



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. 259059 (Reymond Manzano y Dela Cruz, petitioner v. People of the Philippines, respondent). – Assailed in this Petition for Review on *Certiorari*¹ are the Decision² dated February 15, 2021 and the Resolution³ dated February 14, 2022 of the Court of Appeals (CA) in CA-G.R. CR No. 44104 which affirmed with modification the Decision⁴ dated September 3, 2019 of the Regional Trial Court of Makati City, Branch 144 (RTC). The CA found petitioner Reymond Manzano y Dela Cruz (Manzano) guilty beyond reasonable doubt of Lascivious Conduct under Section 5 (b) of Republic Act No. (RA) 7610,⁵ otherwise known as the ‘Special Protection of Children Against Abuse, Exploitation and Discrimination Act.’

The Facts

This case stemmed from an Information⁶ filed before the RTC charging Manzano with Sexual Assault under Article 266-A (2) of the Revised Penal Code (RPC), as amended, the accusatory portion of which reads:

On the 28th day of October 2018, in the city of Makati, the (sic) Philippines, accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual assault against complainant, [AAA259059], 17 years (sic) old minor, by then and there inserting his finger inside complainant’s vagina, against the will and without the consent of the latter.

CONTRARY TO LAW.⁷

¹ *Rollo*, pp. 3-25.

² *Id.* at 30-50. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Marie Christine Azcarraga-Jacob and Angelene Mary W. Quimpo-Sale, concurring.

³ *Id.* at 52-53.

⁴ *Id.* at 73-84. Penned by Presiding Judge Liza Marie R. Picardal-Tecson.

⁵ 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 on June 17, 1992.

⁶ *Rollo*, p. 73.

⁷ *Id.*

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The prosecution alleged that on the evening of October 27, 2018, AAA259059,⁸ then a 17-year-old minor, attended a birthday party of her friend whose house was located in a compound where Manzano and his girlfriend, Patricia Hernandez (Patricia), also lived. AAA259059 and her friends had a drinking spree that lasted until 3:00 a.m. the next day. When AAA259059 was already drunk, Patricia told her to rest for a while at the latter's house before going home. AAA259059 personally knew Patricia as she is a cousin of AAA259059's boyfriend.⁹

AAA259059 settled herself on the sofa located in the living room and slept there. After some time, AAA259059 felt something that roused her from sleep and realized that Manzano was kissing her and fondling her breast. AAA259059 resisted and tried to push Manzano away but she was seized by sudden weakness at that moment. Manzano then inserted his finger into AAA259059's vagina. This time, AAA259059 regained her strength and pushed Manzano away. She immediately got up and went out of the house where she saw Patricia with her friends. When asked what was wrong, AAA259059 uttered '*Yung boyfriend mo! Yung boyfriend mo!*' Patricia then became hysterical and started screaming because she could not believe AAA259059's accusations against Manzano.¹⁰

Meanwhile, AAA259059's friends learned about the incident and immediately took her to one of their friends' house where she recounted to them what had happened. AAA259059 was then brought to the barangay hall where her statement was taken. Thereafter, AAA259059 proceeded to the police station where she was interviewed again. Accompanied by a *Bantay Bayan* member, Ricky Pampanga Valencia (BB Valencia), and the police officers, AAA259059 went back to the compound where the incident happened. **Upon their arrival, AAA259059 identified Manzano. He was arrested after the police officers talked to him and confirmed his identity.** AAA259059 then went home and informed her grandmother about the incident.¹¹

AAA259059 was examined by Dr. Raleigh Herbert G. Ampuan (Dr. Ampuan) who found that AAA259059 had the presence of '*deep healed lacerations at 9 and 3 o'clock positions and shallow healed laceration at 7 o'clock position in the hymen.*'¹² Dr. Ampuan concluded that his evaluation

⁸ Pursuant to Supreme Court Amended Administrative Circular No. 83-2015 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," issued on September 5, 2017, in relation to Republic Act (RA) No. 7610, RA No. 8508, RA No. 9262, and RA No. 9344. Fictitious initials are instead used to represent the victim. Likewise, the personal circumstances or other information tending to establish or compromise their identity, as well as those of their immediate family or household members shall not be disclosed. **To note, the unmodified CA Decision is not attached to the records of the case to verify the real name of the victim.**

⁹ *Rollo*, p. 32.

¹⁰ *Id.*

¹¹ *Id.* at 32-33.

