



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated April 19, 2023, which reads as follows:

“G.R. No. 261889* (*Simon Figueroa Gamboa and Jeffrey Gulles v. People of the Philippines*).— This Petition for Review on *Certiorari*¹ inveighs against the Decision² and the Resolution³ of the Court of Appeals (CA), which affirmed the guilty verdict⁴ of petitioners Simon Nathaniel Figueroa Gamboa (Simon) and Jeffrey Figueroa Gulles (Jeffrey) for violation of Article III, Section 5(b) of Republic Act (RA) No. 7610,⁵ and denied their motion for reconsideration thereof, respectively, in CA-G.R. CR No. 41769.

The Petition deserves short shrift.

For conviction under Section 5(b), Article III of RA No. 7610 to prosper, the following requisites must be established: (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.⁶

Under paragraph (h), Section 2 of the Implementing Rules and Regulations of RA No. 7610, “lascivious conduct” is defined as the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. On the other hand, “other sexual abuse” is construed to cover not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult.⁷ Corollary

* No unmodified version as real name cannot be determined from the *rollo*.

¹ *Rollo*, pp. 13-34.

² *Id.* at 35-57. The Decision dated June 30, 2021 was penned by Associate Justice Carlito B. Calpatura, with the concurrence of Associate Justices Fernanda Lampas Peralta and Maria Elisa Sempio Diy.

³ *Id.* at 8-11 and 58-61.

⁴ *Id.* at 35. The Joint Decision dated March 19, 2018 in Criminal Case Nos. 14-306565 and 14-306566 was rendered by Branch 29 of the Regional Trial Court of Manila.

⁵ AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES, approved on June 17, 1992.

⁶ See *Trocio y Mendoza v. People*, G.R. No. 252791, August 23, 2022.

⁷ *Id.*

thereto, before an accused may be held criminally liable for lascivious conduct, the requisites of the crime of acts of lasciviousness penalized under Article 336 of the Revised Penal Code (RPC) must be established in addition to the requisites of sexual abuse under Section 5(b), Article III of RA No. 7610.⁸

Article 336 of the RPC defines and penalizes acts of lasciviousness as follows:

Article 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional*.

Thus, the following are the elements of the crime: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present; (3) that the offended party is another person of either sex.⁹ Furthermore, in the crime of rape by sexual assault, if the victim is 12 years old and below 18 years old, or at least 18 years old under special circumstances, instead of convicting the accused of rape by sexual assault, the proper crime should be lascivious conduct under Section 5 (b), Article III of RA No. 7610.¹⁰

Here, the evidence proffered by the prosecution sufficiently established the elements of lascivious conduct under Article III, Section 5(b) of RA No. 7610. In Criminal Case No. 14-306565, the credible testimony of AAA pointing to petitioners as the malefactors who committed lascivious conduct against her cannot be overstated— they pushed her against the wall, held her there while alternately kissing her on the lips, cheeks, neck, and back, and fondling her breasts.¹¹ Likewise, in Criminal Case No. 14-306566, the act of petitioner Simon forcibly inserting his penis into AAA's mouth is a clear, unquestionable lascivious conduct.¹² Taken all together, petitioners' lewd behavior and the fulfillment of their sexual desires against AAA were accomplished by force and coercion. Notably, AAA was then a child below 18 years old at the time of the incident. Her birth certificate duly established that she was only 15 years old when the assault occurred.¹³

In *People v. Caoili*,¹⁴ the Court explicated that consent is immaterial in cases involving violation of Section 5 of RA No. 7610. The mere act of having

⁸ See *id.*

⁹ *Id.*

¹⁰ See *People v. XXX*, G.R. No. 254254, February 16, 2022, citing *People v. Tulagan* 849 Phil. 197 (2019).

¹¹ *Rollo*, pp. 38 and 44-46, CA Decision.

¹² *Id.* at 46-48.

¹³ *Id.* at 51.

¹⁴ 815 Phil 839 (2017).

sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense because it is a *malum prohibitum*, an evil that is proscribed.¹⁵

Clearly, petitioners' actions fall under the definition of "lascivious conduct" under Section 2(h) of the Rules on Child Abuse Cases of Republic Act No. 7610. Additionally, the conduct of petitioners before, during, and after the commission of the offense reveal that they intended to achieve a common purpose,¹⁶ which is to gratify their sexual desires. Their acts commenced when they both followed AAA inside the kitchen. Once inside, they assisted each other and cooperated in pushing and holding AAA, with the latter being pinned against the wall. Then they took turns in committing lascivious acts against AAA.¹⁷ Their concerted actions prove the existence of conspiracy.

Moreover, it bears to accentuate the recognized rule in this jurisdiction that the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe the deportment and demeanor of a witness on the stand, a vantage point denied appellate courts; and when his findings have been affirmed by the CA, these are generally binding and conclusive upon the Court. While there are recognized exceptions to the rule, the Court finds no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.¹⁸

Given the foregoing discourse, petitioners' attempt to cast doubt on the credibility of AAA fails in the face of the positive identification by the latter that they were the ones who sexually abused her.¹⁹ After all, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.²⁰

Finally, in accordance with prevailing jurisprudence,²¹ the CA unerringly imposed in both criminal cases, the indeterminate penalty of imprisonment of ten (10) 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, for violation of Article III, Section 5 (b) of RA No. 7610. Similarly, the monetary awards of civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each,²² the additional fine of ₱15,000.00, in the two criminal cases were correctly awarded, pursuant to Section 31(f), Article XII²³ of RA No. 7610, and the imposition of legal interest rate of six

¹⁵ Id. at 890.

¹⁶ See *People v. Pepino y Rueras*, G.R. No. 174471, 777 Phil. 29-98 (2017).

¹⁷ *Rollo* pp. 38

¹⁸ See *Orsos v. People*, G.R. No. 214673, 820 Phil. 1015, 1024 (2017).

¹⁹ *Rollo*, p. 52, CA Decision.

²⁰ See *People of the Philippines v. Elmer Moya*, G.R. No. 228260, June 10, (2019).

²¹ See *People v. Tulagan*, 849 Phil. 197 (2019).

²² Id. at 287-292.

²³ Common Penal Provisions. —

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percent (6%) *per annum* on all monetary awards, are affirmed in accordance with relevant jurisprudence.²⁴

In précis, the CA committed no reversible error in affirming petitioners' conviction.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated June 30, 2021 and the Resolution dated July 13, 2022 of the Court of Appeals in CA-G.R. CR No. 41769 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JB 4/5/23*

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The Presiding Judge
REGIONAL TRIAL COURT
Branch 29, 1000 Manila
(Crim. Case Nos. 14-306565 and 14-306566)

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G.R. No. 261889

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(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.

²⁴ *Id.*