

penalty the Decision⁴ dated December 21, 2017, of Branch ■, Regional Trial Court (RTC), ■, Benguet in Criminal Case Nos. 12-CR-8989 and 12-CR-8990.

In Criminal Case No. 12-CR-8989, the CA found petitioner guilty of psychological violence committed against women and/or children under Section 5(i)⁵ of Republic Act No. 9262.⁶

In Criminal Case No. 12-CR-8990, the CA found petitioner guilty of Acts of Lasciviousness under Article 336,⁷ of the Revised Penal Code in relation to Article III, Section 5(b) of Republic Act No. 7610.⁸

The Antecedents

In an Information, petitioner was charged with psychological violence under Section 5(i) of Republic Act No. 9262 committed against his common-law partner, CCC, committed as follows:

Criminal Case No. 12-CR-8989

That in or about the period from the year 2010 until June 2012, in the Municipality of ■, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named [petitioner] who is the live-in partner of the private

⁴ *Id.* at 71–81. Penned by Judge Marietta S. Brawner-Cualing.

⁵ SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

.....

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

⁶ An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes. Approved on March 8, 2004.

⁷ Art. 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 *prisión correccional*.

⁸ An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Republic Act No. 7610, sec. 5(b) 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:

.....

(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 and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

.....

complainant [CCC], did then and there willfully, unlawfully and knowingly cause substantial emotional and psychological distress to his live-in partner by repeated physical and verbal abuse and by not engaging himself to a gainful employment in order to help in the support of their child or union with [CCC], to her great damage and prejudice.

CONTRARY TO LAW.⁹

In a separate Information, petitioner was charged with violation of Section 5(b) of Republic Act No. 7610, committed against his daughter, AAA. The accusatory portion of the Information states:

Criminal Case No. 12-CR-8990

That sometime in the month of March 2012, at [REDACTED], Municipality of [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named [petitioner], who is the biological father of the offended party, with grave abuse of authority, did then and there willfully, unlawfully and feloniously commit an act of sexual abuse against [his] daughter, AAA, a minor, who was seven (7) years old at the time of the commission of the crime, by letting her hold his penis while inserting his finger in her vagina against her will and consent which deeds debase, degrade and demean the intrinsic worth and dignity of the said AAA as a human being, to her great damage, prejudice and mental anguish.

CONTRARY TO LAW.¹⁰

Upon arraignment, petitioner entered pleas of "Not Guilty" to both charges.¹¹

Trial ensued.¹²

Petitioner and CCC have been common-law partners since 2003. They have a child, AAA, who was born on [REDACTED].¹³ According to CCC, petitioner had been hurting her, both physically and verbally. At one point, he almost threw a liquefied petroleum gas [LPG] tank at her; he also slapped and chased her with a bolo when he would come home drunk. He even threatened to chop her body into pieces. One day, she left their residence and went to [REDACTED], Benguet to work; she left petitioner with their daughter, AAA.¹⁴

⁹ *Rollo*, p. 71.

¹⁰ *Id.* at 71-72.

¹¹ *Id.* at 72.

¹² *Id.* at 37.

¹³ RTC records, Criminal Case No. 12-CR-8990, p. 8. *See* Certificate of Live Birth.

¹⁴ *Rollo*, pp. 37-38.

In 2010, petitioner and AAA followed CCC in [REDACTED], Benguet. There, she and petitioner agreed on AAA's custody. However, whenever AAA was in her custody, petitioner would often cause trouble in her boarding house. He would forcibly open the door of the boarding house, or utter abusive words.¹⁵

In 2012, petitioner went to CCC's boarding house to ask for money and convince her that they get back together; she refused. One day, AAA told CCC that petitioner sexually abused her; the first incident happened when she was about seven years old. According to AAA, every time petitioner got drunk, he would make her hold his penis and touch her vagina. Later, they went to the police station where CCC informed Police Officer II Dexter Gosgos (PO2 Gosgos) that petitioner was "creating trouble" in the boarding house. PO2 Gosgos then invited petitioner to the police station for investigation.¹⁶

Meanwhile, AAA narrated that when her parents separated, she and petitioner stayed in [REDACTED], Benguet. In March 2012, petitioner touched her vagina while she was in bed. Sometimes, he would pull her hands and made her touch his penis. One time, petitioner slapped her when she did not reveal where her mother, CCC, was staying.¹⁷

