rollo*, p. 21.

¹⁰ See *People v. Balonzo*, 560 Phil. 244, 260 (2007).

¹¹ 803 Phil. 751 (2017).

¹² 439 Phil. 440, 470-471 (2002).

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against [him or her].
6. The trial court should always make a categorical finding as to the age of the victim.¹³ (Underscoring supplied)

We find that in this case, the prosecution sufficiently proved AAA's age and that she was, in fact, a minor at the time of the commission of the offense.

We note that the prosecution failed to present AAA's birth certificate. However, Department of Social Welfare and Development representative Fe G. Sarmiento revealed to the RTC that when she tried to secure AAA's birth certificate, she was informed that AAA has no record with the Philippine Statistics Authority.¹⁴

Instead, the prosecution presented AAA's baptismal certificate and scholastic records to the RTC. Unfortunately, these were mere photocopies.¹⁵ AAA's mother executed a Sworn Statement dated June 22, 2009 before Police Officer 3 Tolentino F. Erum, Jr. of the Laoag City Police Station where she claimed that AAA was born on February 19, 1994. Yet, she was not presented as a witness and her Sworn Statement was not identified. Hence, these documents were correctly rejected by the RTC.¹⁶

The guidelines in *Belen* further provide that the private complainant's testimony shall be sufficient to prove his or her age if the accused expressly admitted the same.¹⁷ AAA testified that she was 14 years old at the time of the commission of the crime, but the same was not expressly admitted by Cariño.¹⁸

Despite the foregoing, We agree with the RTC and the CA that the Dental Certificate issued by Dr. Ramonsito Bernabe which indicated that AAA's third molars have yet to erupt should be considered sufficient to prove that AAA was a minor at the time of the offense. The said Certificate noted that the eruption of the third molar occurs between the ages of 17 to 22.¹⁹

¹³ *People v Belen*, supra at 771-772.

¹⁴ *Rollo*, pp. 40-41.

¹⁵ *Id.* at 41.

¹⁶ *Id.*

¹⁷ *People v. Belen*, supra at 771.

¹⁸ *Rollo*, p. 41.

¹⁹ *Id.*

We likewise agree with the CA's application of the relevant provisions of RA No. 9344²⁰ in determining AAA's age. Sec. 4(c) thereof defines a child as a person under the age of 18 years. Sec. 7 thereof also provides how to provide the age of a child in conflict with the law, to wit:

SEC. 7. *Determination of Age.* - The child in conflict with the law shall enjoy the presumption of minority. [He or she] shall enjoy all the rights of a child in conflict with the law until [he or she] is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child [himself or herself], testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in [his or her] favor.

Anent Cariño's defense that the disco was non-operational, We rule that the RTC correctly denied evidentiary value to the certifications issued by the *barangay* captain and the Bureau of Internal Revenue (BIR) Officer, which were issued when the case was already on trial. Moreover, these certifications were negated by the fact that the *barangay* captain would only be present at the routine patrols twice a year to ascertain if the disco was operating. Likewise, the BIR Officer testified that due to lack of personnel, the BIR did not conduct an ocular inspection to confirm whether the disco had indeed ceased operations.

Lastly, Cariño alleges that AAA's testimony is marred by inconsistencies which should result in his acquittal. While AAA stated that she was not molested during her stay in the disco and that the business was not operating, she categorically testified that Cariño asked her to work if there were customers. She even drank with the customers and described her work as "*nagte-table*," which also included kissing the customers.

As can be gleaned from the totality of evidence presented by the prosecution as well as the intent and spirit of the law, Cariño clearly violated Sec. 10(a), Article VI of RA No. 7610. His act of employing AAA, who was established to be a minor at the time, to work in his disco constitutes child abuse and child exploitation, and was prejudicial to AAA's development as a child. Furthermore, a person who commits an act that debases, degrades, or demeans the intrinsic worth and dignity of the child as a human being, whether habitual or not, can be held liable for a violation of RA No. 7610.²¹


²⁰ Entitled "AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE AND WELFARE SYSTEM, CREATING THE JUVENILE JUSTICE AND WELFARE COUNCIL UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," otherwise known as "JUVENILE JUSTICE AND WELFARE ACT OF 2006." Approved: April 28, 2006.

²¹ *Torres v. People*, 803 Phil. 480, 490 (2017).

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 12, 2018 and the Resolution dated March 18, 2019 of the Court of Appeals in CA-G.R. CR No. 38046 are **AFFIRMED**.

SO ORDERED.” *Marquez, J., on official business.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *80-114*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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