



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, which reads as follows:*

“**G.R. No. 244290 (People of the Philippines, Plaintiff-Appellee v. XXX,* Accused-Appellant)**. — Impugned in this *Appeal* is the *Decision*¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09714, which modified the *Decision*² of Branch 194 of the Regional Trial Court of Parañaque City finding accused-appellant XXX (XXX) guilty beyond reasonable doubt of the crime of acts of lasciviousness under Section 5(b) of Republic Act No. 7610.³

ANTECEDENTS

This case has its precursor in the Information⁴ inculcating XXX for acts of lasciviousness under Section 5(b) of Republic Act No. 7610, the accusatory averments of which read:

That sometime in the year 2005, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the common-law husband of complainant’s mother

* The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. 7610 entitled, AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES, approved on June 17, 1992; Republic Act No. 9262 entitled, AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES, and approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the “Rule on Violence Against Women and Their Children” (November 15, 2004). See footnote 4 in *People v. Cadano Jr.*, 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 (2013). See also 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, dated September 5, 2017.

¹ *Rollo*, pp. 4-15. The September 13, 2018 Decision was penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Sesinando E. Villon and Rafael Antonio M. Santos.

² CA *rollo*, pp. 54-62. The October 10, 2016 Decision was penned by Presiding Judge Mary Grace Javier Ibay.

³ Entitled, AN ACT PROVIDING FOR SPECIAL DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION, AND FOR OTHER PURPOSES, approved on June 17, 1992.

⁴ See RTC Decision dated October 10, 2016, CA *rollo*, p. 54.

“with lewd design”, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness on the person of complainant [AAA], 14-year old minor, by then and there holding her breast and forcibly taking her hand putting it inside his short pants, against her will and consent, which acts are constitutive of child abuse and detrimental to the normal growth and development of said minor.

CONTRARY TO LAW.

Upon arraignment, XXX pleaded not guilty to the charge hurled against him.⁵ Thenceforth, the parties stipulated on the following: (1) the jurisdiction of the Regional Trial Court; (2) the identity of XXX; and (3) the minority of private complainant at the time of the commission of the offense.⁶

The combined testimonies of the prosecution witnesses endeavored to establish the following factual backdrop:

AAA was born on April 20, 1991. She lived in Parañaque City with her mother and the latter’s common-law husband, herein XXX. In 2005, AAA was 14 years old and frequently caught XXX peeping in while she took a bath. XXX utilized a cellphone with a camera, which he placed on the ceiling of the bathroom. In other instances, he inserted a mirror past the bottom clearance of the bathroom door. To avert XXX’s lewd acts, AAA would just turn off the bathroom lights or splash water on the mirror. However, these did not stop appellant, who even forced AAA to watch pornographic movies, including his own sex video with a waitress. Moreover, XXX made AAA watch him as he satisfied himself. On several occasions, he touched AAA’s breasts, grabbed her hand, and placed it inside his shorts to gratify his sexual desires.⁷

Things turned for the worse in 2011 when XXX raped AAA several times. This became the subject of a complaint for attempted rape and seven counts of rape filed against him before Branch 257 of the Regional Trial Court of Parañaque City, docketed as Criminal Case Nos. 12-1045 to 1052, wherein he was eventually convicted.⁸

On the other hand, AAA filed the instant complaint for violation of Article III, Section 5(b) of Republic Act No. 7610 before Branch 194 of the Regional Trial Court of Parañaque City, to prosecute XXX’s lascivious conduct in forcibly touching her breasts and placing her hand inside his shorts.

⁵ *Id.* at 55.

⁶ *Id.*

⁷ *Id.* at 55-56.

⁸ *Id.* at 57-58.

Professing his innocence, XXX denied AAA's imputations and avowed that the same were merely fabricated.⁹

In due course, Branch 194 of the Regional Trial Court of Parañaque City, rendered the October 10, 2016 Decision¹⁰ finding XXX guilty beyond reasonable doubt of acts of lasciviousness under Section 5(b) of Republic Act No. 7610. The *fallo* of the said Decision reads:

WHEREFORE, the Court finds (appellant) [XXX] guilty beyond reasonable doubt of Acts of Lasciviousness punishable under Section 5(b) of RA 7610 with relationship as an aggravating circumstance. Accused is sentenced to suffer the penalty of *reclusion perpetua*.

Consistent with recent jurisprudence, (appellant) is hereby ordered to pay private complainant the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages.

