



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IRENEO MAGNO y MONTANO,
Petitioner,

G.R. No. 258682

-versus-

Present:
LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR.,* JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

JAN 16 2023

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DECISION

LOPEZ, J., J.

This Court resolves the Petition for Review on *Certiorari*¹ assailing the Decision² and the Resolution³ of the Court of Appeals, which affirmed the Decision⁴ of the Regional Trial Court, finding the accused-appellant Ireneo Magno y Montano (*Magno*) guilty beyond reasonable doubt of violation of Section 10(a), Article VI of Republic Act No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act.”

* On leave.

¹ *Rollo*, pp. 12–30.

² *Id.* at 33–44. The February 26, 2021 Decision in CA-G.R. CR No. 43304 was penned by Associate Justice Myra V. Garcia-Fernandez, and concurred in by Associate Justices Ruben Reynaldo G. Roxas and Alfredo D. Ampuan of the Special Fifteenth Division, Court of Appeals, Manila.

³ *Id.* at 46. The September 29, 2021 Resolution in CA-G.R. CR No. 43304 was penned by Associate Justice Myra V. Garcia-Fernandez, and concurred in by Associate Justices Ruben Reynaldo G. Roxas and Alfredo D. Ampuan of the Former Special Fifteenth Division, Court of Appeals, Manila.

⁴ *Id.* at 61–65. The October 22, 2018 Decision in Criminal Case Nos. 3308-G and 3309-G was penned by Judge Brigando P. Saldivar of Branch 31, Regional Trial Court, [REDACTED], Nueva Ecija.

The Antecedents

Magno was charged under two Informations for "Other Acts of Neglect, Abuse, Cruelty or Exploitation, and Other Conditions Prejudicial to the Child's Development," the accusatory portions of which read:

Crim. Case No. 3308-G

That on or about the night of March 2, 2012, in the Municipality of [REDACTED],⁵ Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above[-]named accused with intent to humiliate, harass[,] and shame, did then and there willfully, unlawfully and feloniously abuse and take advantage of [AAA258682],⁶ a 16-year-old minor, by touching/stroking her genitalia within the view of other people, thereby causing utmost indignity and embarrassment to [AAA258682].

The above act of the accused debases, degrades[,] and demeans the intrinsic worth and dignity of [AAA258682] as a child and human being.

CONTRARY TO LAW.⁷

Crim. Case No. 3309-G

That on or about the night of March 2, 2012, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to humiliate, harass, and shame, did then and there willfully, unlawfully, and feloniously abuse and take advantage of [BBB258682], a 17-year-old minor, by touching/stroking her genitalia within the view of other people, thereby causing utmost indignity and embarrassment to [BBB258682].

The above act of the accused debases, degrades, and demeans the intrinsic worth and dignity of [BBB258682] as a child and human being.

Contrary to law.⁸

⁵ Geographical location is blotted out pursuant to Supreme Court Amended Circular No. 83-2015, dated September 5, 2017 entitled Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances.

⁶ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.

⁷ Records (Criminal Case No. 3308-G), p. 1.

⁸ Records (Criminal Case No. 3309-G), p. 1.

Upon arraignment, Magno pleaded not guilty to both charges.⁹ After pre-trial was conducted, trial on the merits then ensued.

The version of the prosecution established that on March 2, 2012, at around 9:00 p.m., AAA258682, and her friend, BBB258682, were strolling through the town plaza at ██████████ during the fiesta and looking at some items displayed for sale on the side streets.¹⁰

AAA258682, who was born on November 29, 1995, was 16 years old¹¹ at the time, while BBB258682, who was born on April 21, 1994, was 17 years old.¹²

AAA258682 testified that BBB258682 was walking on her right side when Magno approached them from the opposite direction and touched both of their private parts. After doing so, Magno casually walked away.¹³ Shocked, AAA258682 moved backward and cursed, before turning to find Magno.¹⁴ Initially, both minors tried to chase after Magno but eventually decided against it as they were afraid of the latter because he was bigger than them and seemed intoxicated.¹⁵

AAA258682 and BBB258682 relayed the incident to BBB258682's older sister, who was also at the plaza at the time. BBB258682's older sister told them that her friend, CCC258682, was also tapped in her private parts by a man that night.¹⁶

While together, AAA258682, BBB258682, BBB258682's older sister, and CCC258682 saw Magno with his group of friends. They all ran toward the soldiers of the Philippine Army that were patrolling the area to report the incident. In turn, the soldiers apprehended Magno and took him to the police station. AAA258682, BBB258682, BBB258682's sister, and CCC258682 followed them, and an investigation was conducted.¹⁷

AAA258682 and BBB258682 identified Magno as the person who touched them in their private parts based on his appearance,¹⁸ specifically that he was tall, sported long hair, and had a large build. More, he wore a blue

⁹ Records (Criminal Case No. 3308-G), p. 14.

