



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

**JAN VICTOR CARBONELL y
 BALLESTEROS,**

G.R. No. 246702

Petitioner,

Present:

- versus -

LEONEN, J.,
 Chairperson,
 HERNANDO,
 INTING,
 ZALAMEDA,* and
 DELOS SANTOS, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

April 28, 2021

X-----X

DECISION

DELOS SANTOS, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Decision² dated August 28, 2018 and the Resolution³ dated April 4, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40239, finding Jan Victor Carbonell y Ballesteros (petitioner) guilty beyond reasonable doubt of Acts of Lasciviousness defined and penalized under Section 5(b), Article III of Republic Act (R.A.) No. 7610.⁴ The challenged

* Designated as additional member in lieu of Associate Justice Jhosep Y. Lopez per Raffle dated March 3, 2021.

¹ *Rollo*, pp. 12-31.

² Penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court), with Associate Justices Rosmari D. Carandang and Amy C. Lazaro-Javier, (now both Members of the Court), concurring; *id.* at 36-49.

³ Penned by Associate Justice Jhosep Y. Lopez, with Presiding Justice Romeo F. Barza and Associate Justice Franchito N. Diamante, concurring; *id.* at 51-52.

⁴ An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes.

rulings modified the Decision⁵ dated June 15, 2017 of the Regional Trial Court (RTC) of Baguio City, Branch 4, which convicted petitioner of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC).

The Facts

Petitioner was charged with the crime of Acts of Lasciviousness defined under Article 336 of the RPC under the following Information, which reads:

That on or about the 28th day of November, 2015, at XXX, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named Accused, with intent to arouse or gratify his own sexual desire, with lewd design, by means of force, threat and/or intimidation, did then and there wilfully, unlawfully and feloniously commit lascivious conduct on the person of Private Complainant "AAA" a fifteen (15) year old minor by massaging her breasts, against her will and consent, to her damage and prejudice, in violation of the above-cited provision of law.

CONTRARY TO Article [336] of the Revised Penal Code.⁶

The facts of the case, as summarized by the CA, are as follows:

CCC, AAA's mother, held a birthday party at their house in the evening of November 28, 2015. Accused-appellant, who was then the boyfriend of AAA's older sister, BBB, was one of the attendants. AAA stayed in her room the entire night. During the festivities, AAA was surprised when accused-appellant entered her room and locked the door. Accused-appellant confided in her that he might have impregnated her sister. Upon hearing this, AAA gave accused-appellant some contraceptive pills and asked him to give to her sister. Accused-appellant then asked AAA to remove her shirt otherwise he would tell her friends that she has contraceptive pills. Worrying that this could ruin her reputation, AAA complied. Accused-appellant then massaged her breast, which prompted AAA to push him out of her room. Almost a month after the incident, AAA learned that accused-appellant was spreading false rumors about her. AAA then decided to tell her mother about what accused-appellant did to her. CCC then assisted AAA in filing a criminal [complaint] against accused-appellant.

When placed on the stand, accused-appellant denied the accusation against him. He explained that he met AAA in an event sometime in 2015. AAA introduced him to her sister, BBB, who later became his girlfriend. On November 28, 2015, he was invited to a birthday celebration of AAA's mother at their house. Accused-appellant claimed that he stayed in BBB's room with their other friends, where they had a movie marathon until the

⁵ Penned by Presiding Judge Mia Joy C. Oallares-Cawed; *rollo*, pp. 68-79.

⁶ *Id.* at 37.

following morning. Accused-appellant then denie[d] that he had a moment alone with AAA while he was there. Accused-appellant claimed that CCC filed the criminal complaint against him because BBB started to live with him and she refused to return to their house when CCC ordered her to do so.⁷

The RTC Ruling

In its Judgment⁸ dated June 15, 2017, the RTC convicted petitioner of Acts of Lasciviousness under Article 336 of the RPC, *viz.*:

WHEREFORE, in view of all the foregoing, accused JAN VICTOR CARBONELL Y BALLESTEROS is found GUILTY beyond reasonable doubt for the offense of Acts of Lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code. He is sentenced to suffer the indeterminate sentence of six (6) months of *arresto mayor* as minimum to four (4) years and two (2) months of *prision correccional* as maximum.