SO ORDERED.¹¹

The trial court ratiocinated that the prosecution incontrovertibly established all the elements of the crime charged. It gave credence to the positive testimony of AAA, who identified appellant as the one who, on various occasions, touched her breasts, placed her hand inside his shorts, and forced her to watch him masturbate. In imposing the above-quoted penalty, the trial court noted that XXX was the stepfather of AAA, considering the same as an ordinary aggravating circumstance.

Displeased by the verdict against him, XXX appealed¹² to the CA which, in the assailed *Decision*, modified the penalty imposed by the RTC. The appellate court held that the circumstance of relationship cannot be considered as an ordinary aggravating circumstance which would increase the imposable penalty considering that XXX, as the common-law husband of AAA's mother, cannot be considered as her stepfather in the absence of evidence showing that he was married to her. The CA adjudicated as follows:

WHEREFORE, the instant appeal is **DENIED**. The October 10, 2016 *Decision* of the Regional Trial Court of Parañaque, Branch 1194, in *Criminal Case No. 12-1030*, is hereby **AFFIRMED** with the following **MODIFICATIONS**:

⁹ See RTC Decision dated October 10, 2016, *CA rollo*, p. 59.

¹⁰ *CA Rollo*, 54-62. The October 10, 2016 Decision was penned by Presiding Judge Mary Grace Javier Ibay.

¹¹ *Id.* at 61-62.

¹² *Id.* at 14-15.

- a. (Appellant) is hereby **SENTENCED** to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term;
- b. The award of exemplary damages is hereby **DELETED**; and
- c. (Appellant) is **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of the finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages and fine consistent with prevailing jurisprudence.

SO ORDERED.¹³

Appellant timely filed his appeal¹⁴ before this Court.

The pivotal issue for the Court's resolution is whether or not the CA committed a reversible error when it affirmed XXX's conviction for acts of lasciviousness under Section 5(b) of Republic Act No. 7610, as adjudged by the trial court.

THE COURT'S RULING

The Court rules in the negative. The Appeal must be dismissed.

It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves utmost respect, if not finality, for the reason that the trial judge has the prerogative, usually 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. This principle applies with more reason in testimonies given by child witnesses, considering that their youth and immaturity are generally badges of truth and sincerity.¹⁵

Given the foregoing, the Court finds no substantial reason to overturn the congruent conclusions of the courts *a quo* on the matter of AAA's credibility and testimony.

¹³ *Id.* at 114-115.

¹⁴ *Id.* at 14-15.

¹⁵ See *Carbonell v. People*, G.R. No. 246702, April 28, 2021 [Per J. Delos Santos, Third Division] at 5. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

The Court, however, modifies the challenged Decision insofar as the proper designation of the offense is concerned. In fealty to the pronouncement in *People v. Tulagan*,¹⁶ where the acts constituting sexual assault are committed against a victim who is twelve years or over but under eighteen years old, or is eighteen years old or older but under special circumstances, the nomenclature of the crime should be “*Lascivious Conduct under Section 5(b) of Republic Act No. 7610*”.

Considering that AAA was only 14 years old when appellant sexually abused her, the verdict of conviction against appellant should be modified from acts of lasciviousness to lascivious conduct under Section 5(b) of Republic Act No. 7610.

Invariably, the pertinent provisions of Section 5(b) of Republic Act No. 7610 state:

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:

....

(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[.] xxx

As can be gleaned from the above-mentioned provision, Section 5(b) specifically applies in cases of sexual abuse committed against children, including lascivious conduct.

Parenthetically, the term “**lascivious conduct**” was given a specific definition in the Implementing Rules and Regulations of Republic Act No. 7610, *viz.*: “the **intentional touching, either directly or through clothing**, of the genitalia, anus, groin, **breast**, inner thigh, or buttocks, or

¹⁶ 849 Phil. 197 (2019) [Per J. Leonen, *En Banc*].

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.**"¹⁷

Thus, for a conviction under Section 5 (b) of RA 7610 to prosper, there must be a confluence of the following requisites:

- (1) The accused commits 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 18 years of age**.¹⁸

As correctly found by the CA, all the foregoing elements are present in the case at bench.

Firstly, appellant subjected the victim, AAA, to lascivious conduct when he touched her breasts and grabbed her hand, putting the same inside his shorts for his sexual gratification.