On June 12, 2012, Dr. Michelle Payagen (Dr. Payagen) conducted a physical examination on AAA and observed swelling on her right cheek. According to Dr. Payagen, the swelling could have been secondary to injury or caused by trauma by a blunt force.¹⁸

Despite the opportunity, petitioner failed to secure the services of a lawyer and present his own evidence.¹⁹

The Ruling of the RTC

In the Decision dated December 21, 2017, the RTC found petitioner guilty of the charges. The RTC decreed as follows:

WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crimes as charged, BBB255466 is hereby found GUILTY of violating Section 5(i) of Republic Act No. 9262 and violating Section 5(b) of Republic Act No. 7610. He is hereby imposed the following:

¹⁵ *Id.* at 38.

¹⁶ *Id.* at 38-39.

¹⁷ *Id.* at 39.

¹⁸ *Id.*

¹⁹ *Id.*

1. there being no mitigating or aggravating circumstances attendant, an indeterminate penalty of 6 months and 1 day to 6 years of *Prision Correccional* as minimum to 6 years and 1 day to 8 years of *Prision Mayor* minimum as maximum for violating Section 5(i) of Republic Act No. 9262 and to pay the fine of Php200,000.00. [Petitioner] must also undergo psychological counselling or psychiatric treatment; and

2. there being no mitigating or aggravating circumstance, an indeterminate penalty of 12 years and 1 day of *Reclusion Temporal* as minimum to 17 years of *Reclusion Temporal* as maximum for violation [of] Section 5(b) of Republic Act No. 7610.

[Petitioner] is also directed to indemnify AAA the following amounts as damages: the amount of Php30,000.00 as moral damages; civil indemnity of Php20,000.00; and exemplary damages in the amount of Php15,000.00.

SO ORDERED.²⁰

In Criminal Case No. 12-CR-8989, it held that CCC proved that she and petitioner were live-in partners. During their relationship, petitioner abused her both physically and verbally. He even threatened to chop her body into pieces. Verily, petitioner's acts caused CCC mental and emotional anguish.²¹

In Criminal Case No. 12-CR-8990, the RTC noted that petitioner's act of touching AAA's vagina and forcing her to hold his penis clearly subjected the latter to sexual abuse. AAA was only 7 years old at the time of the abuses.²²

Aggrieved, petitioner appealed to the CA.

The Ruling of the CA

In the assailed Decision dated March 3, 2020, the CA affirmed with modification as to the penalty the RTC Decision. It ruled that all the elements of violation of Section 5(i) of Republic Act No. 9262 were present in the case. Petitioner physically and verbally would abuse CCC; he would also threaten to kill her, but in the end, he would persuade her to reconcile with him. Under the circumstances, she suffered both mental and emotional anguish through petitioner's repeated physical, verbal, and emotional abuses.²³

²⁰ *Id.* at 80.

²¹ *Id.* at 74.

²² *Id.* at 76-77.

²³ *Id.* at 42-43.

The CA likewise held that the RTC did not err in finding petitioner guilty of violating Section 5(b) of Republic Act No. 7610. It observed that AAA narrated in a straightforward, candid, and spontaneous manner how his father, herein petitioner, touched her vagina and made her hold his penis against her will. These, according to the CA, constituted Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b)²⁴ of Republic Act No. 7610. The *fallo* of the CA Decision reads:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated 21 December 2017 of the Regional Trial Court of ██████████, Benguet Branch ██████ is AFFIRMED with MODIFICATIONS:

(1) In Criminal Case No. 12-CR-8989, [petitioner] is found GUILTY beyond reasonable doubt of violation of Section 5(i) of Republic Act No. 9262 and is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. He is also ORDERED to pay a fine of [PHP] 200,000.00 and is DIRECTED to undergo a mandatory psychological counselling or psychiatric treatment, and to report his compliance therewith to the court of origin within fifteen (15) days after the completion of such counselling or treatment.

