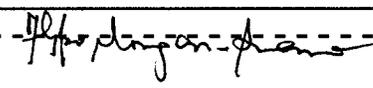


G.R. No. 214497 (*Eduardo Quimvel y Braga v. People of the Philippines*).

Promulgated:

April 18, 2017

X -----  ----- X

SEPARATE CONCURRING OPINION

PERALTA, J.:

I agree with the *ponencia* in affirming the conviction of petitioner Eduardo Quimvel y Braga for Acts of Lasciviousness under Article 336 of the Revised Penal Code (*RPC*), in relation to Section 5(b),¹ Article III of Republic Act (*R.A.*) No. 7610,² and I have decided to expound more on the applicable laws and imposable penalties for acts of lasciviousness committed against minors, as reference for future legislation and for guidance and information purposes.

Eduardo Quimvel y Braga was charged with the crime of acts of lasciviousness in an Information, which reads:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, a

¹ 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:

x x x x

(b) Those who commit the act of sexual intercourse of 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

² *An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes.*



minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Regional Trial Court (*RTC*) of Ligao City, Albay, Branch 11, found Quimvel guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5(b), Article III of R.A. 7610.³ The dispositive portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of R.A. 7610 and hereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) day of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and

2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

On appeal, the Court of Appeals (*CA*) affirmed the RTC Decision with modification as to the damages, civil indemnity and interest thereon,⁴ to wit:

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that the accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/EDWARD QUIMVEL y BRAGA is ORDERED TO PAY THE VICTIM, AAA moral damages, exemplary damages and fine in the amount of ₱15,000.00 each as well as ₱20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of judgment.

SO ORDERED.

³ Decision dated January 23, 2013; penned by Judge Amy Ana L. De Villa-Rosero.

⁴ Decision dated May 29, 2014; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, concurring.

Hence, the present petition for review on *certiorari* under Rule 45, raising the following issues:

I.

The CA erred in affirming the decisions of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of Acts of Lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Section 5 of R.A. 7610.

I concur with the *ponencia* in affirming the CA's decision finding Quimvel guilty beyond reasonable doubt of the crime of violation of Section 5(b), Article III of R.A. 7610.

Acts of lasciviousness under Article 336 of the RPC, together with child prostitution and rape, is dealt with under Section 5(b) of Article III of R.A. 7610 which 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;
- (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 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; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.⁵

In a charge for **acts of lasciviousness under Article 336 of the RPC** in relation to R.A. 7610, there is no need to allege that the lascivious conduct was committed with a “child exploited in prostitution or subject to other sexual abuse.” Such allegation is pertinent only when the charge is for **child prostitution or violation of the first clause of Section 5(b), Article III of R.A. 7610** against “those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse,” *i.e.*, the customer or patron.

Violation of the first clause of Section 5(b), Article III of R.A. 7610 is separate and distinct from acts of lasciviousness under Article 336 of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. On the one hand, the elements of violation of the first clause of Section 5(b) are: (1) accused commits the act of sexual intercourse or lascivious conduct; (2) the 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. On the other hand, the elements of acts of lasciviousness under Article 336 are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation; or (b) when the offended party is deprived of reason or otherwise unconscious; or (c) When the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Thus, the allegation that the child be “*exploited under prostitution or subjected to other sexual abuse*,” need not be alleged in the information for acts of lasciviousness simply because it is not one of the elements of such crime as defined by Article 336 of the RPC.

⁵ Emphasis added.

Moreover, while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines “children” as those below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability. Notably, two provisos succeeding the first clause of Section 5(b) explicitly state a qualification that **when the victims of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period.** It is a basic rule in statutory construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains or limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.⁶ Accordingly, this case falls under the qualifying provisos of Section 5(b), Article III of R.A. 7610 because the allegations in the information make out a case for acts of lasciviousness, as defined under Article 336 of the RPC, and the victim is under 12 years of age:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, **the above-named accused, with lewd and unchaste design, through force and intimidation**, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, **a minor of 7 years old and mash her vagina**, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.⁷

Quimvel should therefore prosecuted under Article 336 of the RPC, and the indeterminate sentence should be computed based on the impossible penalty of *reclusion temporal* in its medium period, pursuant to Section 5(b), Article III of R.A. 7610.