Secondly, the prosecution was able to sufficiently establish that AAA was subjected to other sexual abuse when she indulged in a lascivious conduct under the influence or coercion of an adult, herein appellant.

The pronouncement of the Court in *Mendoza v. People*¹⁹ is instructive, *viz.*:

As explained in *Caballo v. People*:

As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "*child exploited in prostitution and other sexual abuse*." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development. In this relation, case law further clarifies that **sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation**

¹⁷ *Carbonell v. People*, *supra* note 15 at 7. Emphasis supplied.

¹⁸ *Id.* at 6-7.

¹⁹ G.R. No. 239756, September 14, 2020 [Per J. Delos Santos, Second Division]. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

which subdues the free exercise of the offended party's free will. (Emphasis supplied)

In relation thereto, the Court further explained the aspect of other sexual abuse in *Quimvel v. People*, as cited in *People v. Eulalio*, viz.:

As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when **the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.** The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient.

....²⁰

In the case at bench, appellant exercised parental authority over AAA, being the common-law spouse of her mother. Inevitably, he had moral ascendancy over the victim. The CA was correct in declaring that appellant used and took advantage of such moral ascendancy to consummate the crime.

It is axiomatic that consent is immaterial in cases involving violation of Section 5(b), Article III of RA No. 7610. The law being *malum prohibitum*, the mere act of committing lascivious conduct with a child subjected to sexual abuse already constitutes the offense.²¹

Finally, as established in the birth certificate of AAA, and as stipulated upon by the parties during the pre-trial conference, she was only 14 years old when XXX molested her.²² All these circumstances convincingly establish appellant's guilt for lascivious conduct under Section 5(b) of Republic Act No. 7610.

The prescribed penalty for violation of Section 5(b) of RA No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. The circumstance of relationship, *i.e.*, appellant being the common-law husband of AAA's mother, cannot be considered as an aggravating circumstance to increase the imposable penalty. While it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity,²³ regardless of whether the offender is a relative of higher or lower degree of the offended party, it is only taken into consideration under Article

²⁰ *Id.* at 8-9.

²¹ See *People v. Udang*, 823 Phil. 411 (2018) [Per J. Leonen, Third Division] at 431-432.

²² See RTC Decision dated October 10, 2016, *CA Rollo*, p. 55.

²³ See *People v. Montinola*, 567 Phil. 387, 409 (2008) [Per J. Carpio, Second Division].

15 of the Revised Penal Code “when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender.” The relationship between accused-appellant and AAA is not covered by any of the relationships mentioned.²⁴

In the absence of any mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period of the prescribed penalty. Applying the provisions of the Indeterminate Sentence Law, the minimum term shall be taken from 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, *i.e.*, 8 years and 1 day to 14 years and 8 months, and the maximum of which is within the range of *reclusion temporal* in its medium period to *reclusion perpetua*, which is 17 years, 4 months and 1 day to 20 years.

Accordingly, the CA unerringly imposed the indeterminate penalty of imprisonment of eight years and one day of *prision mayor* as minimum, to seventeen (17) years, four months and one day of *reclusion temporal*, as maximum, for violation of Section 5 (b) of RA 7610. However, the damages awarded by the CA must be modified in obeisance to this Court's pronouncement in *People v. Tulagan*,²⁵ such that appellant is liable to pay civil indemnity, moral damages, and exemplary damages each in the amount of Fifty Thousand Pesos (PHP 50,000.00).

Finally, the CA correctly ordered the payment of interest at the rate of six percent (6%) *per annum*, which shall be reckoned from the date of finality of this Resolution until full payment.

WHEREFORE, the *Appeal* is hereby **DENIED**. The *Decision* dated September 13, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09714 is **AFFIRMED** with **MODIFICATION** in that accused-appellant XXX is ordered to **PAY** AAA the amounts of PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) *per annum* from finality of this Resolution until full payment.

²⁴ *People v. Barcelona*, 734 Phil. 332, 342-343 (2014) [Per J. Mendoza, Third Division].

²⁵ *Supra* note 18.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
juls

Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
1104 Diliman, Quezon City

COURT OF APPEALS
CA G.R. CR HC No. 09714
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 194, Parañaque City
(Crim. Case No. 12-1030)

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. XXX
(Accused-Appellant)
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

PHILIPPINE JUDICIAL ACADEMY
Research Publications and Linkages Office
Supreme Court, Manila
[research_philja@yahoo.com]

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

G.R. No. 244290

juls

**(591)
URES**