¹² *Id.* at 33.

showed '*clear evidence of previous blunt penetrating genital trauma.*'¹³ During the trial, Dr. Ampuan testified that per his interview with AAA259059, the latter revealed that she and her boyfriend had already engaged in sexual relations. Under such circumstance, Dr. Ampuan declared that if any foreign object was inserted in AAA259059's genitals, the hymenal tissue would no longer sustain any laceration.¹⁴

For the defense, both Manzano and Patricia denied the accusations and claimed that Manzano was busy cleaning the house at the time of the incident.¹⁵

The RTC Ruling

In a Decision¹⁶ dated September 3, 2019, the RTC found Manzano guilty beyond reasonable doubt of Sexual Assault and was sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and ordered him to pay AAA259059 the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages.¹⁷

In so ruling, the RTC held that the insertion of one's finger into the genital of another constitutes rape through sexual assault. The RTC also rejected Manzano's defenses of denial and alibi and ruled that they cannot be given precedence over AAA259059's positive identification of Manzano during the trial. However, the RTC appreciated the mitigating circumstance of voluntary surrender in Manzano's favor since the latter voluntarily went with BB Valencia and the police officers to the barangay hall after the identification made by AAA259059.¹⁸

Aggrieved, Manzano appealed to the CA.

The CA Ruling

In a Decision¹⁹ dated February 15, 2021, the CA affirmed Manzano's conviction with modifications. Accordingly, the CA found him guilty beyond reasonable doubt of the crime of Lascivious Conduct under Section 5 (b) of RA 7610. Accordingly, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day

¹³ Id.

¹⁴ Id. at 33-34.

¹⁵ Id. at 36.

¹⁶ Id. at 73-84.

¹⁷ Id. at 83.

¹⁸ Id. at 82-83.

¹⁹ Id. at 30-50.

of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and ordered to pay AAA259059 ₱50,000.00 each for civil indemnity, moral damages, and exemplary damages plus six percent (6%) interest on all monetary awards from the date of finality of judgment until fully paid.²⁰

Mainly upholding the RTC's findings, the CA gave full credit to AAA259059's clear and unequivocal testimony concerning her sexual ordeal, which was given in a straightforward, convincing, credible, and satisfactory manner.²¹ The CA also stressed that a medico-legal report is not indispensable to the prosecution of a rape case, it being merely corroborative in nature. It added that medico-legal findings are, at most, mere opinions that can only infer possibilities and not absolute certainties. Consequently, a medico-legal officer's testimony can only suggest what most likely happened.²² On the other hand, the CA also rejected Manzano's defenses of denial and alibi and ruled that Patricia's testimony failed to substantiate Manzano's defense because her testimony only pertained to the facts and circumstances after the incident.²³

Moreover, underscoring that AAA259059 was 17 years old or a child defined under RA 7610 at the time of the incident, the CA modified the RTC Decision as regards the nomenclature of the offense, as well as the impossible penalty and monetary awards due AAA259059.²⁴ The CA held that it is proper to convict Manzano of Lascivious Conduct under Section 5 (b), Article III of RA 7610, even if the designation of the crime alleged in the Information is Rape by Sexual Assault.²⁵ It also increased the monetary awards to ₱50,000.00. Finally, the CA also appreciated the mitigating circumstance of voluntary surrender in Manzano's favor.

Undaunted, Manzano filed a Motion for Reconsideration²⁶ which was, however, denied in a Resolution²⁷ dated February 14, 2022. Hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly convicted Manzano of the crime of Lascivious Conduct, as defined and penalized under Section 5 (b) of RA 7610.

²⁰ Id. at 49-50.

²¹ Id. at 39-40.

²² Id. at 46-47.

²³ Id. at 47.

²⁴ Id. at 47-49.

²⁵ Id. at 48.

²⁶ Id. 107-120. Dated March 11, 2019.

²⁷ Id. at 52-53.

The Court's Ruling

The petition is denied.

Preliminarily, it bears underscoring that 'in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.'²⁸

Guided by the foregoing, the Court affirms Manzano's conviction with certain modifications, as will be explained hereunder.

The essential elements in the prosecution for Sexual Assault under paragraph 2 of Article 266-A of the RPC are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting their penis into another's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.²⁹

'Meanwhile, RA 7610 finds application when the victims of abuse, exploitation or discrimination are children or those '**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.'³⁰ Thus, for a conviction under Section 5 (b), Article III of RA 7610, there must be confluence of the following requisites: (a) the accused commits the act of sexual intercourse or **lascivious conduct**; (b) the said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and (c) the child, whether male or female, is **below 18 years of age**.³¹ Under Section 2 (h) of the Implementing Rules and Regulations of RA 7610, Lascivious Conduct includes the introduction of any object into the genitalia, among others.

Here, both the RTC and the CA found that the prosecution was able to prove the foregoing elements. AAA259059, then a 17-year-old minor, was consistent in her testimony during the direct examination and even on cross-examination that Manzano inserted his finger into her vagina while she

²⁸ See *People v. Acosta*, G.R. No. 238865, January 28, 2019, citing *Sindac v. People*, 794 Phil. 421, 427 (2016).

²⁹ *People v. Caoili*, 815 Phil. 839, 883 (2017), citing *People v. Alfredo*, 653 Phil. 435 (2010).

