



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:*

**“G.R. No. 250995 – XXX<sup>1</sup> v. PEOPLE OF THE PHILIPPINES**

**The Case**

This petition for review on *certiorari* assails the Court of Appeals’ Decision<sup>2</sup> dated May 20, 2019 and Resolution<sup>3</sup> dated December 5, 2019 in CA-G.R. CR No. 41176 affirming the verdict of conviction against XXX for two (2) counts of acts of lasciviousness.

**The Proceedings Before the Trial Court**

**The Charges and the Plea**

XXX was charged with two (2) counts of rape defined and penalized under Art. 266-A of the Revised Penal Code (RPC), in relation to Republic Act No. 7610 (RA 7610), *viz.*:

Crim. Case No. R-QZN-13-04663

*That on or about the 2<sup>nd</sup> day of August 2011, in Quezon City, Philippines, the said accused, with force and intimidation, did then and there willfully, unlawfully and feloniously have*

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<sup>1</sup> The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017

<sup>2</sup> Penned by Associate Justice Ramon A. Cruz, concurred in by Associate Justice Ramon M. Bato, Jr. and Associate Justice Ronaldo Roberto B. Martin, *rollo*, pp. 30-44.

<sup>3</sup> *Id.* at 46-47.

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*carnal knowledge of AAA<sup>4</sup>, a minor, 11 years of age, without her consent and against her will, which act debases and demeans the intrinsic worth and dignity of the latter as a human being, to the damage and prejudice of said minor.<sup>5</sup>*

Crim. Case No. R-QZN-13-04664

*That on or about the 11<sup>th</sup> day of July 2011, in Quezon City, Philippines, the said accused, with force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, a minor, 11 years of age, without her consent and against her will, which act debases and demeans the intrinsic worth and dignity of the latter as a human being, to the damage and prejudice of said minor.<sup>6</sup>*

On arraignment, XXX pleaded not guilty to both charges.<sup>7</sup> Trial ensued.

### **Prosecution's Version**

The testimonies of complainant AAA, her grandmother, and Dr. Michael Nick W. Sarmiento (Dr. Sarmiento) may be summarized, in this wise:

Eleven (11)-year old AAA was living with her relatives including her first cousin XXX in their grandmother's house in Quezon City. On July 11, 2011, around midnight, AAA was sleeping beside her sister and cousins when she felt someone cover her with a blanket. When she looked up, she saw XXX who then was already rubbing his penis on her legs. She tried to resist him but XXX held her legs and spread them. XXX then licked her vagina and mounted her. AAA kicked XXX in the face and ran to the bathroom to wash off the white sticky substance on her legs. When she came back to the room, she lay next to her grandmother.<sup>8</sup>

On August 2, 2011, around midnight, she was roused from sleep when she felt someone licking her vagina. When she looked up, she saw XXX again on top of her about to insert his penis into her vagina. Just in time, she was able to kick him again in the face and run to the bathroom. She washed off the white sticky substance on her legs and vagina and went back to lie down next to her grandmother.<sup>9</sup>

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<sup>4</sup> Supra note 1.

<sup>5</sup> *Rollo*, p. 64.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 65.

<sup>8</sup> *Id.* at 32-33.

<sup>9</sup> *Id.* at 33.

She was too scared back then to tell anyone about the twin incidents. But about two (2) months later, on November 1, 2011, she finally mustered enough courage to tell her grandmother what XXX did to her. She and her grandmother then reported the incidents to the police.<sup>10</sup>

The prosecution offered in evidence AAA's birth certificate which showed that she was only eleven (11) years old at the time of the incidents of sexual abuse.<sup>11</sup>

### **Defense's Version**

On the other hand, XXX and his mother testified:

XXX testified that on the days in question, July 11, 2011 and August 2, 2011, he was working at the Golden Dragon Metal Products Incorporated in Mandaluyong City. He only goes home to the place where he and AAA both stay only during the 15<sup>th</sup> and 30<sup>th</sup> days of every month.<sup>12</sup>