¹⁰ *Rollo*, p. 62.

¹¹ Records, (Criminal Case No. 3308-G), p. 72-A.

¹² Records, (Criminal Case No. 3309-G), p. 53.

¹³ TSN, May 8, 2014, p. 5.

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ *Rollo*, p. 62.

¹⁷ *Id.*

¹⁸ TSN, February 20, 2014, p. 5.

jersey bearing numbers¹⁹ that evening, as opposed to other passersby who were wearing ordinary clothing.²⁰

For their part, the defense's sole witness was Magno, who testified that he was a construction worker and that on March 2, 2012, he was at work at Land Bank of the Philippines, [REDACTED] from 7:00 a.m. to 5:00 p.m. After that, he rested in his quarters until 9:00 p.m.²¹

Sometime that evening, he needed to buy some medicine as he had a headache. He narrated that he went to the drugstore near the public market with his nephew, Jimmy Gardoce (*Gardoce*). While they were on their way to the drugstore, they met Rafael Tolentino (*Tolentino*), the son of Magno's godfather. Together, they decided to roam the plaza as the fiesta was ongoing.²²

Magno denied the accusations against him and claimed that it was Tolentino who touched other persons while walking through the plaza and that he even tried to prevent him from doing the act. However, it was Magno who was arrested by the members of the Philippine Army and taken to [REDACTED] police station where he was incarcerated.²³

Moreover, Magno insisted that Tolentino even went into hiding to avoid being arrested but denied knowing his whereabouts.²⁴

In its Decision,²⁵ the Regional Trial Court found Magno guilty of two counts of other acts of child abuse under Section 10(a), Article VI of Republic Act No. 7610, *viz.*:

WHEREFORE, this Court finds accused Irenio Magno guilty beyond reasonable doubt of two (2) counts of other acts of child abuse under Article 10(a) of Republic Act No. 7610 and sentences him as follows:

- (1) The penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days or *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum[,] plus costs of suit in Criminal Case No. 3309-G; and
- (2) The penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum[,] plus costs of suit in Criminal Case No. 3309-G.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 8.

²¹ *Rollo*, p. 63.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 61-65. Dated October 22, 2018.

Accused's entire period of detention shall be deducted from the penalty herein imposed when the accused serves his sentence.

SO ORDERED.²⁶

The Regional Trial Court found that by holding or tapping the private areas of AAA258682 and BBB258682, Magno committed other acts of child abuse in violation of Section 10(a), Article VI of Republic Act No. 7610.

Citing *Araneta v. People*,²⁷ the Regional Trial Court discussed that Section 10(a) of Republic Act No. 7610 provides four distinct and separate acts that are punishable under the same law, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial to a child's development. Thus, to commit an act that constitutes a violation of Section 10(a), the prosecution need not prove that an accused committed an act that is simultaneously prejudicial to the development of the child.

Further, the Regional Trial Court rejected Magno's defense of denial as the same could not prevail over the positive testimonies of the prosecution witnesses that he committed the crime.

Aggrieved, Magno filed an Appeal.²⁸

In the assailed Decision,²⁹ the Court of Appeals affirmed the conviction of Magno, the *fallo* of which states:

WHEREFORE, the appeal is **DENIED**. The decision of the Regional Trial Court of [REDACTED], Nueva Ecija dated October 22, 2018, finding accused-appellant IRENEO MAGNO y MONTANO guilty beyond reasonable doubt of two (2) counts of other acts of child abuse under Art. 10(a), Article VI of RA No. 7610 in Criminal Case No. 3308-G and Criminal Case No. 3309-G is **AFFIRMED** with **MODIFICATION** as follows:

1. In Criminal Case No. 3308-G, accused-appellant IRENEO MAGNO y MONTANO is sentenced to suffer the indeterminate penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days of prision correccional[,] as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum.