To be sure, Quimvel cannot be merely penalized with *prisión correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. This legislative intent is expressed under Section 10, Article VI of R.A. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age, to wit:

⁶ *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439, 451 (1951); *Arenas v. City of San Carlos (Pangasinan)*, 172 Phil. 306, 311 (1978).

⁷ Emphasis added.

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —

x x x x

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. **The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.**⁸

To impose upon Quimvel an indeterminate sentence computed from the penalty of *prisión correccional* under Article 336 of the RPC would defeat the purpose of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,⁹ which used to be punishable by *arresto mayor*, and now by *prisión correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prisión correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child an offense a probationable offense, pursuant to the Probation Law of 1976,¹⁰ as amended by R.A. 10707.¹¹ Indeed, while the foregoing implications are favorable to

⁸ Emphasis added.

⁹ ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party.* — The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in articles 337 and 338.

ARTICLE 337. *Qualified Seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prisión correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. *Simple Seduction.* — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

¹⁰ Presidential Decree No. 968.

¹¹ *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", as amended.* Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prisión correccional* is 6 months and 1 day to 6 years.

the accused, they are contrary to the State policy and principles under R.A. 7610 and the Constitution on the special protection to children.

Based on the the legal definitions of “child abuse,” it is also my view that there is no need to allege that the lascivious conduct be committed “with a child exploited in other prostitution” or with habituality, before a person may be held liable for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610.

Section 3, Article I of R.A. 7610 states that “**child abuse**” refers to the maltreatment, **whether habitual or not**, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, **sexual abuse** and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical attention to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Section 5, Article III of R.A. 7610 deems to be “children exploited in prostitution and other sexual abuse” those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) due to coercion or influence of any adult, syndicate or group.

Corollarily, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases define the terms “child abuse,” “sexual abuse”, and “lascivious conduct” as follows:

Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise—

x x x x

b) “**Child abuse**” refers to the infliction of physical or psychological injury, cruelty to, or neglect, **sexual abuse** or exploitation of a child;

x x x x

g) “**Sexual abuse**” includes 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;

x x x x

h) “**Lascivious conduct**” means 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; x x x¹²

From the foregoing definitions, it can be deduced that a single lascivious conduct is enough to penalize Quimvel for acts of lasciviousness under Article 336 of the RPC, in relation to R.A. 7610. These definitions negate the necessity to allege in the information a separate and distinct act of sexual abuse apart from the lascivious act complained of. R.A. 7610 does not merely cover a situation wherein a child is being abused for profit as in prostitution, but also one 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. Also, based on the definitions above, prostitution — which involves an element of habituality — is just one of the several other forms of sexual abuses. Thus, neither habituality nor the fact that the child is exploited in prostitution, is required to be alleged in the information for acts of lasciviousness because Article 336 of the RPC does not so provide.

In the same vein, the title of Article III of R.A. 7610 itself is clear that the subsequent provisions thereof pertain not only on the subject of “child prostitution” but also on “other sexual abuse.” Under Section 5 thereof, those considered to be under child prostitution are “children, whether male or female, who for money, profit, or any other consideration” “indulge in sexual intercourse or lascivious conduct” and those that do not fall under that category are those children, who, “due to the coercion or influence of any adult, syndicate or group” “indulge in sexual intercourse or lascivious conduct.” This case falls under the second scenario where no money, profit or any other consideration was involved.