(2) In Criminal Case No. 12-CR-8990, [petitioner] is found GUILTY beyond reasonable doubt of Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 and is hereby sentenced to an indeterminate penalty of twelve (12) years, ten (10) months and twenty one (21) days of *reclusion temporal* minimum, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* medium, as maximum. He is also ORDERED to pay [AAA] the following: [PHP] 50,000.00 as civil indemnity, [PHP] 50,000.00 as moral damages, and [PHP] 50,000.00 as exemplary damages. The [petitioner] is further ordered to pay a fine of [PHP] 15,000.00.

(3) Legal interest at the rate of six percent (6%) per annum is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.²⁵

Aggrieved, petitioner moved to reconsider the CA Decision. The CA denied it in the assailed Resolution dated January 8, 2021. It discussed:

²⁴ *Id.* at 43.

²⁵ *Id.* at 49-50.

As correctly pointed out by the OSG, [petitioner's] arguments are a mere rehash of the matters already judiciously passed upon by this Court in the assailed Decision. As will be recalled, this Court, in the assailed Decision agreed with the findings of the trial court that [CCC's] testimony sufficiently established the acts constituting psychological violence committed by the [petitioner], the effect of which caused her moral and emotional anguish. On the other hand, [AAA's] testimony in open court also sufficiently showed that [petitioner] committed lascivious conduct against her. She was straightforward and spontaneous in recalling how [petitioner] touched her vagina and made her hold his penis against her will. Finally, this Court reiterates the oft-repeated rule that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case.²⁶

Hence, the present Petition.

Petitioner contends that the prosecution failed to demonstrate the anguish which he allegedly caused to CCC. Nowhere in CCC's testimony did she state the details of how she suffered mentally or emotionally. In the absence of a specific testimony to this effect, it cannot be said that the prosecution established all the elements of psychological violence.²⁷

Further, petitioner argues that the prosecution failed to prove all the elements of violation of Section 5(b) of Republic Act No. 7610. Specifically, the law requires that: (1) AAA was either exploited in prostitution or subjected to sexual abuse; and (2) she is a child as defined under Republic Act No. 7610.²⁸

In its Comment (On the Petition for Review on *Certiorari* dated 10 March 2021),²⁹ the Office of the Solicitor General asserts that the grounds relied upon in the present Petition are a mere rehash of the matters previously raised and considered by the CA.³⁰

The Issues

The core issue to be resolved in the case is whether the CA erred in affirming petitioner's conviction for: (1) psychological violence under Section 5(i) of Republic Act No. 9262 committed against his common-

²⁶ *Id.* at 54-55.

²⁷ *Id.* at 21.

²⁸ *Id.* at 24.

²⁹ *Id.* at 120-130.

³⁰ *Id.* at 125.

law partner, CCC; and (2) violation of Section 5(b) of Republic Act No. 7610 committed against his daughter, AAA.

The Ruling of the Court

The Petition is without merit.

At the outset, it is well-settled that only questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts. It will not entertain questions of fact considering that the factual findings of lower courts are deemed final, binding, and conclusive when supported by substantial evidence.³¹ Questions of fact include the review of the truthfulness or falsity of the parties' allegations, or the correctness of the lower court's appreciation of the evidence presented.³²

In any case, all the arguments raised are a mere rehash of petitioner's arguments before the CA that had been carefully considered and found without merit. The Court finds no cogent reason to disturb the factual findings of the RTC and the CA.

Petitioner is guilty of violation of Section 5(i) of Republic Act No. 9262 committed against CCC

In Criminal Case No. 12-CR-8989, petitioner is guilty of psychological violence committed against her common-law partner, CCC, under Section 3(c), in relation to Section 5(i)³³ of Republic Act No. 9262.

Section 3(c) of Republic Act No. 9262, provides:

Section 3. *Definition of Terms.* — As used in this Act:

....

- C. "Psychological violence" refers to acts or omissions, causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a

³¹ *Lydia Cu v. Ventura*, 840 Phil. 650, 656–657 (2018).

³² *Id.* at 658.

³³ An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes. Approved on March 8, 2004.

member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

On the other hand, Section 5(i) of the same law penalizes some forms of psychological violence that are inflicted on victims who are women and children through the following acts:

- (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or access to the woman's child/children.

