



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 1, 2023**, which reads as follows:*

G.R. No. 226119 – JESUS SY y PASCUAL @ “KA JOSEPH”, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent. The Court **NOTES** the Transmittal Letter dated September 23, 2022 of the Court of Appeals (CA), Manila, in compliance with the Resolution dated June 7, 2022, elevating to the Court the CA *rollo* of this case.

The Court resolves to deny the Petition for Review on *Certiorari*¹ (**the Petition**) for failure to sufficiently show that the Court of Appeals (CA) committed any reversible error in affirming the guilt of the petitioner Jesus Sy y Pascual @ “Ka Joseph” (Sy) for Violation of Section 5(b) of Republic Act (R.A.) No. 7610² in CA-G.R. CR No. 35047.

The guilt of Sy was proven beyond reasonable doubt

In *People v. Caoili*,³ the Court enumerated the elements of sexual abuse under Section 5(b) of R.A. No. 7610:

- (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.⁴

¹ *Rollo*, pp. 14-32.

² 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.

³ 815 Phil. 839, 886 (2017).

Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases of R.A. No. 7610, defined Lascivious Conduct as:

The intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or 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.

Meanwhile, the elements of the crime of acts of lasciviousness are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner.⁵

The foregoing elements have been established by the prosecution. As found by both the RTC and the CA, the testimony of the victim AAA⁶ deserved credence.

AAA testified:

Q (Assistant Public Prosecutor Marivic C. Vitor):

AAA, why are you charging Jesus or Joseph Sy for child abuse?

A (AAA):

Kasi bastos po siya, Ma'am.

Q: Why did you say that he is bastos?

A: Kasi po hinawakan ako sa dede tapos sa pepe tapos po yong ari niya idinikit sa puwit (sic) ko, Ma'am.⁷

⁵ *Lutap v. People*, 825 Phil. 10, 26-27 (2018).

⁶ In line with the Amended Administrative Circular No. 83-2015, which requires the preparation of a first copy of Decisions/Resolutions/Orders where the real and genuine name/s or identities and personal circumstances of the victim/s are used.

⁷ Transcript of Stenographic Notes (hereafter, "TSN"). Witness: AAA, 7 August 2007, p. 4. (Emphasis and underscoring supplied)

There is nothing in the testimony of AAA to make the Court doubt that she was sexually abused by Sy, in the manner that she said she was. Indeed, in a long line of cases, the Court has given full weight and credence to the testimonies of child victims, with their youth and immaturity generally regarded as badges of truth and sincerity.⁸ A less stringent standard should be accorded to witnesses who are minors, especially when they are relating past incidents of abuse.⁹

Besides, as enunciated by the Court in *People v. Elimancil*,¹⁰ when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during trial.¹¹ Unless there is a showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstance of weight and substance which could affect the result of the case,¹² the Court will not reverse the conviction of Sy.

Alleged inconsistencies in the testimonies of AAA and BBB

Sy faults the CA for disregarding the alleged inconsistencies between the statements of AAA and her grandmother BBB in their respective *Simumpaaang Salaysay* and their testimonies in open court.

The Court is not persuaded.

In *Kummer v. People*,¹³ the Court explained:

The Court has consistently held that inconsistencies between the testimony of a witness in open court, on one hand, and the statements in his sworn affidavit, on the other hand, referring only to minor and collateral matters, do not affect his credibility and the veracity and weight of his testimony as they do not touch upon the commission of the crime itself. Slight contradictions, in fact, even serve to strengthen the credibility of the witnesses, as these may be considered as badges of truth rather than indicia of bad faith; they tend to prove that their testimonies have not been rehearsed. Nor are

⁸ *People v. Caoili*, supra note 3 at 881, citing *Ricalde v. People*, 751 Phil. 793, 805 (2015), citing *Pielago v. People*, 706 Phil. 460 (2013); *Campos v. People*, 569 Phil. 658, 671 (2008), quoting *People v. Capareda*, 473 Phil. 301, 330 (2004); *People v. Galigao*, 443 Phil. 246, 260 (2003).