To construe “other sexual abuse” as referring to any other sexual abuse other than the acts of lasciviousness complained of is wrong. The law did not use such phrase in order to cover other forms of sexual abuse that a child might have previously experienced, other than being exploited in prostitution for profit, or for any other consideration. Instead, the law clearly distinguishes those children who indulged in sexual intercourse or lascivious

¹² Emphasis added.

conduct for money, profit, or any other consideration, from those children who, without money, profit, or any other consideration, had sexual intercourse or lascivious conduct due to the coercion or influence of any adult, syndicate or group. This is further bolstered by the use of the disjunctive word "or" in separating the two contexts contemplated in the law. Thus, it is erroneous to interpret that R.A. 7610 contemplates situations wherein a child, who was already subjected to prostitution or other sexual abuse, is again subjected to another abuse or lascivious conduct. Note that in the definition of "child abuse," the phrase "whether habitual or not" is used to describe the frequency upon which a maltreatment can be considered as an abuse. Thus, a single act of abuse is enough for a perpetrator to be considered as having violated the law. To interpret it otherwise would lead to an absurdity and ambiguity of the law.

In *Olivarez vs. Court of Appeals*,¹³ the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. The Court found that the 16-year old victim in that case was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. According to the Court, **it is inconsequential that the sexual abuse occurred only once** because, as expressly provided in Section 3 (b) of R.A. 7610, the abuse may be habitual or not. It also observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse. In support of its ruling in *Olivarez*, the Court cited *People v. Larin*¹⁴ which was restated in *Amployo v. People*,¹⁵ thus:

A child is deemed exploited in prostitution 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. x x x.

It must be noted that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in lascivious conduct.¹⁶

Associate Justice Antonio T. Carpio dissented in *Olivarez* where he pointed out that the second element of acts of lasciviousness, Section 5, Article III of R.A. 7610 requires that the accused performs on the child a

¹³ 503 Phil. 421, 432 (2005). Penned by Associate Justice Consuelo Ynares-Santiago, with Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna, concurring; and Chief Justice Hilario G. Davide, Jr. joining the dissent of Associate Justice Antonio T. Carpio.

¹⁴ 357 Phil. 987, 998 (1998).

¹⁵ 496 Phil. 747, 758 (2005).

¹⁶ Emphasis added.

lascivious conduct separate and different from the child's exploitation in prostitution or subject to other sexual abuse.

However, in *Garingarao v. People*,¹⁷ the Court, in a Decision¹⁸ penned by Justice Carpio, affirmed the conviction of petitioner for acts of lasciviousness in relation to R.A. 7610 in an Information which reads:

That on or about the 29th day of October 2003, at Virgen Milagrosa University Hospital, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously touched the breast of AAA, 16 years of age, touched her genitalia, and inserted his finger into her vagina, to the damage and prejudice of said AAA who suffered psychological and emotional disturbance, anxiety, sleeplessness and humiliation.

Contrary to Article 336 of the Revised Penal Code in relation to RA 7610.

Citing *Olivarez*, the Court held in *Garingarao* that petitioner is liable for acts of lasciviousness in relation to R.A. 7610 even if the crime occurred only once:

The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.

Garingarao insists that, assuming that the testimonies of the prosecution witnesses were true, he should not be convicted of violation of RA 7610 because the incident happened only once. Garingarao alleges that the single incident would not suffice to hold him liable under RA 7610.

Garingarao's argument has no legal basis.

The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once. Section 3 (b) of RA 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.¹⁹

¹⁷ 669 Phil. 512, 516 (2011).

¹⁸ Concurred in by Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, Diosdado M. Peralta and Jose Portugal Perez.

¹⁹ Emphasis added.

To be sure, if and when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles under Section 2 of the R.A. 7610, as well as Section 3(2), Article XV of the 1987 Constitution:

[R.A. 7610] Sec. 2. Declaration of State Policy and Principles. - It is hereby declared to be the policy of the State **to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development** including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. [Emphasis added]

[Article XV 1987 Constitution] Section 3. The State shall defend:

x x x

(2) The **right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.**²⁰

Clearly, the objective of the law, more so the Constitution, is to provide a special type of protection for children from all types of abuse. Hence, it can be rightly inferred that the title used in Article III, Section 5, "Child Prostitution and Other Sexual Abuse" does not mean that it is only applicable to children used as prostitutes as the main offense and the other sexual abuses as additional offenses, the absence of the former rendering inapplicable the imposition of the penalty provided under R.A. 7610 on the other sexual abuses committed by the offenders on the children concerned.