The RTC and the CA are correct in finding that all the following elements of violation of Section 5(i) of Republic Act No. 9262 are present in the case, i.e.:

- (1) The offended party is a woman and/or her child or children;
- (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;
- (3) The offender causes on the woman and/or child mental or emotional anguish; and
- (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.³⁴

In *Reyes v. People*,³⁵ the Court explained that conviction under Section 5(i) of Republic Act No. 9262 requires proof of the indispensable requirements of: (1) psychological violence as the means employed by the perpetrator consisting of any acts enumerated in Section 5(i) or similar acts; and (2) the mental or emotional suffering or damage sustained by the offended party.³⁶ Moreover, “[t]he law does not require proof that the victim becomes psychologically ill due to the psychological violence done by her abuser. Rather, the law only requires emotional anguish and mental suffering to be proven. To establish emotional anguish or mental suffering,

³⁴ *Dinamling v. People*, 761 Phil. 356, 373 (2015).

³⁵ 855 Phil. 991 (2019).

³⁶ *Id.* at 1004.

jurisprudence only requires that the testimony of the victim to be presented in court, as such experiences are personal to this party.”³⁷ In *Dinamling v. People*,³⁸ the Court discussed the concept of psychological violence; thus:

[P]sychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused to or the damage sustained by the offended party. To establish psychological violence as an element of the crime, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i) or similar such acts. And to establish mental or emotional anguish, it is necessary to present the testimony of the victim as such experiences are personal to this party.³⁹

The first and second elements are present considering that the offended party, CCC, is petitioner’s common-law partner, or at the very least a woman with whom he has a common child.

As to the third and fourth elements, it is duly established that petitioner committed *repeated* physical and verbal violence against CCC. CCC narrated:

Q: During that time your live-in partner went to your boarding house on [sic] March 2012, who were there?

A: Me and my daughter [AAA].

Q: Where was your boarding house at that time?

A: In [REDACTED], Benguet.

Q: What happened then when your live-in partner went to your boarding house?

A: He went there to ask for money and something else and he said he would like to go back to [sic] me but I refused.

Q: Why do you not want to go back to him?

A: Because he always hurt me.

Q: What else, why do you not want to go back to him?

A: He has no work, he was always drunk and he always hit me.

COURT: How does he hurt you?

A: He would carry the tank of the LPG and throw it at me, he would slap me and chase me with a bolo.

³⁷ *Araza v. People*, 882 Phil. 905, 919 (2020).

³⁸ 761 Phil. 356 (2015).

³⁹ *Id.* at 376.

COURT: How big is the LPG?

A: 50 kilograms.

....

Q: What did he do that's why you do not want to go back to the relationship with him?

A: He would always hurt me and he does not have a job.

....

Q: Why do you not visit him there?

A: Because he threatened me.

Q: What did he say when he threatened you?

A: He told me not to show myself to him because I know what will happen.

Q: What did he say will happen to you?

A: He said that he would chop me and it's okay for him to stay at the prison after what he will do.⁴⁰

Significantly, CCC's testimony provided material details about petitioner's words, actions, and patterns of behavior that were all intended to inflict mental or emotional suffering upon her. For instance, she recalled the many threats, insults, humiliation, and controlling behaviors of petitioner that were designed, whether explicitly or implicitly, to harm CCC. According to CCC, she had been suffering from constant verbal and physical abuse from petitioner since the start of their relationship. This is precisely why she left him and went to ██████████, Benguet to work. Yet, petitioner continued to *terrorize* her. He would go to her boarding house, make a scene, and embarrass her in front of others. He would forcibly open the door of the boarding house or say vicious words. He would also harass and intimidate CCC with his *bolo* and threaten to chop her body. At one point, he even tried to hit her with an LPG tank. CCC's Sworn Statement is also worth noting, viz.:

03Q: Why are you filing a complaint against your former live-in partner, [BBB255466]?

A: Because he kept on coming to my boarding house, disturbing me and our daughter, [AAA], 8 years old [,] and at around 8:30 PM of this date, June 11, 2012, my daughter and I and our visitor who are from ██████████, La Union were already sleeping when we were awoken [sic] when somebody knocked on the door then shouted. I told to [sic] one of my visitor [sic] to open the door thinking that said person is [sic] my son [,] but when

⁴⁰ RTC records, Criminal Case No. 12-CR-8989, pp. 40-41.

my visitor opened the door, she was shocked and uttered, to quote "ni [BBB255466] met". With that, I told to [sic] [BBB255466] to come inside [sic] and when he entered, I observed him under the influence of liquor and angry and told me, to quote "ringen dayta ubing, sukatam" (referring to our daughter, [AAA]).

