



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated June 21, 2023, which reads as follows:

G.R. No. 260299 – NICANOR DAQUIZ y PALABASAN a.k.a. “BANJON,” petitioner, *versus* **PEOPLE OF THE PHILIPPINES,** respondent.

After a careful review of the records of the case and the issues submitted by the parties, the Court finds no error committed in the Decision¹ dated July 15, 2021 and Resolution² dated March 30, 2022 of the Court of Appeals (CA) in CA - G.R. CR No. 44858, which affirmed with modification the Decision³ dated January 21, 2020 of the Regional Trial Court of San Fernando City, Pampanga, Branch 9 (RTC) in FC Criminal Case No. 4221. The issues and matters raised before the Court were sufficiently addressed and correctly ruled upon by the CA.

Elements of the crime of Acts of Lasciviousness, in relation to Section 5(b), Article III of Republic Act (R.A.) No. 7610⁴

Section 5(b), Article III of R.A. No. 7610, which defines and penalizes Acts of Lasciviousness committed against a child under twelve (12) years old, reads in part:

SEC. 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

* Also “Nicanor D. Palabasan” in some parts of the *rollo*.

¹ *Rollo*, pp. 36-53. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Rafael Antonio M. Santos and Bonifacio S. Pascua concurring.

² *Id.* at 56-57.

³ *Id.* at 76-86. Penned by Presiding Judge Rohermia J. Jamsani-Rodriguez.

⁴ AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION AND FOR OTHER PURPOSES otherwise known as the “SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT,” approved on June 17, 1992.

in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

X X X X

(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[.]

The elements of the offense are:

(a) The accused commits the act of sexual intercourse or lascivious conduct;

(b) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

(c) The child, whether male or female, is below eighteen (18) years of age.

Lascivious conduct, as the first element of the offense, is defined under Section 2(h) of the Implementing Rules and Regulations⁵ (IRR) of R.A. No. 7610 as “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,” among others.

The second element, on the other hand, requires that the said lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. A child is deemed exploited or subjected to other sexual abuse when the child indulges in “sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration, or (b) under the coercion or influence of any adult, syndicate or group.”⁶ In *People v. Tulagan*⁷ (*Tulagan*), the Court construed the term “other sexual abuse” in relation to the definition of “sexual abuse” under Section 2(g) of the IRR of R.A. No. 7610 to include the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.⁸ *Tulagan* further clarifies:

⁵ RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES, adopted on October 11, 1993.

⁶ *People v. Vañas*, 850 Phil. 201, 211 (2019). Citation omitted.

⁷ 849 Phil. 197 (2019).

⁸ *Id.* at 256.

We held that for purposes of determining the proper charge, the term “coercion or influence” as appearing in the law is broad enough to cover “force and intimidation” as used in the Information; in fact, as these terms are almost used synonymously, it is then “of no moment that the terminologies employed by R.A. No. 7610 and by the Information are different.” We also ruled that **a child is considered one “exploited in prostitution or subjected to other sexual abuse” when the child indulges in sexual intercourse or lascivious conduct “under the coercion or influence of any adult.”** x x x⁹

Petitioner Nicanor Daquiz y Palabasan (Daquiz) alleges that the CA gravely misappreciated the evidence and erred in finding him guilty beyond reasonable doubt of the crime charged. According to him: (1) the prosecution failed to prove the elements of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b) of R.A. No. 7610; (2) the prosecution witness’ testimony was incredible and inconsistent; and (3) the CA erred in not giving credence to his defense of denial.¹⁰

The Court disagrees.

Presence of all the elements of the crime of Acts of Lasciviousness, in relation to Section 5(b), Article III of R.A. No. 7610

In the case at bar, the first element of the offense was clearly established during trial. The testimony of AAA¹¹ showed how Daquiz or her “Lolo Banjon” took her inside a room, kissed her on her lips, pulled down her panty, and licked her vagina:

- Q. [AAA], do you know one Lolo Banjon?
- A. Yes, Ma’am.
- Q. You know that he is in prison?
- A. Yes, Ma’am. Kiniss niya po ito ko. (Witness pointing to her lips.)
- Q. Aside from kissing your lips, what else did he do, if any?

COURT:

Put on record that the minor complainant is crying while testifying.

⁹ Id. at 276. Emphasis supplied; citations omitted.

¹⁰ *Rollo*, pp. 18-19, Petition for Review on Certiorari.

¹¹ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, *supra* note 4; RA 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES,” 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,” effective 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.

WITNESS:

He did something on my vagina, Ma'am.

PROS. SALOMEEO:

What did Lolo Banjon do on your vagina?

WITNESS:

He licked it, Ma'am.