²⁰

Emphasis added.

Even if the remaining issue in the *en banc* decision in *Dimakuta v. People*²¹ was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the non-probationable penalty imposed to a probationable one, the majority has nonetheless discussed at length the matters of sexual abuse under R.A. 7610 and acts of lasciviousness under the RPC, thus:

Petitioner was charged and convicted by the trial court with violation of Section 5 (b), Article III of R.A. No. 7610 based on the complaint of a sixteen (16)-year-old girl for allegedly molesting her by touching her breast and vagina while she was sleeping.

X X X X

The elements of sexual abuse are as follows:

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 sexual abuse.
3. The child, whether male or female, is below 18 years of age.

Under Section 5, Article III of R.A. No. 7610, **a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.** This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - a. By using force or intimidation; or
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.

Article 339 of the RPC likewise punishes acts of lasciviousness committed with the consent of the offended party if done by the same persons and under the same circumstances mentioned in Articles 337 and 338 of the RPC, to wit:

²¹ G.R. No. 206513, October 20, 2015, 773 SCRA 228.



1. if committed against a virgin over twelve years and under eighteen years of age by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman; or
2. if committed by means of deceit against a woman who is single or a widow of good reputation, over twelve but under eighteen years of age.

Therefore, if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a virgin and consents to the lascivious acts through abuse of confidence or when the victim is single or a widow of good reputation and consents to the lascivious acts through deceit, or;

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness is covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable

3. **Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.**

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable

to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the **declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development;** provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, **if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.**

As correctly found by the trial court, all the elements of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 are present in the case at bar.

First, petitioner's lewd advances of touching the breasts and vagina of his hapless victim constitute **lascivious conduct** as defined in Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of R.A. No. 7610:

[T]he 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.

Second, petitioner clearly has moral ascendancy over the minor victim not just because of his relative seniority but more importantly due to the presumed presence of mutual trust and confidence between them by virtue of an existing employment relationship, AAA being a domestic helper in petitioner's household. Notably, a child is considered as sexually abused under Section 5 (b) of R.A. No. 7610 when he or she is subjected to lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient. On this point, *Caballo v. People* explicated:



As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "child exploited in prostitution and other sexual abuse." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

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.

To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of . . . power to compel another to submit to the wishes of one who wields it."

Finally, the victim is 16 years of age at the time of the commission of the offense. Under Section 3 (a) of R.A. No. 7610, "children" refers to "persons below eighteen (18) years of age or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."²²

In view of the above discussion in *Dimakuta v. People*,²³ to which the *ponencia* appears to subscribe, and considering that all the elements of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610,²⁴ have been proven beyond reasonable doubt, the CA correctly upheld the RTC in convicting Quimvel of the said crime.

²² Emphasis added and citations omitted.

²³ *Supra*.

²⁴ 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.

3. That child, whether male or female, is below 18 years of age.

Moreover, the application of the provisions of R.A. 7610, although not specifically stated in the Information, does not violate the accused's right to be informed of the nature and cause of the accusation against him. This is because all the elements of the crime of "sexual abuse"²⁵ as contemplated in Section 5, Article III of R.A. 7610, as well as the age of minority of the victim, are all sufficiently alleged in the same Information in this wise: "the above-named accused [Quimvel], **with lewd and unchaste design, through force and intimidation**, did then and there, willfully, unlawfully, and feloniously, **insert his hand inside the panty of [AAA], a minor of 7 years old and mash her vagina**, against her will and consent, to her damage and prejudice."²⁶

It bears emphasis that since Section 5, Article III of R.A. 7610 already **deems** to be "children exploited in prostitution and other sexual abuse" those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) **due to coercion or influence** of any adult, syndicate or group, the afore-quoted allegation that the lascivious conduct was done "through force and intimidation," suffices to inform the accused of the second element of sexual abuse.

