



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. 261898 – TIRSO ARGETE y GUTIERREZ, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.”\***

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the December 14, 2021 Decision<sup>2</sup> and the July 7, 2022 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 45034.

The assailed Decision affirmed with modifications the February 18, 2020 Decision<sup>4</sup> of the Regional Trial Court, Branch 2, Lipa City (RTC) in Criminal Case Nos. 08-0764-2018, 08-0765-2018, 08-0826-2018, 08-0827-2018, and 08-0766-2018, and convicted the petitioner Tirso Argete y Gutierrez (**Argete**) of four counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b), Article III of Republic Act No. (RA) 7610,<sup>5</sup> otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The assailed Resolution, in turn, denied Argete’s Motion for Reconsideration.

*The Facts*

Argete was charged with four counts of Rape through Sexual Assault under Article 266-A, paragraph 2 of the RPC, and violation of RA 7610, in five separate Informations, the accusatory portions of which read:

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\* No unmodified version since the real names of the private complainants and the information redacted by the lower courts cannot be found in the *rollo*.

<sup>1</sup> *Rollo*, pp. 12-35.

<sup>2</sup> *Id.* at 37-52. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Ramon A. Cruz and Angelene Mary W. Quimpo-Sale.

<sup>3</sup> *Id.* at 36-37.

<sup>4</sup> *Id.* at 82-91.

<sup>5</sup> Approved on June 17, 1992.

**Criminal Case No. 08-0764-2018**  
**(Rape through Sexual Assault)**

In or about May, (sic) 2018, in █████, █████, █████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat or intimidation, did then and there willfully, unlawfully[,] and feloniously commit acts of sexual assault upon the person of one AAA (DOB: SEPTEMBER 26, 2009), an eight (8) year[-]old minor, by then and there inserting his finger into the vagina of the said victim, against her will and consent.

Contrary to law.

**Criminal Case No. 08-0765-2018**  
**(Rape through Sexual Assault)**

In or about May, (sic) 2018, in █████, █████, █████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat or intimidation, did then and there willfully, unlawfully[,] and feloniously commit acts of sexual assault upon the person of one AAA (DOB: SEPTEMBER 26, 2009), an eight (8) year[-]old minor, by then and there inserting his finger into the vagina of the said victim and touching said victim's breast and buttocks against her will and consent.

Contrary to law.

**Criminal Case No. 08-0826-2018**  
**(Rape through Sexual Assault)**

Sometime in the month of May 2018, in █████, █████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat or intimidation, did then and there willfully, unlawfully[,] and feloniously commit acts of sexual assault upon the person of one BBB (DOB: 10/17/2009), an eight (8) year[-]old minor, by then and there inserting his finger into the vagina of the said victim and touching said victim's breast against her will and consent.

Contrary to law.

**Criminal Case No. 08-0827-2018**  
**(Rape through Sexual Assault)**

On or about June 15, 2018, in █████, █████, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat or intimidation, did then and there willfully, unlawfully[,] and feloniously commit acts of sexual assault upon the person of one BBB (DOB: 10/17/2009), an eight (8) year[-]old minor, by then and there inserting his finger into the vagina of the said victim and touching said victim's breast against her will and consent.

Contrary to law.

**Criminal Case No. 08-0766-2018**  
**(Lascivious Conduct)**

On or about June 15, 2018, in [REDACTED], and within the jurisdiction of this Honorable Court, the above-named accused, with intent to abuse, humiliate, harass, degrade or arouse or gratify his sexual desire, did then and there willfully, unlawfully, and feloniously commit Lasciviousness' (sic) Conduct upon the person of AAA (DOB: SEPTEMBER 26, 2009), an eight (8) year[-]old minor, by touching her private part, breast and buttocks[,] and poking his penis into her buttocks, against her will and consent[,] which acts debases (sic) or demeans (sic) the intrinsic worth and dignity of the minor as a human being.