Accused-appellant IRENEO MAGNO y MONTANO is ordered to pay the minor victim AAA the amount of P10,000.00 for moral damages, plus costs of suit. Accused-appellant shall be liable for interest of six percent (6%) per annum to be computed from date of finality of this decision until full payment.

²⁶ *Id.* at 65.

²⁷ 578 Phil. 876, 885 (2008) [Per J. Chico-Nazario, Third Division].

²⁸ CA *rollo*, p. 14.

²⁹ *Rollo*, pp. 33-44. Dated February 26, 2021.

2. In Criminal Case No. 3309-G, accused-appellant IRENEO MAGNO y MONTANO is sentenced to suffer the indeterminate penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days of prision correccional[,] as minimum[,] to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum.

Accused-appellant IRENEO MAGNO y MONTANO is ordered to pay the minor victim BBB the amount of P10,000.00 for moral damages, plus costs of suit. Accused-Appellant shall be liable for interest of six percent (6%) per annum to be computed from date of finality of this decision until full payment.

SO ORDERED.³⁰ (Emphases in the original)

The Court of Appeals reiterated that Republic Act No. 7610 not only covered child prostitution but expanded the definition of child abuse to include “other acts of neglect, abuse, cruelty, or exploitation and other conditions prejudicial to the child’s development.”³¹

Accordingly, the Court of Appeals ruled that the evidence of the prosecution sufficiently proved that Magno committed the acts charged against him. By his act of touching the victims’ private parts, he subjected AAA258682 and BBB258682 to lascivious acts or sexual abuse.³²

Anent the penalty, the Court of Appeals affirmed the penalty imposed by the Regional Trial Court, modifying only the judgment by awarding moral damages to the victims in the amount of PHP 10,000.00 and the imposition of an interest rate of six percent (6%) per annum on the total judgment award, to be computed from the date of the finality of the decision until fully paid.³³

On May 31, 2021, Magno moved for reconsideration, but the motion³⁴ was denied in a Resolution³⁵ of the Court of Appeals.

Hence, this Petition.

Issue

Whether Ireneo Magno y Montano should be held guilty of violation of Section 10(a), Article VI of Republic Act No. 7610.

³⁰ *Id.* at 42-43.

³¹ *Id.* at 40.

³² *Id.* at 41.

³³ *Id.* at 42.

³⁴ *Id.* at 82-87.

³⁵ *Id.* at 46. Dated September 29, 2021.

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Here, Magno insists on his innocence and avers that although the present Petition involves mixed questions of fact and law, the findings of fact of the Court of Appeals may be passed upon by this Court as the inferences are manifestly mistaken, absurd, or impossible and that the judgment is based on a misapprehension of facts.³⁶

First, Magno raises that the prosecution failed to prove his identity beyond reasonable doubt. In support of this, Magno highlights that initially, AAA258682 claimed to recognize Magno due to his long hair and that he wore a jersey shirt, whereas BBB258682 identified Magno due to his height, built, and long hair. Both parties did not recognize their perpetrator's face. During their testimonies, the victims admitted that Magno was not the only person wearing a jersey shirt or had similar features as him in built and appearance.³⁷

Second, Magno contends that the incident of the alleged tapping of the victims' private areas occurred in a narrow and busy pathway at the town plaza, with several persons passing by. This admits an equal possibility that when Magno was walking by in the opposite direction, his hand may have accidentally tapped the private parts of AAA258682 and BBB258682, devoid of any intent that the latter wanted to ascribe. Thus, the same cannot amount to child abuse.³⁸

Further, AAA258682 and BBB258682 testified that their private parts were merely tapped, which means that the touch was only fleeting and did not linger. They did not mention that they felt their perpetrator squeezed, enclosed, or applied pressure on their private parts to consider the touch lascivious. Thus, it is possible that when Magno swung his hand, it accidentally landed to touch their private parts.³⁹

Therefore, Magno emphasizes that if the act was accidental, the elements of child abuse were not proven as the intent to debase, degrade, or demean the intrinsic worth of AAA258682 and BBB258682 is wanting.⁴⁰

This Court's Ruling

The Petition is without merit.

³⁶ *Id.* at 19.

³⁷ *Id.* at 20-21.

³⁸ *Id.* at 21.

³⁹ *Id.* at 24.

⁴⁰ *Id.* at 23.