Having in mind the State policies and principles behind R.A. 7610 (*Special Protection of Children Against Abuse, Exploitation, and Discrimination Act*) and R.A. 8353²⁷ (*Anti-Rape Law of 1997*), as well as the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, I submit that the following are the applicable laws and imposable penalties for **acts of lasciviousness** committed against a child²⁸ under Article 336 of the RPC, in relation to R.A. 7610:

1. **Under 12 years old** – Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is **reclusion temporal in its medium period**, instead of *prisión correccional*. In *People v. Fragante*,²⁹ *Imbo v. People of the Philippines*,³⁰ and *People of the Philippines v. Santos*,³¹ the accused were

²⁵ *Id.*

²⁶ Emphasis added.

²⁷ *An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and For Other Purposes.*

²⁸ Section 3. *Definition of Terms.* –

(a) "Children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

²⁹ 657 Phil. 577, 601 (2011)

³⁰ G.R. No. 197712, April 20, 2015, 756 SCRA 196, 210.

³¹ G.R. No. 205308, February 11, 2015, 750 SCRA 471, 488.

convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b), Article III of R.A. 7610, and not under Article 336 of the RPC, as amended.

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610**³² – Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as amended, applies and the penalty is *reclusion temporal in its medium period to reclusion perpetua*. This is because the proviso under Section 5(b) apply only if the victim is under 12 years old, but silent as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. The said penalty was applied in *People of the Philippines v. Bacus*³³ and *People of the Philippines v. Baraga*³⁴ where the accused were convicted of acts of lasciviousness committed against victims 12 years old and below 18, and were penalized under Section 5(b), Article III of R.A. 7610. But, if the acts of lasciviousness is not covered by lascivious conduct as defined in R.A. 7610, such as when the victim is 18 years old and above, acts of lasciviousness under Article 336 of the RPC applies and the penalty is *prisión correccional*.³⁵

Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [*reclusion temporal medium*] when the victim is under 12 years old is lower compared to the penalty [*reclusion temporal medium to reclusion perpetua*] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,³⁶ Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum,³⁷ whereas as the minimum term in the case of the older victims

³² Section. 3. *Definition of Terms.* –

(a) “Children” refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect from themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

³³ G.R. No. 208354, August 26, 2015, 768 SCRA 318, 341.

³⁴ G.R. No. 208761, June 4, 2014, 725 SCRA 293, 303.

³⁵ *Dimakuta v. People*, *supra* note 18.

³⁶ Section 31. *Common Penal Provisions.*—

x x x x

(b) The penalty provided herein shall be imposed in its **maximum period** when the perpetrator is an **ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. [Emphasis added]

³⁷ Ranging from 12 years and 1 day to 14 years and 8 months.

shall be taken from *prisión mayor medium* to *reclusion temporal minimum*.³⁸ It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,³⁹ but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.⁴⁰ To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

Too, it bears emphasis that R.A. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. 8353, except in sexual assault as a form of rape. Hence, when the lascivious act is not covered by R.A. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. 7610.

In fact, R.A. 8353 only modified Article. 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances⁴¹ applicable to rape, *viz.*: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

Meanwhile, the Court is also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by

³⁸ Ranging from 8 years and 1 day to 14 years and 8 months.

³⁹ *Lamb v. Phipps*, 22 Phil. 456 (1912).

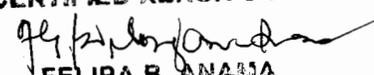
⁴⁰ *People v. De Guzman, et al.*, 90 Phil. 132 (1951).

⁴¹ Aside from use force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

prisión mayor. In *People v. Chingh*,⁴² the Court noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. 8353 to have disallowed the applicability of R.A. 7610 to sexual abuses committed to children. The Court held that **despite the passage of R.A. 8353, R.A. 7610 is still good law**, which must be applied when the victims are children or those “persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.”⁴³

Finally, as the Court stressed in *Dimakuta v. People*,⁴⁴ where the lascivious conduct is covered by the definition under R.A. 7610 where the penalty is *reclusion temporal* medium and the said act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect from herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.


DIOSDADO M. PERALTA
 Associate Justice

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

⁴² 661 Phil. 208, 224 (2011).
⁴³ Section 3 (a), Article I of R.A. 7610
⁴⁴ *Supra* note 18, at 264-265.