04Q: What happened next?

A: With his loud voice, the caretaker of our boarding house came and told him to calm down. I then grabbed the opportunity [,] so I woke up [AAA] and we escaped through the window of our room and sought assistance to this police station.

05Q: You have stated that [BBB255466] kept on going to your boarding house[,] disturbing you and your daughter, when did this incident happened [sic]?

A: It started on [sic] the month of May 2012 when he let our daughter pinpoint my boarding house at [REDACTED], Benguet [,] and our daughter told me that her father threatened her. And one time, when our daughter was with me and we slept at the boarding house of my employer, our co-boarders told me that [BBB255466] slept at my boarding house. When I learned such, I confronted him [,] but he got angry and even told me to thank him as he slept thereat. From then on[,] he kept on coming to my boarding house specially [sic] so when our daughter was with me as [sic] he will let our daughter stay with me but after which, he will come to get her [,] and if he will come he is under the influence of liquor then telling me unsavory words and even telling words against my siblings. He even telling [sic] me that we will live together again and touching [sic] me maliciously.

06Q: When did you started [sic] living together with [BBB255466]?

A: We started living together year 2003 at [sic] [REDACTED] La [U]nion. Sometime year 2008, we rented a boarding house in [REDACTED], Benguet. On year 2010, we had a misunderstanding [,] and he manhandled me [,] so I decided to leave along with our daughter, [AAA]. On June 4, 2010, I was about to enroll [AAA] when we met [BBB255466] and he invited us to eat at Jacks Restaurant at [REDACTED], Benguet when he suddenly took [AAA] [,] and they left on board a taxi cab.

06Q: What happened next?

A: I did not followed [sic] them in [REDACTED], [L]a Union for fear that something might happen to me if I will follow them because [BBB255466] told me one time, to quote "tadtadtaden kan tupay nalaka ka lang nga itogawan ijay baludan" though [BBB255466] texting [sic] me to send money for our daughter in which I was sending money for her. On the last week of March 2012, he came to the trading post together with our daughter. From then on, whenever [BBB255466] and [AAA] will come here in [sic] [REDACTED], Benguet, I will met [sic] them at McDonald, [REDACTED], Benguet as I don't

want to give my address to him until he learned my address.⁴¹

Intent to cause psychological violence can be established by the testimony of the victim herself, CCC, as her narration provides direct evidence of petitioner's actions and their impact. In cases involving psychological violence, the victim's testimony is crucial because it sheds light on the abuser's behavior, intent, and the resulting harm. In the case, petitioner's repeated physical abuse created a *cycle of fear*, which perpetuated fear, control, and emotional harm in CCC. He employed physical violence upon CCC, his common-law spouse, and created the perfect foundation for fear. His acts conveyed to CCC that she was *vulnerable* and that he held power over her. This physical violence is then accompanied by *threats*—promises of future harm and social humiliation—which *amplify* CCC's fear, even in the absence of immediate physical violence. As a result, petitioner's persistent threats kept CCC in a constant state of anxiety; she never felt safe or secure. In other words, he planted in CCC's mind that she was vulnerable and that he was watching her closely. She has then become extra-cautious and hyper-vigilant, always anticipating the next instance of violence. At this point, the likelihood of petitioner's abuse in an unpredictable environment heightened CCC's distress, as she has to live in constant fear and agony. The CA found:

In finding the [petitioner] guilty of psychological violence, the trial court aptly ruled:

"In the case for violation of Republic Act No. 9262, [CCC] stated that from the start of her common law relationship, she had been suffering from the constant verbal and physical abuse from [petitioner]. This was the reason she left him and went to [REDACTED] Benguet.

However, even with her trying to free herself from the clutches of an abusive partner, [petitioner] followed her and continued with his harassment [of CCC]. He would still inflict verbal and physical abuse on her. Because he was not gainfully employed, he would also ask [CCC] to give him money. He also threatened to kill her, carrying a bolo and following her with it and even stated that he will chop her to pieces and will not mind if he will go to jail because of what he did.