³⁰ See *Carbonell v. People*, G.R. No. 246702, April 28, 2021.

³¹ *Id.*, citing *Roallos v. People*, 723 Phil. 655, 667-688 (2013). See also *Caballo v. People*, 710 Phil. 792, 801 (2013), citing *Olivarez v. Court of Appeals*, 503 Phil. 421, 431 (2005).

struggled to push him away.³² Further, AAA259059 also positively identified Manzano as the perpetrator of said act.³³ At this point, it bears restating the ‘time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies. 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.’³⁴ In addition, this principle shall apply in testimonies given by child witnesses, ‘considering that their youth and immaturity are generally badges of truth and sincerity,’³⁵ as in this case.

On a related matter, it is well to point out that in *People v. Tulagan*³⁶ (*Tulagan*), the Court *En Banc* ruled that when acts constituting Sexual Assault is committed against a minor between 12 to 18 years of age, or those above 18 years of age but are unable to fully take care of or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition, the proper nomenclature of the crime committed is ‘*Lascivious Conduct under Section 5 (b) of RA 7610.*’ Thus, the CA correctly convicted Manzano of this crime.

However, the Court holds that the courts *a quo* erred in appreciating the mitigating circumstance of voluntary surrender in Manzano’s favor.

To appreciate such mitigating circumstance, it must be shown that: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter’s agent; and (3) the surrender is voluntary.³⁷ The essence of voluntary surrender is spontaneity and the intent of the accused to give themselves up and submit themselves to the authorities, either because they acknowledge their guilt or they wish to save the authorities the trouble and expense that may be incurred for their search and capture.³⁸

Here, a judicious perusal of the records shows that after AAA259059 reported the matter to the authorities, BB Valencia and the police officers went to where the incident occurred to arrest Manzano.³⁹ AAA259059,⁴⁰ BB Valencia,⁴¹ and even Patricia⁴² all testified during the trial that BB Valencia and the police officers arrested and brought Manzano to the barangay office

³² *Rollo*, p. 44.

³³ *Id.* at 41.

³⁴ See *Carbonell v. People*, *supra* note 29; citations omitted.

³⁵ *Id.*; citation omitted.

³⁶ G.R. No. 227363, March 12, 2019.

³⁷ *People v. Doca*, G.R. No. 233479, October 16, 2019, citing *People v. Manzano*, 827 Phil. 113 (2018).

³⁸ *Id.*

³⁹ *Rollo*, p. 34.

⁴⁰ *Id.* at 75.

⁴¹ *Id.* at 77.

⁴² *Id.* at 36.

after the latter was positively identified by AAA259059 as the perpetrator. Indubitably, Manzano did not surrender himself but was actually arrested by the authorities.

Further, the RTC's appreciation of Manzano's act of voluntarily going with BB Valencia and the police officers to the barangay office as the voluntary surrender contemplated by law was misplaced. Suffice it to state that '[v]oluntary surrender does not simply mean non-flight'⁴³ and 'it matters not if the accused never avoided arrest and never hid or fled.'⁴⁴ It bears underscoring that during the trial, Manzano testified that he 'chose to stay in his house and awaited the complaint that may be filed against him' because '[t]he thought of going out of his house frightened him knowing that there were several drug addicts in their place who might harm him.'⁴⁵ From this, it may be reasonably presumed that Manzano only went with the authorities to ensure his safety from retaliation. In this regard, case law instructs that 'without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure [their] safety, the surrender is not spontaneous and therefore cannot be characterized as 'voluntary surrender' to serve as a mitigating circumstance,'⁴⁶ as in this case. In this light, such mitigating circumstance cannot be credited in Manzano's favor.

Anent the proper penalty to be imposed on Manzano, the prescribed penalty for Lascivious Conduct under Section 5 (b) of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. Thus, applying the Indeterminate Sentence Law and further considering the absence of any aggravating or mitigating circumstances, the Court imposes on Manzano the penalty of imprisonment for an indeterminate period 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.

Finally, the Court sustains the CA's order to award AAA259059 ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of the ruling until full payment, consistent with *Tulagan*.

FOR THESE REASONS, the petition is **DENIED**. Petitioner Reymond Manzano y Dela Cruz is found **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5 (b) of Republic Act No. 7610. Accordingly, he is **SENTENCED** to suffer the penalty of imprisonment for an indeterminate period 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

⁴³ *People v. Nicholas*, 422 Phil. 53, 66 (2001).

⁴⁴ *Id.*

⁴⁵ *Rollo*, p. 35.

⁴⁶ *People v. Manzano*, supra note 36 at 143, citing *Belbis, Jr. v. People*, 698 Phil. 706, 724 (2012).

reclusion temporal, as maximum; and **ORDERED** to pay AAA259059 the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the finality of this ruling until fully paid.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{07/13}
03 APR 2023

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