In *Quimvel v. People*,⁴¹ this Court found that:

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.¹⁵ As further explained in *Andaya v. People*:

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. **The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.**⁴² (Emphasis supplied and citations omitted)

Still in *Quimvel*, this Court emphasized that what determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the information or complaint, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being conclusions of law.

Thus, this Court is constrained to place the text of the Information under scrutiny.

Magno was charged, tried, and found guilty of “other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child’s development” under Republic Act No. 7610 by the Regional Trial Court and Court of Appeals.

However, this Court finds that the subject Information sufficiently recited the ultimate facts as would classify the acts committed by Magno as

⁴¹ 808 Phil. 889 (2017) [Per J. Velasco, Jr., *En Banc*].

⁴² *Id.* at 912–913.

lascivious conduct under Section 5(b), Article III of Republic Act No. 7610. Thus, Magno may be validly convicted of the offense.

Section 3(b), Article I of Republic Act No. 7610 defines child abuse as follows:

(b) "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 treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

The definition of child abuse was expanded to encompass not only those specific acts mentioned but include other acts of neglect, abuse, cruelty or exploitation, and other conditions prejudicial to the child's development.

For lascivious conduct committed against minors, Section 5(b), Article III of Republic Act No. 7610 is instructive, to wit:

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:

.....

(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[.] (Emphasis in the original)

Further, the Implementing Rules and Regulations of Republic Act No. 7610 define lascivious conduct 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.

In *People v. Tulagan*,⁴³ this Court made a clarification on the nomenclature of the crime and its penalties when lascivious conduct is committed against a child under 12 years old on one hand, and a child 12 years old and below 18, thus:

Under Section 5(b) of R.A. No. 7610, the proper penalty when sexual intercourse is committed with a victim who is under 12 years of age or is demented is *reclusion perpetua*, pursuant to paragraph 1 (d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, which in turn amended Article 335 of the RPC. Thus:

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 subject 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 [sic] 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.

In *Quimvel v. People*, it was opined that the two *provisos* under Section 5 (b) of R.A. No. 7610 will apply only if the victim is under 12 years of age, but not to those 12 years old and below 18, for the following reason:

⁴³ G.R. No. 227363, March 12, 2019 [Per J. Peralta, *En Banc*].

“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 victim 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.** 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[.]”

In view of the foregoing rule in statutory construction, it was proposed in *Quimvel* that the penalty for acts of lasciviousness committed against a child should depend on his/her age: if the victim is under 12 years of age, the penalty is *reclusion temporal* in its medium period, and if the victim is 12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. No. 7610, the penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.⁴⁴ (Emphasis in the original and citations omitted)

Magno’s act of touching the two minor victims in their private areas in public constitutes the offense of lascivious conduct under Section 5(b) of Article III of Republic Act No. 7610.

Magno committed an act of lasciviousness when he insidiously invaded the minor victims’ personal space and violated their person by quickly touching their private areas in public. This same act constitutes sexual abuse against the victims who, at the time, were under the age of 18 years old.

The minority of the victims, AAA258682 and BBB258682, are undisputed. To repeat, through the presentation of their birth certificates, it was shown that at the time of the incident, AAA258682 was 16 years old, while BBB258682 was 17 years old.

Again, the offense was committed against the two minor victims in a public area, where they could not react or had very little time to react to the

⁴⁴ *Id.* at 15–17. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

assault done against them. More, after committing the offense, Magno casually walked away from them with little to no remorse.

By way of defense, Magno asserted that the prosecution was unable to duly prove the identity of the perpetrator of the victims due to inconsistencies in their testimonies.

We disagree:

The testimonies of the victims are clear that while they were walking through the fiesta stalls at the plaza, Magno approached them from the opposite direction, and touched both of their private areas before nonchalantly walking away.

In AAA258682's testimony, she narrated that:

COURT:

Q: Where did this happen?

A: In front of the town plaza, while we are strolling.

Q: Town plaza of what town?

A: Here in [REDACTED], Ma'am.

Q: I noticed that you used the word "kami", who was your companion then that you were complaining about what happened?

A: I was with my friends then, Ma'am.

Q: What is their name?

A: [BBB258682].

Q: Now, how were you tapped in the genitalia by the accused?

A: We were then walking in opposite direction and when we met each other, he sway[ed] his hand to tap my private parts and "*patay malisya*" siya, Sir.

Q: And what hand did he tap your genitalia?

A: His left hand, Ma'am.

Q: And you were walking near the store on what side Ms. Witness?

