Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

EDWIN DAGSA y BANTAS @ "WING WING,"
Accused-Appellant.

G.R. No. 219889

Present:

CARPIO, *J.*, *Chairperson*,
PERALTA,
PERLAS-BERNABE,
CAGUIOA,
REYES, JR., *JJ.*

Promulgated:
29 JAN 2018

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DECISION

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Edwin Dagsa y Bantas @ "Wing Wing" assailing the Decision[1] of the Court of Appeals (CA), promulgated on August 29, 2014, in CA-G.R. CR-H.C. No. 06087, which affirmed, with modification, the September 21, 2012 Judgment[2] of the Regional Trial Court (*RTC*) of La Trinidad, Benguet, Branch 9, in Criminal Case No. 04-CR-5629, finding accused-appellant guilty beyond reasonable doubt of the crime of rape.

The antecedents are as follows:

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1 Penned by Associate Justice Mario V. Lopez, with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 3-14.

2 Dated September 21, 2011 in some parts of the *rollo* and records.

On October 11, 2004, the victim, AAA, a young girl who was then four (4) years old, was walking home with two of her classmates after having been dismissed from their class in Kapangan, Benguet. While they were on their way home, herein accused-appellant, who is the cousin of AAA's father, blocked their path and told AAA's classmates to go ahead as he would be giving AAA a candy. AAA's classmates left her and, after walking a little farther, they looked back and saw accused-appellant remove AAA's panty and proceeded to fondle her vagina. Thereafter, when AAA arrived home, her mother, BBB, noticed that the victim immediately removed her panty, saying that she no longer wanted to use it. The following day, while BBB was giving AAA a bath, the latter refused that her vagina be washed claiming that it was painful. Upon her mother's inquiry, AAA replied that accused-appellant played with her vagina and inserted his penis in it. BBB immediately went to talk to AAA's classmates about the incident whereby the said classmates relayed to her what they saw. They then proceeded to the police station to report the incident. AAA's classmates gave their statements, but AAA was not able to give hers as she was too shy. A criminal complaint for rape was eventually filed against accused-appellant. In an Information dated November 25, 2004, the Provincial Prosecutor of Benguet charged accused-appellant with the crime of rape as defined under Article 266-A, paragraph 1(d) and penalized under Article 266-B, paragraph 6(5), both of the Revised Penal Code (*RPC*), as amended by Republic Act No. 8353[3] (*RA 8353*), in relation to Republic Act No. 7610[4] (*RA 7610*). The accusatory portion of the Information reads, thus:

> That on or about the 11th day of October 2004, at Paykek, Municipality of Kapangan, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a minor, four (4) years, four (4) months and twenty-one (21) days of age against her will and consent, to her great damage, prejudice and mental anguish.
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> CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant pleaded not guilty.[6]

The case proceeded to trial where the prosecution presented AAA's mother, AAA's two (2) classmates, the police officer who took the statements of AAA's mother and her classmates, as well as the psychologist

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3 Otherwise known as the "*Anti-Rape Law of 1997*".

4 Otherwise known as the "*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*".

5 Records, p. 1.

6 See RTC Order and Certificate of Arraignment, records, pp. 15 and 16.

who examined AAA. No documentary or object evidence was presented by the prosecution.

After the prosecution rested its case, accused-appellant, through counsel, chose not to adduce evidence in his behalf.

After trial, the RTC rendered its Judgment dated September 21, 2012 finding accused-appellant guilty as charged. The dispositive portion of the trial court's decision reads, thus:

> WHEREFORE, accused EDWIN DAGSA y BANTAS alias "WING WING" is hereby found GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE. He is sentenced to suffer the penalty of Reclusion Perpetua and is ordered to pay the private complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages. All damages awarded in this case should be imposed with interest at the rate of six (6) percent per annum from the finality of this judgment until fully paid (People v. Asetre, G.R. No. 175834, June 8, 2011).
>
> In view of the prison term of the accused which is more than 3 years, he is considered a national prisoner (P.D. 29 and Supreme Court Circular No. 4-92-A), hence, he is ordered transferred to the New Bilibid Prison at Muntinlupa City. By virtue thereof, issue a corresponding commitment order.
>
> SO ORDERED.[7]

In convicting accused-appellant, the RTC gave full credence to the testimonies of the prosecution witnesses finding them to be straightforward, categorical, convincing and bearing the hallmark of truth. The trial court concluded that the failure of the accused-appellant to dispute or refute the accusation of rape, coupled with the chain of unbroken circumstantial evidence, leads to no other conclusion than that accused-appellant raped AAA.