Q. Where did that happen?

A. In the room, Ma'am.¹²

AAA then described how Daquiz undressed her using anatomically correct dolls. She demonstrated how Daquiz pulled her panty in such a manner that her vagina was exposed.

PROS. SALOMEEO:

Your Honor, may we be allowed to use the anatomically correct dolls?

COURT:

Okay.

x x x x

Q. [AAA], I am going to show to you two (2) dolls, a male doll and a female doll?

A. Yes, Ma'am.

Q. This doll (Fiscal showing the male doll to the witness) will represent your Lolo Banjon?

A. Yes, Ma'am.

Q. And this doll (Fiscal showing the female doll to the witness) is you?

A. Yes, Ma'am.

Q. When Lolo Banjon licked your vagina, were you wearing panty?

A. Yes, Ma'am.

Q. [AAA], using the dolls, will you please show to us how Lolo Banjon licked your vagina?

A: Hinubad niya po ng konti yung panty ko, Ma'am.

Q: Will you show to the court, using the female doll with a panty, how did Lolo Banjon remove your panty a little bit, and lick your vagina?

¹² TSN, September 3, 2018, pp. 5-6.

(Witness demonstrated how the accused removed her panty, by removing the panty of the female anatomically correct doll[.]

COURT:

Paano?

WITNESS:

He pulled down her panty.

COURT:

In such a manner na nakikita ang pepe mo?

WITNESS:

Opo.¹³

The assessment of the credibility of witnesses is within the province of the trial court. All questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office. The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact is accorded great respect on appeal. Moreover, it has been held that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth. Likewise, jurisprudence has consistently given full weight and credence to a child's testimonies as youth and immaturity are badges of truth and sincerity.¹⁴

As found by the RTC in this case, AAA was able to narrate in a straightforward manner the incident, even the sequence of how she was brought to the room by Daquiz. AAA was also crying while testifying.¹⁵ AAA's testimony in court was also consistent with the *Sinumpaang Salaysay*¹⁶ she executed on June 24, 2018 or a day after the incident.

The fact that AAA did not shout, cry, ask for help or attempt to escape when Daquiz brought her inside the room and licked her vagina does not destroy her credibility. The Court has consistently ruled that no standard form of behavior has been observed when a person is confronted by a shocking or a harrowing and unexpected incident, for the workings of the human mind, when placed under emotional stress, are unpredictable. Some

¹³ Id. at 6-7.

¹⁴ *People v. Dagsa*, 824 Phil. 704, 718-719 (2018).

¹⁵ *Rollo*, p. 82, RTC Decision.

¹⁶ Records, pp. 5-7.

people may cry out, some may faint, some may be shocked into insensibility, while others may yet appear to yield to the intrusion.¹⁷

Hence, the CA was correct in holding that the acts constituting lascivious conduct were painstakingly proven by the prosecution. AAA was able to clearly narrate how Daquiz persuaded her to go to the room with him while the others were drinking in the kitchen, and how, while they were inside the room, he pulled down her panty and licked her vagina.¹⁸

Further, BBB, AAA's father, testified and demonstrated in a clear manner the position Daquiz and his daughter were in when he found them in the room:

Q: You stated in your affidavit that you saw [AAA] sitting on the table, where is the table located, from the door of the room? Based on your drawing, can you please indicate where is the door of the bedroom?

A: Here, ma'am. (witness pointed to his drawing and labeled (sic) it "door")

Q: And where is the table where you saw [AAA] seated?

A: She is at that (sic) back of the door, ma'am.

Q: Can you please demonstrate to the Honorable Court the position of the accused while he was kneeling in front of [AAA]?

(witness demonstrated (sic) how the accused was kneeling down in front of the victim)

Q: Will you please show to the Honorable Court the position of the accused in relation to your daughter when you said that you saw the accused in front of the vagina of your daughter? So, pakita mo yung position ni Bapang Banjon doon sa affidavit mo kasi sinabi mo nakaluhod si Bapang Banjon sa harapan ng ari ng anak mo?

A: Opo.

Pros. Salomeo: Ipakita mo. Your Honor, may we be allowed to use the anatomically correct dolls?

Court: Yes.

Pros. Salomeo: Yun pong eksaktong position ng anak niyo ha. Gaano kataas yung mesa.

(the witness demonstrated how the accused was in front of the victim by kneeling and almost sitting down, and demonstrated the position of her (sic) daughter in front of the accused by placing the female doll in front of him in a sitting position while the left leg of the female

¹⁷ *People v. Abadies*, 433 Phil. 814 (2002).