A: Right side, Ma'am.

Q: Why did you follow the accused?

A: Because he touched our private parts, Ma'am.

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- Q: And so, you assumed that you want to file a complaint against the accused?
- A: Yes, Ma'am.
- Q: But, however, you were not able to figure out him because there are many persons there?
- A: Yes, Ma'am.
- Q: Ms. Witness, what were the other persons wearing at the plaza during that time?
- A: Ordinary cloth[e]s, Ma'am.
- Q: When you say ordinary clothes, is it t-shirts and pants clothes, am I correct?
- A: Yes, Ma'am.
- Q: Can you tell us now that the accused is the only person who is wearing a jersey on that night?
- A: Probably not, but we were able to recognize him, Ma'am.⁴⁵

Similarly, in BBB258682's testimony, she claimed that:

- Q: And why are you here today?
- A: To file a case.
- Q: What case are you referring to?
- A: "Panghihipo po."
- Q: Where were you touched... What part of your body?
- A: My private part, Ma'am. ("Sa pepe po.")
-
- Q: What did you do when the accused whom you identified touched your vagina?
- A: I moved back and uttered "Ay, Shit."
- Q: And what did the accused do after touching your vagina?
- A: He just proceeded to walk.
- Q: When the accused simply walked away after touching your private part, what did you do?
- A: I turned around and we intended to chase him but we were frightened.
- Q: Why did you feel afraid?
- A: Because he was tall and he looks scary.
- Q: Why does he look scary then?
- A: Because he was sporting a long hair that time.
- Q: Aside from being tall and then sporting a long hair, what else did you notice about the accused at the time he touched your private part?
- A: He looked as if he was drunk.⁴⁶

⁴⁵ TSN, February 20, 2014, pp. 4-8.

⁴⁶ TSN, May 8, 2014, pp. 4-5.

Magno's identity was proven beyond reasonable doubt.

The testimonies of the minor victims showed that they were both tapped in their private areas by Magno at the same time and on the same day. AAA258682 and BBB258682 were able to clearly recall the description of Magno's appearance, clothing, and features on even date and distinguished his identity from other attendees of the festival.

In *People v. Ladra*,⁴⁷ this Court said that squeezing the private part of a child suggests that the same acts constitute intentional touching, to wit:

After a careful evaluation, the Court finds that the mere fact of "squeezing" the private part of a child — *a young girl 12 years of age* — could not have signified any other intention but one having lewd or indecent design. It must not be forgotten that several years prior, accused-appellant had raped AAA in the same house, for which act he was appropriately convicted. Indeed, the law indicates that the mere *touching* — more so, "squeezing," in this case, which strongly suggests that the act was intentional — of AAA's genitalia clearly constitutes lascivious conduct. It could not have been done merely to annoy or vex her, as opined by the courts *a quo*. That AAA was fully clothed at that time, which led the courts *a quo* to believe that accused-appellant could not have intended to lie with her, is inconsequential. "Lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried on a wanton manner[.]⁴⁸ (Citations omitted)

Hence, the prevailing circumstances must be examined to determine if there was intentional touching. In this case, the circumstances show that Magno intentionally touched the private parts of AAA258682 and BBB258682.

As told by the two minor victims, Magno walked towards them *swaying his arms in a narrow way*.⁴⁹ When he neared AAA258682 and BBB258682, he intentionally swayed both of his arms toward the exact direction of their lower bodies, aiming for their private areas.

The circumstances were specified by BBB258682 in her testimony, stating that:

Q: A while ago, you were also asked whether ... a follow-up question was asked of you which was roughly stated this way — "You were not able to chase Irineo Magno because there were so many people then?" and your answer was, "No, Mam, not because there were so many people but because we were frightened". Now, I would like to

⁴⁷ 813 Phil. 862 (2017) [Per J. Perlas-Bernabe, First Division].

⁴⁸ *Id.* at 876.

⁴⁹ TSN, February 20, 2014, p. 7. (Emphasis supplied)

ask you. When you met the accused from the opposite direction and he touched your genitalia, were there a lot of people walking in your path also?

A: They cannot pass by because we were blocking the way.

Q: Was the path where you met the accused wide enough for both of you to pass without coming near you and touching your private part or genitalia?

Atty. Gungon:

Your Honor, please, the witness answered that the way was very narrow.

Fiscal Apolonio:

That is why I am asking if it is wide enough for the two of them to pass without the accused going near her and touching her body.