⁴¹ RTC records, Criminal Case No. 12-CR-8989, pp. 5-6.

Clearly, all these acts as testified by [CCC] are the psychological violence committed by the [petitioner] on her the effect of which caused her moral and emotional anguish giving her enough courage to leave [petitioner] to escape such abuses.”

This Court further takes note that based on [CCC’s] testimony, she would always end up crying each time the [petitioner] would physically and verbally abuse her. The [petitioner] would also threaten to kill [CCC] [,] and yet after making threats to her life, the [petitioner] would persuade [CCC] to reconcile with him. These, taken together with the trial court’s own observations as well as the portions of [CCC’s] testimony quoted in the trial court’s decision, are enough to convince Us that [CCC] suffered mental and emotional anguish through the repeated physical, verbal [,] and emotional abuse of the [petitioner]. Anguish causes distress to someone, or makes someone suffer intense pain or sorrow. Here, without a doubt, [CCC] by her own recount of the situation, was thoroughly distressed by the [petitioner’s] acts.⁴²

Considering petitioner’s persistent behavior and actions, it becomes evident that his actions were *not* merely isolated incidents; they were part of a *deliberate pattern* aimed at instilling fear and causing emotional distress to CCC. His persistence highlighted a *willful disregard* for her well-being. Such *calculated repetition* of abuse, not to mention the *escalation* thereof, indicated a clear *intent to dominate and harm* CCC, both physically and psychologically.

At this point, it bears noting that the determination of whether mental anguish and suffering was duly proven by the prosecution is a question of fact that, as mentioned earlier, is beyond the province of a Petition for Review on *Certiorari*. Factual findings of the RTC, especially when affirmed by the CA, are accorded respect and even finality. Indeed, the credibility of witnesses is a matter best assessed by the RTC that has the unique position and firsthand opportunity to note the demeanor, attitude, and candor of the witness.⁴³

Having failed to show that the circumstances in the case fall under any of the exceptions, petitioner cannot insist on the review of the factual findings of the lower courts.

As for the penalty, the imposed indeterminate sentence of four years and two months of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum, must be modified. Section 6 of Republic Act No. 9262 reads:

⁴² *Rollo*, pp. 42–43.

⁴³ *People v. Salazar*, 648 Phil. 520, 532 (2010).

Section 6. *Penalties.* — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

....

(l) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than Three hundred thousand pesos (P300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court.

In *Reyes*,⁴⁴ the Court applied the Indeterminate Sentence Law (ISLAW) in determining the proper penalty to be imposed for violation of Section 5(i) of Republic Act No. 9262. Accordingly, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, which is *prision correccional*, or six months and one day to six years. On the other hand, the maximum term shall be that which could be properly imposed under the law which is eight years and one day to 10 years of *prision mayor* there being no aggravating or mitigating circumstances attending the commission of the crime.⁴⁵ The Court, thus, deems it proper to impose upon petitioner the indeterminate penalty of six months and one day of *prision correccional* as minimum, to eight years and one day of *prision mayor* as maximum.

In addition, the imposition of a fine of PHP 100,000.00 and the order directing petitioner to: (1) submit himself to a mandatory psychological counselling, or psychiatric treatment; and (2) to report his compliance therewith to the court of origin are proper.

Petitioner is also guilty of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Republic Act No. 7610, Article III, Section 5(b), committed against [AAA]

⁴⁴ *Supra* note 35.

⁴⁵ *XXX v. People*, 893 Phil. 840, 854 (2021).

In Criminal Case No. 12-CR-8990, the RTC convicted petitioner plainly under Section 5(b) of Republic Act No. 7610. However, the CA underscored that AAA was only 7 years old at the time of the incident. Hence, it held him guilty of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610 which defines and penalizes Acts of Lasciviousness committed against a child *under* 12 years old, *viz.*:

Sec. 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 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 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[.]

For conviction under Section 5(b) of Republic Act No. 7610, the following requisites must be established: “(1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that child, whether male or female, is *below* 18 years of age.”⁴⁶

Under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, “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.”

⁴⁶ *Dela Cruz v. People*, 903 Phil. 801, 813 (2021).