Accused-appellant appealed[8] his case with the CA contending that the testimonies of AAA's mother and the police officer who took the statement of the mother are not circumstantial evidence but, in fact, are hearsay evidence because what the mother testified to in open court are the things that her daughter, AAA, told her regarding her supposed rape. In the same manner, the testimony of the police officer was essentially based on the allegations relayed to her by the mother of AAA. Accused-appellant also contended that the testimonies of AAA's classmates, Michael and Jomie, that

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7 Records, pp. 131-132.

8 See Notice of Appeal, *id.* at 133.

they saw accused-appellant fondle AAA's vagina, is not sufficient to establish the allegation that accused-appellant raped AAA. As to the testimony of the psychologist, the same is hearsay because it was based on the narration given to her by AAA. Accused-appellant also questions the failure of the prosecution to present the result of the medical examination conducted on AAA, considering the admission of AAA's mother that the child, in fact, underwent such examination. Lastly, accused-appellant attacks the decision of the prosecution not to present the victim as a witness, considering that the psychologist testified that, given a friendly and non-threatening environment, the child-victim could testify in court. Accused-appellant proceeded to conclude that the circumstantial evidence presented by the prosecution is not sufficient to reach the conclusion that he raped AAA.

On August 29, 2014, the CA promulgated its Decision holding that "the combination of all the circumstances presented by the prosecution does not produce a conviction beyond reasonable doubt against [accused-appellant] for the crime of rape."[9] The CA found that the evidence of the prosecution failed to establish that [accused-appellant] had carnal knowledge of AAA."[10] What the classmates of AAA saw was that accused-appellant fondled her vagina. The CA also held that the admission of AAA to her mother that accused-appellant sexually abused her may not be considered as part of the *res gestae* because such was not spontaneously and voluntarily made. The CA, nonetheless, held that accused-appellant may be convicted of the crime of acts of lasciviousness as the said crime is included in the crime of rape, and the elements of which were sufficiently established during trial. Thus, the CA disposed as follows:

> FOR THE STATED REASONS, the September 21, 2011 (sic) Decision of the Regional Trial Court is AFFIRMED with MODIFICATIONS that accused-appellant EDWIN DAGSA y BANTAS @ "WING WING" is sentenced to suffer an indeterminate penalty of thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* in its medium period, as maximum, and further ORDERED to pay the victim, AAA, Php20,000.00 as civil indemnity, Php30,000.00 as moral damages, and Php10,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment until its satisfaction.
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> SO ORDERED.[11]

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9 CA *rollo*, pp. 74-75
10 *Id.* at 75.
11 *Id.* at 80

On September 17, 2014, accused-appellant, through counsel, filed a Notice of Appeal[12] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution dated September 29, 2014, the CA gave due course to accused-appellant's Notice of Appeal and ordered the elevation of the records of the case to this Court.[13]

Hence, this appeal was instituted.

In a Resolution[14] dated October 12, 2015, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation (In Lieu of Supplemental Brief)[15] dated December 16, 2015, the Office of the Solicitor General (*OSG*) informed this Court that it will no longer file a supplemental brief "there being no significant transaction, occurrence or event that happened since the filing of its Appellee's Brief [with the CA] dated March 17, 2014."

Accused-appellant, likewise filed a Manifestation (In Lieu of a Supplemental Brief)[16] dated December 28, 2015, indicating that he will no longer file a Supplemental Brief "since no new issues material to the case which were not elaborated upon in the Appellant's Brief were discovered and that he "had exhaustively argued all the relevant issues in his brief, hence, the filing of a Supplemental Brief would only be a repetition of the arguments raised therein."

The appeal lacks merit.

The CA did not commit error in finding accused-appellant not liable for rape. Pertinent portions of the CA Decision, which the Court quotes with approval, are as follows:

x x x x x x x x x

> In the present case, the combination of all the circumstances presented by the prosecution does not produce a conviction beyond reasonable doubt against Edwin for the crime of rape.

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12 *Id.* at 86-88.
13 *Id.* at 91.
14 *Rollo*, p. 20.
15 *Id.* at 24-27.
16 *Id.* at 28-32.

x x x x x x x x x

Here, the evidence of the prosecution failed to establish that Edwin had carnal knowledge of AAA. Michael's testimony did not show that Edwin had carnal knowledge with AAA. He only testified that he saw Edwin holding AAA's vagina. x x x

Jomie corroborated Michael's testimony, x x x

Clearly, Michael and Jomie's testimonies failed to prove that Edwin inserted his penis [into] AAA's vagina. What they saw was only his act of fondling AAA's private part which is not rape.

