



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 22, 2022** which reads as follows:*

“**G.R. No. 258938 (XXX258938)**,¹ *petitioner v. People of the Philippines, respondent*). – This petition for review on *certiorari*² seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. CEB CR No. 03412 entitled *People of the Philippines v. XXX258938*:

1. Decision³ dated March 17, 2021, affirming petitioner’s conviction for Acts of Lasciviousness; and
2. Resolution⁴ dated July 8, 2021 denying his motion for reconsideration.

Proceedings before the Regional Trial Court

Petitioner XXX258938 was charged in the following Information:

That on or about 11:00 AM of April 2016 at Hda. ██████████ Barangay ██████████ City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lewd design, did, then and there[,] wilfully, unlawfully and feloniously commit an act of sexual abuse upon the person of AAA, an eight year old minor, by kissing her on the lips while holding her butt, against her will, which act degrades or demeans the intrinsic worth and dignity of the child as a human being, to her damage and prejudice.

CONTRARY TO LAW.⁵

On arraignment, petitioner pleaded not guilty.⁶

¹ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

² Petitioner is represented by the Public Attorney’s Office. Respondent is represented by the Office of the Solicitor General.

³ *Rollo*, pp. 81–92.

⁴ *Id.* at 108–109.

⁵ *Id.* at 82.

⁶ *Id.*

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Version of the Prosecution

Eight year old AAA258938 testified that sometime in April 2016 at 11 o'clock in the morning, petitioner called her inside his house. There, he forced her to lie down on a bamboo bench. He kissed and sucked her lips for eight seconds while his hands ran through her waist. His hands got inside her short pants and touched her buttocks. Petitioner stopped only when someone suddenly arrived.⁷

She told her cousin FFF258938 about the incident. FFF258938 is petitioner's granddaughter. Per advice of FFF258938, she reported the incident to her father BBB258938.⁸

BBB258938 testified that he was a *Bantay Dagat* member who was usually assigned to do the night duty. It was his routine to leave AAA258938 in the care of DDD258938 and her husband, herein petitioner.⁹ DDD258938 is the aunt of BBB258938.

Sometime in July 2016, AAA258938 divulged to him that on separate occasions, she was molested by both petitioner and petitioner's son ZZZ258938.¹⁰ AAA258938 was crying while relating to him what happened. Enraged, he confronted the two.¹¹

He reported the incident to the Department of Social Welfare and Development (DSWD), and subsequently, to the police station.¹²

Version of the Defense

Petitioner interposed denial and alibi. He testified that in April 2016, he was frequently at work as a carpenter. In the same month, he saw AAA258938 twice only, specifically on his daughter's wedding day and the day before. Whenever AAA258938 would stay in their house, he would sleep downstairs while AAA258938 would sleep in the room upstairs with his wife and grandchildren. The following day, AAA258938 would leave and proceed to the house of her grandfather CCC258938, his wife's brother.¹³

He and CCC258938 are not in good terms. Petitioner resented CCC258938 for his failure to bring petitioner's wife to the hospital when she was experiencing

⁷ *Id.* at 83.

⁸ *Id.*

⁹ *Id.* at 46.

¹⁰ A separate information was filed against ZZZ.

¹¹ *Rollo*, p. 83.

¹² *Id.* at 46.

¹³ *Id.* at 47.

stomach pain. BBB258938, on the other hand, got mad at him after he refused to accept the fish he gave him.¹⁴

DDD258938 testified that AAA258938 stayed with them only in June 2016 and not in April and May of the same year. She corroborated petitioner's claim that whenever AAA258938 stays in their house, she (DDD258938) and AAA258938 would sleep in the balcony upstairs, together with her grandchildren. Meanwhile, petitioner would sleep downstairs.¹⁵

Petitioner and his wife DDD258938 agreed that AAA258938 was a good child.¹⁶

Ruling of the Trial Court

By Decision¹⁷ dated December 18, 2018, the trial court found petitioner guilty of lascivious conduct under Section 5(b), Article III of Republic Act No. (RA) 7610,¹⁸ viz.:

WHEREFORE, premises considered, judgment is hereby rendered finding accused XXX guilty of **lascivious conduct under Sec. 5(b), Art. III of Republic Act 7610**. He is sentenced to suffer the penalty of TWELVE (12) YEARS and ONE (1) DAY of RECLUSION TEMPORAL, as minimum, to FIFTEEN (15) YEARS, SIX (6) MONTHS, and TWENTY (20) DAYS of RECLUSION TEMPORAL, as maximum. He is ordered to pay AAA the amounts of Php 30,000.00 as civil indemnity; Php 30,000.00 as moral damages; and Php15,000.00 as exemplary damages.

An interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral, and exemplary damages from the finality of the judgment until fully paid.

SO ORDERED.¹⁹

Ruling of the Court of Appeals

In its assailed Decision²⁰ dated March 17, 2021, the Court of Appeals affirmed with modification as to the nomenclature of the crime.

¹⁴ *Id.* at 46.

¹⁵ *Id.*

¹⁶ *Id.* at 46.

¹⁷ Penned by Presiding Judge Amy Alabado Avellano; *rollo*, pp. 57-69.

¹⁸ Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, June 17, 1992.

¹⁹ *Rollo*, p. 48.

²⁰ Penned by Associate Justice Roberto P. Quiroz and concurred in by Associate Justices Marilyn B. Lagura-Yap and Bautista G. Corpin, Jr.; *rollo*, pp. 81-92.

Guided by *People v. Tulagan*, it held that the proper nomenclature of the crime is acts of lasciviousness under Article 366 of the Revised Penal Code (RPC), in relation to Section 5(b) of RA 7610 considering that the victim AAA258938 was only eight years old when the sexual abuse happened.

Petitioner's motion for reconsideration was subsequently denied.²¹

The Present Petition

Petitioner now prays anew for his acquittal. He reiterates that the Information failed to allege the second element of acts of lasciviousness, much less, prove the same during trial. He adds that AAA258938's testimony is too incredible to inspire belief. Her behavior during and after the sexual abuse is contrary to normal human experience. AAA258938 should have resisted and shouted for help when he forced her to lie down on the bamboo bench considering that it was 11 o'clock in the morning and people could have easily heard her had she cried for help. Lastly, it is unusual for victims of sexual abuse to still feel comfortable around their predators *post facto*. He concludes that AAA258938 could not have had a bad experience with him since she does not feel any discomfort around him.²²

Ruling

The petition must fail.

The Court, not being a trier of facts, will not take cognizance of factual issues raised in Rule 45 petitions. For under this rule, only questions of law are allowed. It is not the task of the Court to review the factual findings of the trial court, let alone, recalibrate its evaluation of the evidence on record. More, in the absence of grave abuse of discretion or misapprehension of facts, the factual findings of the trial court on the credibility of the witnesses are conclusive and binding on the Court especially when they carry the full conformity of the appellate court, as in this case. On this score, no special reason was adduced to merit a departure from this rule, let alone, justify the exercise of the Court's discretionary appellate jurisdiction in this case.

Consequently, the verdict of conviction against petitioner for *acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of RA 7610* is sustained.

The elements of acts of lasciviousness are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done (a) by using force or intimidation, or

²¹ *Rollo*, pp. 108-109.

²² *Id.* at 19-29.

(b) when the offended party is under twelve years of age; and (3) the offended party is another person of either sex.²³

Here, AAA258938 categorically testified in detail how petitioner forced her to lie down on the bamboo bench and thereafter kissed her lips while touching her buttocks. The trial court found her testimony to be credible, categorical, and straightforward. Her testimony by itself, therefore, is sufficient to sustain a verdict of conviction. Especially since her tender age, youth, and immaturity are generally taken as badges of truth and sincerity. AAA258938 would not have narrated such sordid details had she not actually experienced them in the hands of petitioner.²⁴

As for the supposed absence of “coercion or influence” or “force or intimidation,” the second element of the crime requires that either (a) the act is done by using force or intimidation or **(b) the offended party is under 12 years of age**. The Court has consistently ruled that if acts of lasciviousness are committed against a victim below twelve years of age, as here, proof of force or intimidation is not required.²⁵

With regard to petitioner’s claim that AAA258938’s testimony is incredible being contrary to normal human experience, suffice it to state that not every victim of a crime can be expected to act reasonably and conformably with the expectation of humankind. No standard reaction or norm of behavior ensues after one’s harrowing experience. This is especially true when dealing with an innocent and immature child still of tender age, as here.²⁶

Notably, it was unlikely that AAA258938’s father BBB258938 and grandfather CCC258938 would subject AAA258938 to dishonor by staging a rape incident for the flimsy reason that he (petitioner) refused to accept the fish given by BBB258938 and because CCC258938 failed to bring petitioner’s wife to the hospital when she was suffering from stomach pain.