Contrary to law.<sup>6</sup>

Upon arraignment, Argete pleaded not guilty to all the charges. During the Pre-Trial Conference, the parties agreed to a joint trial of the cases. Thereafter, trial ensued.<sup>7</sup>

The prosecution presented the testimonies of AAA and BBB. On the basis of the parties' admissions and stipulations, the testimonies of AAA's mother, BBB's mother, and Dr. Marjorie A. Tec (**Dr. Tec**) were dispensed with.<sup>8</sup>

The evidence for the prosecution shows that sometime in May 2018, AAA and BBB were playing with the other children in their neighborhood when Argete invited them to watch television inside his house. AAA and BBB agreed. Not long after, Argete set up the DVD player and made AAA and BBB watch a movie showing nude people holding and kissing each other. Argete ignored AAA and BBB's request that the DVD be removed so they could watch cartoons. Thus, they decided to go outside but Argete prevented them and locked the door. Thereafter, Argete caressed AAA's buttocks and then touched her vagina and breast. Argete then proceeded to touch the same private parts of BBB. Argete only stopped what he was doing when he heard that his daughter was calling for him. As Argete opened the door of the house, AAA and BBB took the opportunity to get out.<sup>9</sup>

A similar incident happened on June 15, 2018. Argete invited AAA and BBB inside his house under the same pretense that they would be watching television. Once AAA and BBB were inside the house, Argete locked the door. He allowed AAA and BBB to watch cartoons for a while and then again showed them a pornographic film. After touching the vagina,

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<sup>6</sup> *Rollo*, pp. 38-39.

<sup>7</sup> *Id.* at 39.

<sup>8</sup> *Id.* at 40.

<sup>9</sup> *Id.* at 85.

breast and buttocks of AAA, Argete proceeded to touch BBB's private parts. AAA and BBB were again saved by the arrival of Argete's daughter.<sup>10</sup>

On June 16, 2018, AAA and BBB were brought to the hospital where Dr. Tec conducted their medical examination. Dr. Tec said that there was "[n]o evident injury [to the hymen] at the time of examination but medical evaluation cannot exclude sexual abuse."<sup>11</sup>

Argete interposed the defenses of denial and alibi. He denied all the accusations against him. He insisted that on June 15, 2018, he was at the house of AAA's grandmother fixing the latter's door. Argete's daughter, who was tending her store just in front of Argete's house while she was taking care of her newborn child, testified that at the time of the alleged incidents, she did not notice AAA and BBB enter her father's house.<sup>12</sup>

### *The Ruling of the RTC*

The RTC convicted Argete of four counts of Lascivious Conduct under Article III, Section 5(b) of RA 7610. It sentenced him to suffer the penalty of imprisonment of 12 years, five months, and 11 days of *reclusion temporal*, as minimum, to 15 years, six months, and 20 days of *reclusion temporal*, as maximum, for each count, and ordered him to pay the victims PHP 15,000.00 as moral damages also for each count.

According to the RTC, while Argete cannot be held liable for the crime charged, *i.e.*, Rape Through Sexual Assault, because the prosecution failed to establish the fact that Argete inserted his finger in the vagina of AAA or BBB, he cannot be completely absolved of liability. Giving full credence to the testimonies of AAA and BBB, the RTC found that all the elements of the crime of Lascivious Conduct under RA 7610 were proven beyond reasonable doubt.

### *The Ruling of the CA*

The CA affirmed Argete's conviction. However, the CA, pursuant to recent jurisprudence, deemed it proper to change the nomenclature of the crime committed to Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of RA 7610 and to direct Argete to pay AAA and BBB PHP 50,000.00, as civil indemnity *ex delicto*; PHP 50,000.00, as moral damages; and PHP 50,000.00, as exemplary damages each.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 41.

<sup>12</sup> *Id.*

*The Issue*

Did the CA commit a reversible error in convicting Argete of four counts of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of RA 7610?

*The Ruling of the Court*

Argete assails the credibility of AAA and BBB. He maintains that because of their tender age, AAA and BBB “tended to be suggestible and might have accepted a suggestion put to them even if it were not true.” Argete also argues that because of the prosecutor’s “highly suggestive” line of questioning during the direct examination of AAA and BBB, there was no categorical account of the alleged sexual abuse. He likewise claims that the testimonies of AAA and BBB are riddled with contradictions and inconsistencies as to effectively cast serious doubt on their credibility.

Argete’s arguments deserve scant consideration.

The Court has time and again abided by the principle that the factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect.<sup>13</sup> This is because the trial court’s determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses’ credibility and to appreciate their truthfulness, honesty and candor.<sup>14</sup> Thus, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising its findings and evaluation, this Court has consistently deferred to the trial court’s factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA.<sup>15</sup>

Moreover, the issue of credibility of witnesses is a factual issue that is generally beyond the province of a petition for review on *certiorari* in accordance with the principle that the Court is not a trier of facts.<sup>16</sup>

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<sup>13</sup> *Jamaca v. People*, 764 Phil. 683 (2015).