Further, jurisprudence teaches that before an accused may be held criminally liable under this section, the requisites of the crime of Acts of Lasciviousness penalized under Article 336 of the Revised Penal Code must be satisfied in addition to the requisites under Section 5(b) of Republic Act No. 7610. Article 336 of the Revised Penal Code defines and penalizes Acts of Lasciviousness as follows:

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 *prisión correccional*.

The elements of Acts of Lasciviousness under Article 336 of the Revised Penal Code are: (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.”⁴⁷

All the elements are present in the case.

Petitioner tries to escape conviction by contesting the age of AAA at the time of the commission of the crime. However, based on the Certificate of Live Birth,⁴⁸ AAA was born on [REDACTED]. AAA’s birth certificate is the best evidence of a person’s age and date of birth. It is an official record and is considered *prima facie* evidence of the facts stated therein.

Further, the prosecution sufficiently established the element of “lascivious conduct”. Records show that petitioner touched the vagina of his daughter, AAA, when the latter was only 7 years old; he also made her hold his penis. At this point, the law punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subject to *other sexual abuses*. 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 lascivious conduct through the coercion or intimidation by an adult, as in AAA’s case. Intimidation must be viewed in the light of the victim’s perception and judgment at the time

⁴⁷ *Carbonell v. People*, 901 Phil. 501, 506–507 (2021).

⁴⁸ RTC records, Criminal Case No. 12-CR-8990, p. 8.

of the commission of the crime, taking into consideration the age, size, and strength of the parties.⁴⁹ AAA recalled:

Q: In March 2012, you were staying in [REDACTED], Benguet at that time?

A: Yes sir.

.....

Q: And while you were in [REDACTED] staying with your father in the house of your uncle [DDD], did your father do anything to you?

A: Yes sir.

Q: What did your father do to you?

A: He was holding my private part.

.....

Q: You were on the bed?

A: Yes sir.

Q: So your father did that at night?

A: Yes sir.

Q: You said he touched your private part, how did he touch it, did he touch it with his hands under your clothes?

A: Yes sir.

.....

Q: Did you also touch your father's private part?

A: He pulled my hand and put it on his private part.

Q: When you say private part, you are referring to his penis?

A: Yes sir.⁵⁰

The foregoing facts established that petitioner, who exercised moral ascendancy over his own daughter, AAA, engaged her in lascivious conduct within the purview of sexual abuse under Section 5(b) of Republic Act No. 7610. As a minor, she cannot be expected to give rational consent to petitioner's sexual advances. As her father, petitioner also exercised moral ascendancy and influence over her. Hence, the CA correctly convicted petitioner of Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610. The CA aptly observed:

The Supreme Court explained that the phrase, "other sexual

⁴⁹ *People v. Manuel*, 892 Phil. 374, 385-386 (2020).

⁵⁰ RTC records, Criminal Case No. 12-CR-8989, pp. 54-55.

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. It further held that 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. In the fairly recent case of *Fianza v. People*, the Supreme Court explained that a child is generally unable to give rational consent to any lascivious act, and such inability is tantamount to coercion, intimidation or influence. In the present case, the accused-appellant certainly coerced or intimidated AAA when he committed the lascivious acts towards her. It bears emphasis that AAA, who was then seven (7) years old, cannot be expected to give rational consent to the accused-appellant’s lascivious acts. Moreover, the accused-appellant is the biological father of AAA, and moral influence or ascendancy takes the place of violence or intimidation. Lastly, the evidence on record clearly shows that AAA was a child below eighteen (18) years of age, or only seven (7) years old, at the time of the commission of the crime, thereby satisfying the third element. All told, there is no doubt that all the elements for violation of Section 5(b) of R.A. No. 7610 were proven to exist in the case before Us.⁵¹

Following *People v. Tulagan*,⁵² the penalty to be imposed for Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610, is *reclusion temporal* in its medium period which ranges from 14 years, eight months, and one day to 17 years and four months. Applying the ISLAW, considering the aggravating circumstance of relationship, the maximum term of the sentence should be imposed in its maximum period. On the other hand, the minimum penalty should be taken from the penalty that is one degree lower which is *reclusion temporal* in its minimum period; its range is from 12 years and one day to 14 years and eight months.