In consonance with the earlier cited jurisprudence, the accused is directed to pay private complainant [AAA] civil indemnity in the amount of P20,000.00 and P15,000.00 as moral damages or a total of P35,000.00. An interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded to [AAA] to be computed from the date of the finality of the judgment until fully paid. The payment of the docket fees as to the damages is considered a first lien on the judgment.

SO ORDERED.⁹

The RTC gave full weight and credit to AAA's testimony, finding it to be very clear, definite and straightforward. Conversely, the RTC rejected petitioner's uncorroborated defense of denial.¹⁰

Aggrieved, petitioner appealed to the CA challenging AAA's credibility. Petitioner referred to the purported inconsistencies in AAA's declaration in her sworn affidavit, that petitioner touched her breast several times, *vis-à-vis* her testimony in court, that petitioner touched her left breast only with his right hand. Petitioner added that it was impossible for him to have sexually molested AAA, claiming that there were many guests at the time of the incident, who could have easily noticed any unusual event. Lastly, questioning AAA's behavior during the alleged sexual molestation, petitioner argued that it is unfathomable that AAA did not run or shout for help.¹¹

⁷ Id. at 38.

⁸ Supra note 5.

⁹ *Rollo*, p. 79.

¹⁰ Id. at 77-78.

¹¹ Id. at 44-45.

The CA Ruling

In the challenged Decision¹² dated August 28, 2018, the CA modified the RTC Judgment, and convicted petitioner of Acts of Lasciviousness defined under Section 5(b), Article III of R.A. No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The *fallo* of the Decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Judgment dated June 15, 2017 of the Regional Trial Court of Baguio City, Branch 4 in Criminal Case No. 38798-R is **AFFIRMED with MODIFICATIONS**.

Accused, JAN VICTOR CARBONELL y BALLESTEROS is hereby found **GUILTY** beyond reasonable doubt of committing an act of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby **sentenced to suffer the penalty of imprisonment** for ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and is **ordered to pay** AAA the following amounts: (1) P20,000.00 as civil indemnity; (2) P15,000.00 as moral damages; (3) P15,000.00 as exemplary damages; and (4) P15,000.00 as fine with an interest rate of 6% per annum to be imposed on all damages awarded counted from the date of finality of this judgment.

SO ORDERED.¹³

As did the RTC, the CA gave paramount weight to the testimony of AAA, finding the same to be straightforward and consistent. It debunked petitioner's assertions which purportedly tainted her testimony.¹⁴

Underscoring that AAA was 15 years old, or a child defined under R.A. No. 7610, at the time of the incident, the CA modified the RTC Judgment, as regards the designation of the offense, as well as the impossible penalty and civil liability. The CA held that the Information against petitioner sufficiently averred the acts defined under Section 5(b), Article III of R.A. No. 7610, and, thus, convicted him of Acts of Lasciviousness under the said provision.¹⁵

Petitioner moved for reconsideration, but to no avail.

Hence, this Petition raising the following issues for resolution:

¹² Supra note 2.

¹³ *Rollo*, p. 48.

¹⁴ Id. at 43-45.

¹⁵ Id. at 47-48.

I.

WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER NOTWITHSTANDING THE INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II.

WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III.

WHETHER THE [CA] GRAVELY ERRED IN DISREGARDING THE PETITIONER'S DEFENSE OF DENIAL.¹⁶

The Court's Ruling

The Petition is devoid of merit.

Preliminarily, it bears underscoring the time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies.¹⁷ Indeed, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions based on its findings are generally binding and conclusive upon the Court, especially so when affirmed by the appellate court.¹⁸ With more reason shall this principle apply in testimonies given by child witnesses, considering that their youth and immaturity are generally badges of truth and sincerity.¹⁹ While there are recognized exceptions to the rule, the Court finds no substantial reason to overturn the congruent conclusions of the RTC and the CA on the matter of AAA's credibility.