BBB's testimony that AAA admitted to her that she was sexually molested by Edwin cannot be treated as part of the *res gestae*. To be admissible as part of the *res gestae*, a statement must be spontaneous, made during a startling occurrence or immediately prior or subsequent thereto, and must relate to the circumstance of such occurrence. Here, AAA did not immediately tell BBB of the alleged rape. It was only the next day that she told her mother of the incident after she was asked what was wrong. Verily, the declaration was not voluntarily and spontaneously made as to preclude the idea of deliberate design.

x x x x x x x x x[17]

Nonetheless, the Court agrees with the ruling of the CA that accused-appellant is guilty of the crime of acts of lasciviousness. Under the variance doctrine embodied in Section 4,[18] in relation to Section 5,[19] Rule 120 of the Rules of Criminal Procedure and affirmed by settled jurisprudence,[20] even though the crime charged against the accused was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.

The ruling of the CA finding accused-appellant guilty of the crime of acts of lasciviousness is based on the testimonies of the two classmates of the victim, AAA, who saw accused-appellant fondle the latter's vagina.

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17 *Id.* at 7-11.

18 SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

19 SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

20 *People v. Pareja*, 724 Phil. 759, 784 (2014); *People v. Rellota*, G.R. No. 168103, August 3, 2010, 626 SCRA 422, 448; *People v. Abulon*, 557 Phil. 428, 455 (2007).

Witness, Michael, clearly narrated the details of the fondling incident and positively identified accused-appellant as the perpetrator. In a simple, spontaneous, and straightforward manner, Michael testified as follows:

PROS. PATARAS ON DIRECT EXAMINATION:

Q You are a Grade I pupil?
A Yes sir.

Q In what school?
A In Paykek.

Q And as a Grade I pupil, you know that telling a lie is not good?
A Yes sir.

Q What you tell is only the truth?
A Yes sir.

Q Do you [know] a person by the name of [AAA]?
A Yes sir.

Q Why do you know her?
A (No answer)

COURT:

Make the question simple.

Q [AAA] was your classmate?
A Yes sir.

Q [AAA] was your classmate while you were also in kindergarten?
A Yes sir.

Q She is also your neighbor?
A Yes sir.

Q And she is also your playmate?
A Yes sir.

Q You always go to school together?
A Yes sir.

Q And whenever you go home, you always go home with her?
A Yes sir.

Q You have the same pathway in going to school and in going home?
A Yes sir.

Q How about a person by the name of Wingwing, do you know a person by that name
A Yes sir

Q If this Wingwing is in the Courtroom, would you be able to identify him?
A Yes sir.

Q Will you point to us this Wingwing that you know?

INTERPRETER:

The person pointed to by the witness identified himself as Edwin Dagsa alias Wingwing

Q Did you see anything that Wingwing do to[AAA]?
A Yes sir.

Q What did this Wingwing do to [AAA] that you saw?
A "Kinawet na ti pipit ni [AAA]"

Q He used his hands in doing that?
A Yes sir.

Q Do you still recall where did this Wingwing do that to [AAA]?
A Yes sir.

Q Where?
A In Paykek.

Q Were you going to school at that time or were you already dismissed from school when you saw Wingwing do that to [AAA]?
A Yes sir.

Q So you were already going home when Wingwing did that to [AAA]?
A Yes sir.

Q So you were just dismissed from school?
A Yes sir.

Q Before Wingwing put his hands in the vagina on this [AAA], did he talk to anyone of you?
A Yes sir.

Q What did Wingwing tell you?
A Hè said that we will go down so that he will give candy to [AAA].

Q Aside from [AAA], do you recall if you have other companions when Wingwing put his hands at the vagina of [AAA]?
A Yes sir.

Q Who?
A Arnold, Dave, Joemi and I.

Q When you said Joemi, you are referring to Joemi Oyani?
A Yes sir.

Q After you saw Wingwing put his hands on the vagina of [AAA], where did you go?
A I went down.

x x x x x x x x x

ATTY SAYOG ON CROSS EXAMINATION;

Q Michael, is [AAA] your neighbor too?
A Yes ma'am

Q Michael, you said that you saw Wingwing put his hands into the vagina of Jerrilyn, are you far when you saw Wingwing put his hands on the vagina of [AAA]?
A Yes ma'am.

Q From where you are sitting, can you point to how far was Wingwing when he put his hands into the vagina of [AAA]?
A Where the Fiscal is sitting down.

COURT:

That would be about two (2) meters.