Here, petitioner should be sentenced to 12 years and one day of *reclusion temporal* as minimum to 17 years and four months of *reclusion temporal* as maximum.

As regards the award of damages, in cases involving Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610, and when the victim is a child under 12 years old or is demented, civil indemnity, moral damages, and exemplary damages should be fixed at PHP 50,000.00 each.⁵³

All the amounts shall earn interest at the rate of 6% per annum reckoned from the date of finality of the Decision until full payment.⁵⁴

⁵¹ *Rollo*, p. 45.

⁵² 849 Phil. 197, 297 (2019).

⁵³ *CICL XXX v. People*, 899 Phil. 467, 486 (2021).

⁵⁴ *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, 929 Phil. 754 (2022), citing *Nacar v.*

In addition, a fine in the amount of PHP 15,000.00 shall be imposed on Marcelo pursuant to Article XII, Section 31(f),⁵⁵ of Republic Act No. 7610.⁵⁶

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 3, 2020, and the Resolution dated January 8, 2021, of the Court of Appeals in CA-G.R. CR No. 41234 are **AFFIRMED** with **MODIFICATION**:

1. In Criminal Case No. 12-CR-8989 filed with Branch █, Regional Trial Court, █, Benguet, petitioner BBB255466 is found **GUILTY** of acts of psychological violence under Section 5(i) of Republic Act No. 9262. He is **SENTENCED** to suffer an indeterminate penalty of six months and one day of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum.

He is **ORDERED** to **PAY** a fine of PHP 100,000.00 and **DIRECTED**: (1) to undergo a mandatory psychological counselling or psychiatric treatment; and (2) to **REPORT** his compliance therewith to the court of origin within 15 days after the completion of such counseling or treatment.

2. In Criminal Case No. 12-CR-8990, filed with Branch █, Regional Trial Court, █, Benguet, petitioner BBB255466 is found **GUILTY** of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Article III, Section 5(b) of Republic Act No. 7610. He is **SENTENCED** to suffer the indeterminate penalty of 12 years and one day of *reclusion temporal* as minimum to 17 years and four months of *reclusion temporal* as maximum.

He is also **ORDERED** to **PAY** a fine of PHP 15,000.00; PHP 50,000.00 as civil indemnity; PHP 50,000.00 as moral damages; and PHP 50,000.00 as exemplary damages.

Gallery Frames, 716 Phil. 267, 281 (2013).

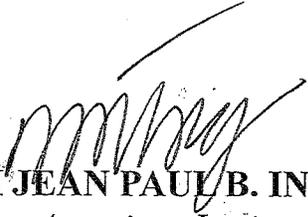
⁵⁵ Article XII — Common Penal Provisions
Sec. 31. *Common Penal Provisions*. —

.....
(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

⁵⁶ *People v. VVV*, 874 Phil. 811, 835 (2020).

These amounts, except for the fine, shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

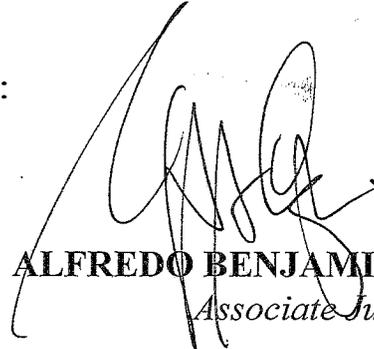
SO ORDERED.



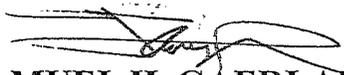
HENRI JEAN PAUL B. INTING
Associate Justice

See Concurring Opinion

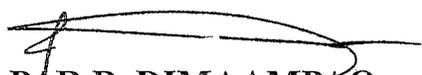
WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



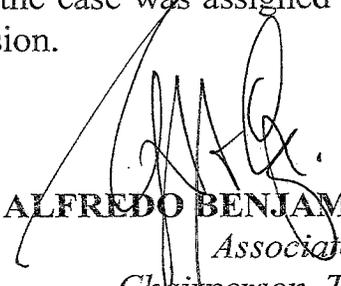
JAPAR B. DIMAAMPAO
Associate Justice

(On official business)

MARIA FILOMENA D. SINGH
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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 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