¹⁸ *Rollo*, p. 49, CA Decision.

doll was raised up. But he did not see if the accused was holding the leg of the victim.)¹⁹

It is of no moment that BBB did not actually see Daquiz in the act of abusing his daughter. The credible testimony of AAA, which was delivered in a clear, positive, and straightforward manner, is sufficient on its own to sustain a conviction.

The defense tries to convince the Court that the disappearance of Daquiz and AAA from the drinking party with no one noticing is unworthy of belief and contrary to human experience, since common sense would dictate that this would place Daquiz at high risk of being caught by his own relatives. Moreover, the fact that Daquiz did not fully close the door when he allegedly brought AAA inside the room to commit lascivious acts on her is contrary to the behavior of someone who had the intention to commit an unlawful act. Per the defense, common human experience dictates that persons with criminal intent observe measures to conceal their crimes and prevent discovery of the same.

This line of argumentation fails to persuade. It is undisputed that lust is no respecter of time and place. In *People v. Descartin, Jr.*,²⁰ the Court held:

It is well-settled that close proximity of other relatives at the scene of the rape does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.²¹

As to the second element of the crime, the act of licking AAA's vagina constitutes "other sexual abuse" under Section 5(b), Article III of R.A. No. 7610, as AAA was subjected to lascivious conduct under the influence of an adult. Here, AAA was a young child at the time of the commission of the crime. Daquiz was not only a neighbor of AAA, but also a relative, being the brother of AAA's paternal grandfather. Based on AAA's and BBB's testimonies, AAA has known Daquiz for so long and that AAA saw Daquiz almost every day.²² Hence, it is by no stretch of the imagination to conclude that by virtue of moral ascendancy, influence, familiarity, and familial relations, Daquiz wielded the power to compel AAA, a child of tender years, to submit to his wishes no matter what they may be. The defense's argument that there was no employment, use, persuasion, inducement, enticement, or coercion by Daquiz deserves scant consideration.

¹⁹ TSN, November 19, 2018, pp. 5-6.

²⁰ 810 Phil. 881 (2017).

²¹ Id. at 892. Citation omitted.

²² TSN, November 19, 2018, p. 3.

As for the third element of the crime, there is no question that AAA was a child when the incident happened, having only been eight (8) years old at the time. The parties themselves stipulated on the minority of AAA during the pre-trial.²³

The defense of denial is unavailing

Daquiz's defense of denial is weak in the face of AAA's positive identification and straightforward narration of the events that transpired. As jurisprudence dictates, the defense of denial is inherently weak because it can easily be fabricated. Such defense becomes unworthy of merit if it is established only by the accused themselves and not by credible persons. It cannot prevail over the positive testimonies of the prosecution witnesses.²⁴

Penalties

In *Tulagan*, the Court settled that the penalty of *reclusion temporal* in its medium period shall be imposed for those found guilty of the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610 when the victim is under twelve (12) years old or demented.²⁵ The penalty to be imposed in this case, however, should be modified to the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum, in accordance with recent jurisprudence.²⁶

Likewise, the award of damages shall be revised in accordance with *Tulagan* where it was declared that in cases of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, the award of civil indemnity, moral damages, and exemplary damages should now be fixed in the amount of ₱50,000.00 each, taking into account that the impossible penalties for the said crimes are within the range of *reclusion temporal*.²⁷

WHEREFORE, in view of the foregoing, the Petition for Review on Certiorari is hereby **DENIED**. The Decision dated July 15, 2021 and Resolution dated March 30, 2022 of the Court of Appeals in CA – G.R. CR No. 44858, which affirmed with modifications the Decision dated January 21, 2020 of the Regional Trial Court of San Fernando City, Pampanga, Branch 9 in FC Criminal Case No. 4221 are **AFFIRMED with MODIFICATIONS**.

Petitioner Nicanor Daquiz y Palabasan is found **GUILTY** beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised

²³ Records, p. 18, Order (Arraignment and Pre-Trial Conference) dated July 6, 2018.

²⁴ *People v. Reyes*, G.R. No. 244175, October 13, 2021 (Unsigned Resolution).

²⁵ *People v. Tulagan*, supra note 7, at 248-249.

²⁶ *People v. Jagdon, Jr.*, G.R. No. 242882, September 9, 2020, 952 SCRA 92 and *People v. XXX*, G.R. No. 254812, March 22, 2023 (Unsigned Resolution).

²⁷ *People v. Tulagan*, supra note 7, at 287-288.

Penal Code in relation to Section 5(b) of Republic Act No. 7610. He is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum, and pay a fine of ₱15,000.00. Said petitioner is also ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

All awards for civil indemnity and damages shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.

SO ORDERED. (Dimaampao and Singh, JJ., on official business)

By authority of the Court:

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