Q When you allegedly saw Wingwing did that act to [AAA], did you tell it to anyone?
A Yes ma'am

Q And to whom did you tell it? Your mother, your uncle?
A My mother, ma'am.

x x x x x x x x x[21]

In the same manner, Jomie corroborated the testimony of Michael and narrated, thus:

PROS. PATARAS ON DIRECT EXAMINATION

Q You know that telling a lie is bad or not good?
A Yes sir.

Q And what you will tell is only the truth?
A Yes sir.

Q Do you know this [AAA]?
A Yes sir.

Q Why do you know [AAA]?
A Yes sir.

Q Is she your neighbor?
A No sir.

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21 TSN, March 21, 2006, records, pp. 70-74.

Q Will you tell us why you know [AAA]?
A She was my classmate in kinder.

Q How about a person by the name of Wingwing, do you know such a person named Wingwing?
A Yes sir.

JEFFRY TAYNAN:

The witness pointed to a person who identified himself as Edwin Dagsa.

Q While you were classmates with [AAA], did you see anything that Wingwing did to [AAA]?
A Yes sir.

Q What did you see that Wingwing did to [AAA]?
A While [we] were walking, he blocked our way and he told us to go down so that he will give [AAA] candy and when we did not go, he let [AAA] sit down.

Q After he let [AAA] sit down, what did he do to [AAA]?
A He held her vagina.

Q After he held the vagina of [AAA], what did he do next, if you have seen any?
A We went home.

Q How many times did you see Wingwing hold the vagina of [AAA]?
A Once only.

Q Did you tell this to the police?
A No sir.

Q I'm showing you a document with a name Jomie Uyan and above it is a signature, will you see whose signature is this?
A Mine sir.

Q Is that your signature?
A Yes sir.

Q So you recall that a policeman went to talk to you about what Wingwing did to [AAA]?
A Yes sir.

Q Did you tell also the police that Wingwing removed the panty of [AAA]?
A Yes sir.

Q And it was after this Wingwing removed the panty that he played the vagina of [AAA]?
A Yes sir.[22]

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22 TSN, April 2, 2007, records, pp. 89-91.

The trial court found the testimonies of Michael and Jomie to be straightforward, categorical and convincing. It is settled that the assessment of the credibility of witnesses is within the province of the trial court.[23] 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.[24] The trial judge has the unique advantage of actually examining the real and testimonial evidence, particularly the demeanor of the witnesses.[25] Hence, the trial judge's assessment of the witnesses' testimonies and findings of fact are accorded great respect on appeal.[26] In the absence of any substantial reason to justify the reversal of the trial court's assessment and conclusion, like when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[27]

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.[28] Likewise, jurisprudence has consistently given full weight and credence to a child's testimonies as youth and immaturity are badges of truth and sincerity.[29]

What is important in the instant case is that Michael and Jomie witnessed the unfolding of the crime and was able to positively identify accused-appellant as the culprit. Also, the fact that Michael and Jomie were just a few meters away from the victim and the accused-appellant, and that the crime was committed in broad daylight, bolster their testimonies as to the particular acts committed by accused-appellant and their identification of the latter as the perpetrator of the lascivious acts committed against the victim.

On the other hand, accused-appellant failed to refute the testimonies of Michael and Jomie who categorically pointed to him as the person who fondled the victim's private organ. He also failed to attribute any improper motive to the child witnesses to falsely testify against him. There was no evidence to establish that Michael and Jomie harbored any ill-will against accused-appellant or that they had reasons to fabricate their testimony. In the absence of proof to the contrary, the presumption is that the witness was not

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23 *People v. Esugon*, 761 Phil. 300, 311 (2015).
24 *Id.*
25 *Id.*
26 *Id.*
27 *Id.*
28 *People v. Aquino*, 724 Phil. 739, 749 (2014).
29 *People v. Entrampas*, G.R. No. 212161, March 29, 2017.

moved by any ill-will and was untainted by bias, and thus, worthy of belief and credence.[30]

Under these circumstances, the rule that where the prosecution eyewitnesses were familiar with both the victim and the accused, and where the *locus criminis* afforded good visibility, and where no improper motive can be attributed to the witnesses for testifying against the accused, then their version of the story deserves much weight, thus applies.[31] The Court is, therefore, convinced that accused-appellant's culpability for lascivious acts committed against the victim was duly established by the testimony of the child witnesses.

The CA found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of RA 7610, which defines and penalizes acts of lasciviousness committed against a child, as follows:

> 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 x x x x x
>
> (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; x x x
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> x x x x x x x x x

The essential elements of this provision are:

1. The accused commits the act of sexual intercourse or *lascivious conduct.*

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30 *People v. Jalbonian*, 713 Phil 93, 104 (2013).

