

**G.R. No. 214497 – Eduardo Quimvel y Braga, Petitioner v. People of the Philippines, Respondent.**

**Promulgated:**

April 18, 2017

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**CONCURRING OPINION**

**PERLAS-BERNABE, J.:**

I concur.

Petitioner Eduardo Quimvel y Braga (Quimvel) should be convicted under Section 5 (b), Article III of Republic Act No. (RA) 7610,<sup>1</sup> otherwise known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” in relation to Article 336 of the Revised Penal Code. As now subscribed to by the *ponencia*, the said provision covers a situation wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel’s case. To my mind, the law does not contemplate a situation where the acts of lasciviousness are committed on a child priorly exploited in prostitution or subjected to other sexual abuse. This latter position effectively requires allegation and proof of a first act of abuse committed against the same child victim for a sex offender to be convicted.

Section 5 (b), Article III of RA 7610 reads:

**ARTICLE III**

**Child Prostitution and Other Sexual Abuse**

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.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

- (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
  - (1) Acting as a procurer of a child prostitute;

<sup>1</sup> Entitled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992.

- (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
- (3) Taking advantage of influence or relationship to procure a child as prostitute;
- (4) Threatening or using violence towards a child to engage him as a prostitute; or
- (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

**(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse;** Provided, That when the victims 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; and

x x x x (Emphases supplied)

For the brief reasons that follow, I deem it enough that a singular act of sexual abuse be committed against a minor in order to qualify under the law's protection:

***First***, the prevailing Congressional intent behind RA 7610 was to establish “[a] national program for protection of children” which needs “not only the institutional protective mechanisms, but also a mechanism for strong deterrence against commission of abuse and exploitation.”<sup>2</sup> In his sponsorship speech for Senate Bill No. 1209, from which RA 7610 originated, Senator Jose D. Lina, Jr. (Senator Lina, Jr.) mentioned that the law was “intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. It is intended to complement the provisions of the Revised Penal Code [at that time] where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities.”<sup>3</sup> Senator Lina, Jr. also presented cases of reported abuse, none of which imply that the child victims have been previously exploited. Instead, they are straight-up cases of sexual abuse of minors.<sup>4</sup> Hence, if RA 7610 was directly meant to reinforce the legal framework against the sexual abuse of minors, it would not make any sense to first require a preliminary act of sexual abuse against a child before a sex offender could be punished under the same. Indeed, a person's chastity – much more a child's – is undoubtedly sacred and once ravaged, is forever lost and leaves a scar on his or her well-being.

<sup>2</sup> See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 191.

<sup>3</sup> See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, pp. 191-192.

<sup>4</sup> See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 192.

As such, our lawmakers, in crafting a special legislation precisely to deter child abuse, would not have thought of such absurdity.

***Second***, it is difficult – if not, insensible – to operationalize the application of RA 7610 under the theory that the commission of a prior act of sexual abuse is required before a lascivious conduct may be penalized under Section 5 (b) of the same law. For one, no operational parameter was provided by law to determine the existence of a prior sexual abuse so as to satisfy the preliminary element of the aforementioned theory. It is unclear whether a prior sexual abuse on the same child victim should be pronounced in an official court declaration, or whether a mere finding on that matter in the same case would suffice. The Congressional deliberations also express nothing on the necessity to determine a prior sexual abuse to qualify the lascivious conduct. If a prior sexual abuse was an integral element for prosecution, then it stands to reason that the language of the law or the deliberations should have addressed the same.

***And third***, while the grammatical structure of Section 5 (b) of RA 7610 may, if construed literally, be taken to mean that the victim should be one who is first “exploited in prostitution or subjected to other sexual abuse” as previously intimated during the deliberations on this case, this interpretation would surely depart from the law’s purpose based on its policy considerations as afore-discussed. On the other hand, it is my view that Section 5 (b) can be construed in another way, in order to give full life and meaning to its avowed purpose, which is to “provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse.”

Particularly, it is observed that the phrase “**a child exploited in prostitution or subject to other sexual abuse**” in Section 5 (b) has been priorly defined in the first paragraph of the same provision as “[**a child**], **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[s] in sexual intercourse or lascivious conduct.**” Hence, just by switching this phrase with its equivalent technical definition in the first paragraph, Section 5 (b) may then be construed as follows: “**Those who commit the act of sexual intercourse or lascivious conduct against [a child], whether male or female, x x x for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group.**”

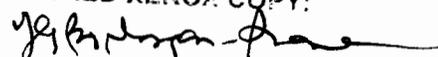
To my mind, this reading equally passes grammatical logic, and most importantly, renders Section 5 (b) consistent with the fundamental intent of the law. Besides, nowhere from the entirety of the law’s other provisions nor the deliberations on the same could one discern that the requirement of a prior sexual affront on a child exists. Ultimately, despite Section 5 (b)’s ambiguous wording, it should be remembered that in the final analysis:

The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.<sup>5</sup>

**ACCORDINGLY**, I vote to **DENY** the petition. The conviction of petitioner Eduardo Quimvel y Braga for the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of Republic Act No. 7610 should be **AFFIRMED** with **MODIFICATION** anent the proper penalty as held in the *ponencia*.<sup>6</sup>

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

CERTIFIED XEROX COPY:

  
FELIPA B. ANAMA  
CLERK OF COURT, EN BANC  
SUPREME COURT

<sup>5</sup> *League of Cities of the Philippines v. COMELEC*, 623 Phil. 531, 564-565 (2009).

<sup>6</sup> See *ponencia*, pp. 22-23.