In any event, as between AAA258938’s categorical and straightforward identification of petitioner as her sexual predator, on one hand, and petitioner’s unsubstantiated denial and alibi, on the other, the former indubitably prevails.

The Court accords the highest respect to the trial court’s factual findings on the credibility of the witnesses especially because these factual findings carry the full concurrence of the Court of Appeals.²⁷

²³ *People v. Dela Cuesta y Ramos*, 430 Phil. 742, 754.

²⁴ See *Pielago v. People*, 706 Phil. 460, 471 (2013); *Campos v. People*, 569 Phil. 658, 671 (2008), citing *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galigao*, 443 Phil. 246, 260 (2003).

²⁵ See *Capueta v. People*, G.R. 240145, September 14, 2020.

²⁶ See *People v. Villaros*, 372 SCRA 358, 372.

²⁷ See *Castillano y Asutilyo v. People*, G.R. No. 222210 (Notice), June 20, 2016.

All told, the verdict of conviction by the trial court, as affirmed by the Court of Appeals, is in order.

Penalty

Under the second *proviso* of Section 5(b), Article III of RA 7610,²⁸ the imposable penalty for acts of lasciviousness committed against a child below 12 years of age is *reclusion temporal* in its medium period. Applying the indeterminate sentence law, the Court of Appeals correctly affirmed the imposed penalty of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days, as maximum.

On the other hand, the Court modifies the award of damages in accordance with prevailing jurisprudence.

In *People v. Jugueta*²⁹ and *People v. Tulagan*,³⁰ the Court ordained that when the surrounding circumstances of the crime call for the imposition of *reclusion temporal* only, there being no ordinary aggravating circumstance, the proper amount of damages should be PHP 50,000.00 each for civil indemnity, moral damages, and exemplary damages.³¹ A fine of PHP 15,000.00 is likewise imposed pursuant to Section 31(f), Article XII of RA 7610.³² Finally, the total monetary award shall earn 6% legal interest *per annum* from finality of this Resolution until fully paid.

FOR THESE REASONS, the petition is **DENIED**. The Decision dated March 17, 2021 and Resolution dated July 8, 2021 of the Court of Appeals in CA-G.R. CEB CR No. 03412 are **AFFIRMED with MODIFICATION**.

XXX258938 is found **GUILTY** of **Acts of Lasciviousness** under Article 366 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610 and sentenced to twelve (12) years and one (1) day, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days, as maximum. He is further ordered to **PAY** a **FINE** of PHP15,000.00.

²⁸ 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. xxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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.*** (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610. June 17, 1992*)

²⁹ G.R. No. 250437, June 16, 2021.

³⁰ G.R. No. 227363, March 12, 2019.

³¹ See supra note 24.

³² Section 31 (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

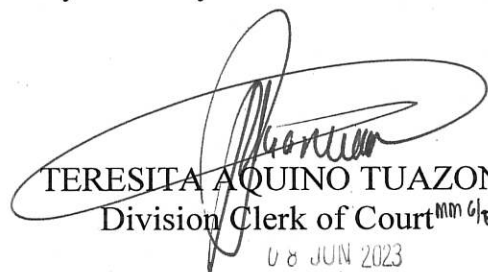
He is likewise ordered to **PAY AAA258938** civil indemnity, moral damages, and exemplary damages of PHP 50,000.00 each.

The monetary awards shall earn 6% legal interest *per annum* from finality of this Resolution until fully paid.

Further, the Court **GRANTS** the Motion for Extension to file a Petition for Review on Certiorari dated October 12, 2021 of XXX258938.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court ^{MM 6/8}
 08 JUN 2023

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 58
 San Carlos City, Negros Occidental
 (Crim. Case No. 16-6203)

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 Supreme Court, Manila

*with a copy of the Decision dated March 17, 2021
Please notify the Court of any change in your address.
 GR258938. 6/22/2022(61)URES(m)