31 *Id.* at 104-105.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.[32]

As to the first element, paragraph (h), Section 2 of the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as a crime committed through the intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that the prosecution duly established this element when the witnesses positively testified that accused-appellant fondled AAA's vagina sometime in October 2004.

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse.[33] This second element requires evidence proving that: (a) AAA was either exploited in prostitution or subjected to sexual abuse; and (b) she is a child as defined under RA 7610.[34]

In the case of *Olivarez v. Court of Appeals,*[35] this Court explained that the phrase, "other sexual abuse" in the above provision covers 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. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[36] Intimidation need not necessarily be irresistible.[37] As in the present case, it is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[38] This is especially true in the case of young, innocent and immature girls, like AAA, who could not be expected to act with equanimity of disposition and with nerves of steel.[39] Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[40]

Anent the third element, there is no dispute that AAA was four years old at the time of the commission of the crime. Thus, on the basis of the

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32 *People v. Garingarao,* 669 Phil. 512, 523 (2011).
33 *People v. Abello,* 601 Phil. 373, 393 (2009).
34 *Id.*
35 503 Phil. 421 (2005).
36 *Id.* at 432; *People v. Abello, supra* note 31.
37 *People v. Rellota, supra* note 20, at 447.
38 *Id.*
39 *Id.*
40 *Id.*

foregoing, the Court finds that the CA correctly found accused-appellant guilty of the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610

With respect to the proper penalty to be imposed, Section 5(b) of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12) years of age, shall be *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. Citing the cases of *People v. Simon*[41] and *People v. Santos,*[42] this Court, in the case of *Quimvel v. People,*[43] deemed it proper to apply the provisions of the Indeterminate Sentence Law in imposing the penalty upon the accused who was similarly charged with the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610.

Thus, in the present case, in the absence of any mitigating or aggravating circumstance, the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

Hence, from the foregoing, the penalty imposed by the CA, which is thirteen (13) years, nine (9) months and eleven (11) days of *reclusion temporal* in its minimum period, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* in its medium period, as maximum, should be modified to conform to prevailing jurisprudence. Accordingly, the minimum prison term is reduced to twelve (12) years and one (1) day, while the maximum term is likewise reduced to fifteen (15) years, six (6) months and twenty-one (21) days

Finally, in light of this Court's recent ruling in *People v. Caoili,*[44] where the accused was found guilty of lascivious conduct under Section 5(b) of RA 7610, committed against a fourteen (14)- year-old minor, and was meted the maximum penalty of *reclusion perpetua*, as opposed to the present case where the victim is only four (4) years old and the imposable penalty under existing law is only *reclusion temporal* in its medium period,

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41 304 Phil. 725 (1994).
42 753 Phil. 637 (2015).
43 G.R. No. 214497, April 18, 2017,
44 G.R. Nos. 196342 and 196848, August 8, 2017.

it bears to reiterate the present ponente's disquisition in his Separate Concurring Opinion in *Quimvel,*[45] to wit:

> 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. 8353 *(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 child 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 *prision correccional.* In *People v. Fragante, Imbo v. People of the Philippines,* and *People of the Philippines v. Santos,* the accused were convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b), Article III of R.A. 7 610, 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** - 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) appl[ies] 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* had *People of the Philippines v. Baraga* 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 *prision correccional.*
>
> **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,**

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45 *Supra* note 42.

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, whereas as the minimum term in the case of the older victims shall be taken from *prision mayor medium* to *reclusion temporal minimum.* 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, 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. 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 circumstances 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 *prision mayor.* In *People v. Chingh,* 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."**
>
> Finally, as the Court stressed in ***Dimakuta v. People,*** 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 *prision 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. 7 610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.[46]

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06087, finding accused-appellant Edwin Dagsa y Bantas @ "Wing Wing" guilty beyond reasonable doubt of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610, is hereby **AFFIRMED** with **MODIFICATION** by sentencing accused-appellant to an indeterminate 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.

As reference for possible corrective legislation on the basis of the above observations, let a Copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice, pursuant to Article 5[47] of the Revised Penal Code. Also, let a copy of this Decision be furnished the President of the Senate and the Speaker of the House of Representatives.

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46 Citations omitted; emphases supplied.

47 ARTICLE 5. *Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties.* — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

Subj. to my dissent in Quirino + separate opinion in Peo. vs. Carli

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY:

MA. LOURDES C. PERFECTO
Division Clerk of Court
Second Divison