It was impossible for him to have sexually abused AAA considering that the place where they were staying was too small and full of occupants. More, the charges against him were made up by AAA upon the instigation of their grandmother who had an axe to grind against him. In fact, their grandmother also threatened to file charges against his brother and uncle because she wanted them to leave her house. She also had a quarrel with his mother involving the ownership of the house which they all live in.<sup>13</sup>

### **The Trial Court's Ruling**

As borne in its Decision<sup>14</sup> dated November 4, 2017, the trial court rendered a verdict of conviction against XXX not for two (2) counts of rape but for two (2) counts of acts of lasciviousness, viz.:

WHEREFORE, in view of the foregoing premises, the court finds as follows:

1. In Criminal Case No. R-QZN-13-04663 the accused [XXX] is ACQUITTED of the charge of Rape under Article 266-A of the Revised Penal Code. However, he is found guilty beyond

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<sup>10</sup> *Id.*

<sup>11</sup> Referred to as "Exhibit B and B1" under the trial court's Decision dated November 4, 2017, *id.* at 77.

<sup>12</sup> *Id.* at 67.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 64-80.

reasonable doubt of the crime of Acts of Lasciviousness punishable under Article 336 of the Revised Penal Code, [necessarily] included in the offense charged therein and is hereby sentenced to suffer the penalty of 12 years, 10 months[,] and 21 days of Reclusion Temporal Minimum as minimum penalty to 15 years, 6 months and 20 days of Reclusion Temporal Medium as maximum penalty. Also, he is ordered to pay the victim Twenty Thousand Pesos (P20,000.00) as civil indemnity; Fifteen Thousand Pesos (P15,000.00) as moral damages; Fifteen Thousand Pesos (P15,000.00) as exemplary damages and a fine of Fifteen Thousand Pesos (P15,000.00), all with interest at the rate of 6% per annum from the date of finality of this Decision until fully paid; and

2. In Criminal Case No. R-QZN-13-04664 the accused [XXX] is ACQUITTED of the charge of Rape under Article 266-A of the Revised Penal Code. However, he is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness punishable under Article 336 of the Revised Penal Code, necessarily included in the offense charged therein and is hereby sentenced to suffer the penalty of 12 years, 10 months[,] and 21 days of Reclusion Temporal Minimum as minimum penalty to 15 years, 6 months and 20 days of Reclusion Temporal Medium as maximum penalty. Also, he is ordered to pay the victim Twenty Thousand Pesos (P20,000.00) as civil indemnity; Fifteen Thousand Pesos (P15,000.00) as moral damages; Fifteen Thousand Pesos (P15,000.00) as exemplary damages and a fine of Fifteen Thousand Pesos (P15,000.00), all with interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.<sup>15</sup>

The trial court ruled that the prosecution failed to establish the element of carnal knowledge in the two (2) cases. XXX, however, was found guilty of acts of lasciviousness, a crime necessarily included in the charge of rape. It found that eleven (11)-year old AAA positively identified XXX and narrated how he undressed her, licked her vagina, rubbed his penis on her legs, mounted her, and ejaculated on her legs in both cases.<sup>16</sup>

### **The Proceedings Before the Court of Appeals**

On appeal, XXX faulted the trial court for giving full weight and credence to AAA's purportedly incredible testimony. He argued that both incidents happened around midnight and in the blanket of darkness, thus, AAA could not have identified him as her abuser.<sup>17</sup>

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<sup>15</sup> *Id.* at 80.

<sup>16</sup> *Id.* at 68-79.

<sup>17</sup> *Id.* at 35.

For its part, the People, through the Office of the Solicitor General (OSG) riposted, in the main: XXX should be convicted of rape since AAA categorically stated that she was raped by the former and her testimony was corroborated by medical findings.<sup>18</sup>

### **The Court of Appeal's Ruling**

On appeal, the Court of Appeals affirmed under Decision<sup>19</sup> dated May 20, 2019. It denied XXX's subsequent motion for reconsideration under Resolution<sup>20</sup> dated December 5, 2019.

### **The Present Petition**

XXX now seeks affirmative relief from the Court and prays anew for his acquittal. He reiterates his argument before the Court of Appeals that he was not positively identified by AAA, thus, he must be acquitted.