⁹ *Id.*, citing *Ricalde v. People*, 751 Phil. 793, 805 (2015).

¹⁰ 846 Phil. 186, 193 (2019).

¹¹ *Id.*, citing *Remiendo v. People*, 618 Phil. 273, 287 (2009).

¹² *Id.*, citing *People v. Panganiban*, 412 Phil. 98, 107 (2001).

¹³ 717 Phil. 670, 678 (2013).

such inconsistencies, and even improbabilities, unusual, for no person has perfect faculties of senses or recall.¹⁴

Aside from the trivial nature of such inconsistencies referred to by Sy, such as the incorrect spelling of the friend of AAA, CCC's name, or the mention of "*palagi*" and "*dalawa po*" to refer to the frequency by which she was abused by Sy,¹⁵ it has not escaped the Court that Sy only selected excerpts of the Transcripts of Stenographic Notes that support his claim of innocence. Thus, while AAA did testify that Sy helped her climb the *aratiles* tree and in the process, touched her buttocks,¹⁶ the same does not negate her categorical statement that Sy mashed her breast and touched her vagina. If indeed Sy merely helped AAA climb the *aratiles* tree, there was no need for him to touch these areas of AAA's body.

The correct nomenclature of the offense; monetary awards

The Court notes that Sy was convicted both by the RTC and the CA for child abuse under Section 5(b) of R.A. No. 7610. In *People v. Tulagan*¹⁷ (***Tulagan***), the Court already clarified the correct nomenclature of the crime if the victim is under 12 years old, as AAA was when she was abused by Sy, which shall be "Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b) of R.A. No. 7610."

As for the award of damages, the following shall be due to AAA: (a) PHP 50,000.00, as civil indemnity *ex delicto*; (b) PHP 50,000.00, as moral damages; and (c) PHP 50,000.00, as exemplary damages, in accordance with the pronouncement in *Tulagan*. All these amounts shall earn interest at the rate of six percent (6%) *per annum* reckoned from the finality of this Resolution, until full payment.¹⁸

The correct penalty

In the assailed Decision, the CA affirmed the RTC's imposition of the penalty of imprisonment of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal* in its medium period, as maximum.

¹⁴ *Id.*, citing *People v. Perreras*, 414 Phil. 480, 488 (2001). (Citation omitted)

¹⁵ *Rollo*, pp. 19-21.

¹⁶ TSN, Witness: AAA, 1 July 2008, p. 6.

¹⁷ 849 Phil. 197-297 (2019).

¹⁸ *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.* (Resolution), G.R. No. 225433, September 20, 2022.

fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal* in its medium period, as maximum.

In *Tulagan*, the imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b), of R.A. No. 7610 is *reclusion temporal* in its medium period, which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, in the absence of any mitigating or aggravating circumstance as in this case, the maximum term of the sentence should be taken from the medium period of *reclusion temporal* medium, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and ten (10) days.

Applying the foregoing, the correct maximum penalty should be fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* medium.

The CA Decision should thus be modified to reflect the foregoing.

WHEREFORE, the Petition for Review on *Certiorari* filed by Jesus Sy y Pascual @ “Ka Joseph” is **DENIED**. The Decision, dated January 28, 2016 of the Court of Appeals in CA G.R. CR No. 35047 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Jesus Sy y Pascual @ “Ka Joseph” is found guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610;

(2) Jesus Sy y Pascual @ “Ka Joseph” is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* medium, as maximum.

(3) Jesus Sy y Pascual @ “Ka Joseph” is ordered to pay AAA the amounts of (a) PHP 50,000.00, as civil indemnity *ex delicto*; (b) PHP 50,000.00, as moral damages; and (c) PHP 50,000.00, as exemplary damages, in accordance with prevailing jurisprudence.

The civil liabilities so awarded shall earn interest at the rate of six percent (6%) *per annum* reckoned from the finality of this Resolution, until full payment.

SO ORDERED.

By authority of the Court:

MisDcBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
4/2/23

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 68, Binangonan Rizal
(Crim. Case No. 06-233)

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