The Court affirms the CA Decision with modification, only insofar as the proper designation of the offense is concerned, that is, petitioner is guilty of "Lascivious Conduct" under Section 5(b), Article III of R.A. No. 7610.

Article 336 of the RPC defines and penalizes "acts of lasciviousness," thus:

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

¹⁶ Id. at 19-20.

¹⁷ *People v. Chua*, 444 Phil. 757, 766-767 (2003).

¹⁸ *People v. Iroy*, 628 Phil. 145, 152 (2010).

¹⁹ *Ricalde v. People*, 751 Phil. 793, 805 (2015).

Deduced to its elements, the crime presupposes the concurrence of the following: (1) that the offender commits any **act of lasciviousness** or lewdness; (2) that it is done under any of the following circumstances: (a) through force, **threat**, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present; and (3) that the offended party is another person of either sex.²⁰

Meanwhile, R.A. No. 7610 finds application when the victims of abuse, exploitation or discrimination are children or those “**person[s] below 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.” Section 5(b) thereof provides:

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 or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims (*sic*) 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[.] (Underscoring supplied)

For a conviction under Section 5(b), Article III of R.A. No. 7610, there must be confluence of the following requisites, thus:

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

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

²⁰ *Quimvel v. People*, 808 Phil. 889, 914 (2017).

(3) The child, whether male or female, is **below 18 years of age.**²¹ (Emphases supplied)

“Lascivious conduct,” is defined as “**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.”²²

As correctly found by the CA, all elements are present in this case.

First, the prosecution sufficiently established the elements of lascivious conduct of petitioner and the minority of AAA. Records show that AAA positively testified that on November 28, 2015, petitioner intimidated AAA, and grabbed and mashed her breast to satisfy his lustful desire. At the time of such incident, AAA was a child below 18 years of age, having been born on August 9, 2000, as shown by her Certificate of Live Birth.

Second, the element requiring that the victim was subject to other sexual abuse was likewise established.

By “other sexual abuse” is meant to cover not only a child who is abused for profit, but also in cases where a child was engaged in a lascivious conduct through the coercion, influence or intimidation by an adult.²³

“Influence” is “use of power or trust in any way that deprives a person of free will and substitutes another’s objective.”²⁴ On the other hand, “coercion is the improper use of power to compel another to submit to the wishes of one who wields it.”²⁵ “Coercion and influence” as appearing under R.A. No. 7610 is broad enough to cover “force and intimidation” as one of the circumstances under Article 336.²⁶ Intimidation must be viewed in the light of the victim’s perception and judgment at the time of the commission of the crime,²⁷ taking into consideration the age, size and strength of the parties.²⁸ In *People v. Leonardo*,²⁹ the Court held:

²¹ *Roallos v. People*, 723 Phil. 655, 667-668 (2013); *Caballo v. People*, 710 Phil. 792, 801 (2013), citing *Olivarez v. Court of Appeals*, 503 Phil. 421, 431 (2005).

²² Implementing Rules and Regulations of R.A. No. 7610, Sec. 2(h).

²³ *Olivarez v. Court of Appeals*, supra note 21, at 432.

²⁴ *See People v. Caoili*, 815 Phil. 839, 889 (2017).

²⁵ *Id.*

²⁶ *See Quimvel v. People*, supra note 20, at 919.

²⁷ *People v. Ardon*, 407 Phil. 104, 121 (2001).

²⁸ *Id.*

²⁹ 638 Phil. 161, 188 (2010).

Section 5 of [R.A.] No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct. To repeat, 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. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat. (Underscoring supplied)

In this case, petitioner, who was senior to the child victim by four years, manipulated and subjected AAA to his lascivious conduct, under the threat of ruining her reputation. Petitioner intimidated AAA by threatening her that he would tell others that she was taking birth control pills. As succinctly put by the RTC, it was enough that fear was produced in the mind of the 15-year-old victim from the threat of petitioner, whom she may have identified as her “*kuya*,” he being the boyfriend of her older sister.