<sup>14</sup> *Medina, Jr. y Oriol v. People*, 724 Phil. 226 (2014).

<sup>15</sup> *Id.*

<sup>16</sup> *Mendoza y Esguerra v. People*, 843 Phil. 881 (2018).

Here, Argete has not proffered any compelling reason for this Court to depart from the RTC's evaluation of the credibility of AAA and BBB as witnesses.

The Court cannot simply discount the testimony of AAA and BBB on account of their minority. AAA and BBB testified in a categorical and straightforward manner that Argete touched their private parts on two separate instances. In *People v. Baylon*,<sup>17</sup> the Court had the occasion to hold that where the victims are of tender years, "there is a marked receptivity on its part to lend credence to their version of what transpired," a matter that is not to be wondered at, since the State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority are not yet able to fully protect themselves.<sup>18</sup>

In any event, the alleged inconsistencies and contradictions in the testimony of AAA and BBB are so minor and inconsequential to warrant a reversal of Argete's conviction. They do not go into the elements of the crime of Lascivious Conduct. As such, the supposed inconsistencies can hardly affect the substance or veracity and weight of the victims' testimony which, on the contrary, only serve to reinforce than weaken their credibility.<sup>19</sup>

As regards Argete's contention that the prosecution's questions to AAA and BBB were "highly suggestive," suffice it to state that under the Rule on Examination of a Child Witness,<sup>20</sup> propounding leading questions to a child witness is allowed if the same will further the interests of justice. In any case, it is too late for Argete to impugn the manner of questioning used by the prosecutor at this stage. He should have interposed his objections during the examination of AAA and BBB, as soon as the grounds therefor became apparent, if indeed there is merit to his objection.<sup>21</sup>

The nomenclature of the crime and the civil indemnity and damages awarded by the CA are in line with the Court's ruling in the case of *People v. Tulagan*<sup>22</sup> (**Tulagan**). However, the penalty imposed by the RTC and the CA must be modified. The maximum of the indeterminate sentence imposable for each count should be 15 years, six months, and 21 days instead of 20 days.

*Tulagan*<sup>23</sup> provides that the imposable penalty for Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), of

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<sup>17</sup> 156 Phil. 87 (1974).

<sup>18</sup> *People v. Cabodac y Oras*, 284-A Phil. 303 (1992).

<sup>19</sup> *People v. Jacob y Lopez*, 413 Phil. 542 (2001).

<sup>20</sup> A.M. No. 00-4-07-SC, November 21, 2000.

<sup>21</sup> *People v. Belen y Marasigan*, 803 Phil. 751 (2017).

<sup>22</sup> G.R. No. 227363, March 12, 2019, 896 SCRA 307.

<sup>23</sup> *Id.*

RA 7610 is *reclusion temporal* in its medium period, which ranges from 14 years, eight months, and one day to 17 years and four months. Applying the provisions of the Indeterminate Sentence Law, the maximum term of the sentence to be imposed on Argete shall be taken from the medium period of *reclusion temporal* medium, which ranges from 15 years, six months, and 21 days to 16 years, five months, and 10 days. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from 12 years and one day to 14 years and eight months, considering the absence of any mitigating or aggravating circumstance in this case.

In view of the foregoing, the Petition is denied for Argete's failure to show that the CA committed reversible error in affirming with modifications the RTC's ruling.

**WHEREFORE**, the petition is **DENIED**. The Decision, dated December 14, 2021, and the Resolution, dated July 7, 2022, of the Court of Appeals in CA-G.R. CR No. 45034, finding petitioner Tirso Argete y Gutierrez **GUILTY** beyond reasonable doubt of four (4) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610 is **AFFIRMED with MODIFICATION**, sentencing him to suffer the penalty of imprisonment for the indeterminate period of twelve (12) years, five (5) months, and eleven (11) days 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. The award of moral damages, exemplary damages, and civil indemnity are maintained. All amounts due shall earn interest at the rate of six percent (6%) per annum from the finality of this Resolution until full satisfaction.

**SO ORDERED."**

By authority of the Court:

*Misael C. Battung III*  
**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court* 03-10-23

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Family Court, 4<sup>th</sup> Judicial Region  
Branch 2, Lipa City  
(Criminal Case Nos. 08-0764-2018, 08-0765-2018,  
08-0826-2018, 08-0827-2018 and 08-0766-2018)

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**G.R. No. 261898** 

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