Court:

May answer.

A: It can be if he will give way, but as I already know that we might bump each other that is why I gave way and yet he came near me and touched my genitalia.⁵⁰

Considering the narrow pathway and for which AAA258682 and BBB258682 have already given space for Magno to pass through, Magno had sufficient space to avoid touching the private parts of AAA258682 and BBB258682, unless he had the intention to touch their private parts.

Moreover, in their testimonies, Magno was described by both minor victims as tall in height. Given the height difference between Magno and the children, Magno could not have reached the children's private parts had he not bent his knees and intentionally reach for them.

Further, this Court has consistently given full weight and credence to a child's testimonies as youth and immaturity are badges of truth and sincerity.⁵¹

Mere inconsistencies or discrepancies in a witness' testimony do not, by such fact alone, diminish the credibility of the same, as in this case, when they are minor.

Thus, the Regional Trial Court's findings of fact regarding the assessment of the credibility of a witness should be given greater weight as they were able to observe the disposition and manner in which they testified.

⁵⁰ TSN, May 8, 2014, pp. 14.

⁵¹ G.R. No. 245516, June 14, 2021 [Per J. J. Lopez, Third Division].

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It bears to note that no other testimonial or documentary evidence was offered by Magno during the course of the trial. Thus, Magno's defense of denial is outweighed by the positive identification and straightforward testimonies of AAA258682 and BBB258682.

Anent the penalties, in *People v. Tulagan*,⁵² this Court elucidated that:

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *provisò* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.⁵³
(Emphasis supplied and citations omitted)

Here, as AAA258682 and BBB258682 were 16 and 17 years old, respectively, at the time of the commission of the acts complained of, Section 5(b), Article III of Republic Act No. 7610 applies and the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*.

Applying the Indeterminate Sentence Law and in the absence of aggravating or mitigating circumstances, Magno should be sentenced to imprisonment for an indeterminate period of eight years and one day of *prision mayor*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum, for each count of lascivious conduct.

⁵² *Supra* note 41.

⁵³ *Id.* at 14-15. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

In line with *People v. Jugueta*,⁵⁴ this Court modifies the award of damages by the Court of Appeals, increasing the amount of PHP 10,000.00 moral damages to PHP 50,000.00. We also impose the following amounts: (1) PHP 50,000.00 as civil indemnity; and (2) PHP 50,000.00 as exemplary damages to the two minor victims.

Further, a fine in the amount of PHP 10,000.00 is imposed for the benefit of each minor victim pursuant to Section 31(f), Article XII of Republic Act No. 7610.

Lastly, all monetary awards shall bear interest of six percent (6%) per annum reckoned from the finality of this decision until fully paid.

ACCORDINGLY, the instant Petition is **DENIED**. The Decision dated February 26, 2021 of the Court of Appeals in CA-G.R. CR No. 43304, which affirmed the Decision of Branch 31, Regional Trial Court, ██████████, Nueva Ecija in Criminal Case Nos. 3308-G and 3309-G, is hereby **AFFIRMED with MODIFICATION**, as follows:

- a. Accused-appellant IRENEO MAGNO y MONTANO is **GUILTY** beyond reasonable doubt of two (2) counts of lascivious conduct as defined and penalized in Section 5(b), Article III of Republic Act No. 7610, and is sentenced to suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, for each count.
- b. He is likewise **ORDERED** to **PAY** AAA258682 and BBB258682 the following amounts, to wit:
 1. PHP 50,000.00 as civil indemnity;
 2. PHP 50,000.00 by way of moral damages;
 3. PHP 50,000.00 as exemplary damages.
 4. PHP 10,000.00 as a fine pursuant to Section 31(f), Article XII of Republic Act No. 7610.
- c. Legal interest is hereby imposed on all damages awarded at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

⁵⁴ 783 Phil. 806 (2016) [Per J. Peralta, *En Banc*].

JHOSEP Y LOPEZ
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

On leave
ANTONIO T. KHO, JR.
Associate Justice

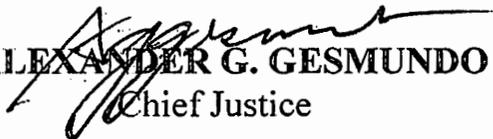
ATTESTATION

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.

MARVIC M.V.F. LEONEN
Senior 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.


ALEXANDER G. GESMUNDO
Chief Justice