It bears emphasis, as well, that consent is immaterial in cases involving violation of Section 5(b), Article III of R.A. No. 7610.³⁰ The law being *malum prohibitum*, the mere act of committing lascivious conduct with a child subjected to sexual abuse already constitute the offense.³¹

While the Information against petitioner made no particular mention of Section 5(b), Article III of R.A. No. 7610, this omission is not fatal to petitioner’s right to be informed of the nature and cause of accusation against him. What controls are the actual facts recited in the Information as constituting the offense charged, not its caption or designation.³² In *Flordeliz v. People*,³³ the Court allowed the imposition of a penalty provided for in R.A. No. 7610 despite the absence in the Information of any explicit reference to the said statute, *viz.*:

We are aware that the Information specifically charged petitioner with Acts of Lasciviousness under the RPC, without stating therein that it was in relation to R.A. No. 7610. However, the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged. The character of the crime is not determined by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, but **by the recital of the ultimate facts and circumstances in the complaint or information.**

³⁰ *Caballo v. People*, supra note 21, at 806.

³¹ *Id.* at 806-807.

³² *Espino v. People*, 713 Phil. 377, 385-386 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

³³ 628 Phil. 124 (2010).

In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and unmistakably describes acts punishable under Section 5(b), Article III of R.A. No. 7610.³⁴ (Emphasis supplied)

In this case, the subject Information sufficiently recited the ultimate facts as would classify AAA as a child subjected to sexual abuse under the coercion, intimidation or influence of petitioner, within the purview of Section 5(b), Article III of R.A. No. 7610. Thus, petitioner may be validly convicted of the offense of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610.

Penalty and Award of Damages

The impossible penalty for Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law, the maximum term of the sentence shall be taken from the medium period, or from 17 years, four (4) months and one (1) day to 20 years, owing to the absence of any mitigating or aggravating circumstance. On the other hand, the minimum term of the indeterminate penalty shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, or from eight (8) years and one (1) day to 14 years and eight (8) months.

Accordingly, the CA correctly imposed the indeterminate penalty of imprisonment ranging from a period 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum.

As to petitioner's civil liabilities, the CA correctly applied the prevailing jurisprudence³⁵ in awarding AAA the following amounts: (a) ₱20,000.00 as civil indemnity, (b) ₱15,000.00 as moral damages, (c) ₱15,000.00 as exemplary damages, and (d) ₱15,000.00 as fine, all of which shall earn interest at the rate of 6% per annum from the date of finality of this judgment until full payment.

WHEREFORE, the Petition is **DENIED**. Petitioner Jan Victor Carbonell y Ballesteros is found **GUILTY** beyond reasonable doubt of the offense of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610. Accordingly, he is **SENTENCED** to suffer the indeterminate prison term of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and

³⁴ Id. at 142.

³⁵ See *Quimvel v. People*, supra note 20.

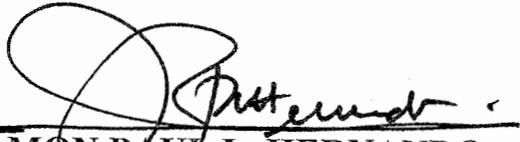
further **ORDERED** to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine. All monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until full payment.

SO ORDERED.

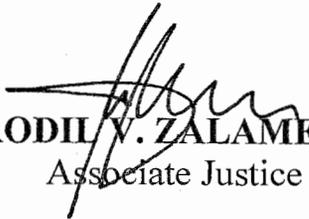

EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR: *see separate concurring opinion:*


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

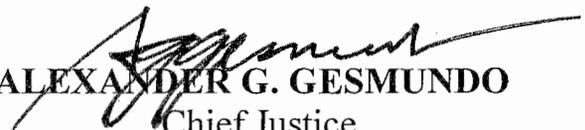
ATTESTATION

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.


MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third 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.


ALEXANDER G. GESMUNDO
Chief Justice