### **Issue**

Did the Court of Appeals err in affirming the verdict of conviction against XXX for two (2) counts acts of lasciviousness?

### **Ruling**

We affirm.

In *People v. Tulagan*,<sup>21</sup> the Court decreed that when the victim is under twelve (12) years of age at the time the offense was committed, as here, the offense shall be designated as Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 of RA 7610. Thus, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below twelve (12) years of age, the elements of the crime of acts of lasciviousness under Article 336 of the RPC must be present in addition to the elements of sexual abuse under Section 5 of RA 7610.

To sustain a verdict of conviction under Section 5 (b) of RA 7610, the following elements must be proved: 1) the accused commits

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<sup>18</sup> *Id.* at 35.

<sup>19</sup> *Id.* at 30-40.

<sup>20</sup> *Id.* at 46-47.

<sup>21</sup> G.R. No. 227363, March 12, 2019.

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 3) the child, whether male or female, is below 18 years of age.<sup>22</sup>

On the other hand, the elements of acts of lasciviousness under Article 336 of the RPC are: a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age. Lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity.<sup>23</sup>

Here, all the elements of lascivious conduct under RA 7610 and acts of lasciviousness under Article 336 of the RPC were clearly established.

Eleven (11)-year old AAA positively testified that on July 11, 2011, she was roused from sleep when she felt someone cover her with a blanket. When she looked up, she saw XXX already on top of her, rubbing his penis on her legs. XXX then spread her legs and licked her vagina. She tried to free herself but failed. After XXX had accomplished his bestial act, she managed to kick him in the face, rush to the bathroom and wash off the sticky white substance on her legs. Thereafter, she lay next to her grandmother and went back to sleep.

As for the second incident, AAA categorically testified that on August 2, 2011, she was again roused from sleep when she felt someone licking her vagina. She saw XXX already on top of her and was about to insert his penis into her vagina. Fortunately, she was able to stop XXX in the nick of time as she, there and then, kicked him in the face like what she did during the first incident. Then she immediately ran to the bathroom and washed off the white sticky substance on her legs.

The trial court found AAA's testimony credible, positive, straightforward, and categorical. Indeed, the trial court's factual findings and evaluation of the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court

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<sup>22</sup> *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019.

<sup>23</sup> *Id.*

has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not. This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.<sup>24</sup>

XXX's allegation that their grandmother instigated the filing of the criminal charges against him because she had an axe to grind against him must fail. No grandmother would stoop so low as to subject her granddaughter to the embarrassment of a public trial knowing that such a traumatic experience would damage the latter's psyche and mar her life if the charge is not true. More, it is settled that family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast in her testimony throughout the direct and cross-examinations that she was sexually abused.<sup>25</sup>

Against AAA's positive, straightforward, and categorical testimony, XXX only offered denial and alibi. We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.<sup>26</sup>

### **Penalty and damages**

The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610, if the victim is below twelve (12) years old when the offense was committed, is *reclusion temporal* in its medium period. Applying the Indeterminate Sentence Law, the Court of Appeals correctly sentenced XXX to twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

In accordance with our pronouncement in *People v. Tulagan*,<sup>27</sup> however, the awards of civil indemnity should be increased from ₱20,000.00 to ₱50,000.00, moral damages from ₱15,000.00 to

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<sup>24</sup> *Medina Jr. v. People*, 724 Phil. 226, 234-235 (2014).

<sup>25</sup> *People v. Ubina*, 554 Phil 199, 210 (2007).

<sup>26</sup> *People v. Gabriel*, 807 Phil. 516, 528 (2017).

<sup>27</sup> *Supra* note 21.

₱50,000.00, and exemplary damages from ₱15,000.00 to ₱50,000.00. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

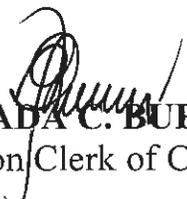
**WHEREFORE**, the petition is **DENIED**. The Court of Appeals' Decision dated May 20, 2019 and Resolution dated December 5, 2019 are **AFFIRMED WITH MODIFICATION**.

XXX is found guilty of acts of lasciviousness defined and penalized under Art. 336 of the Revised Penal Code (RPC), in relation to Sec. 5 of Republic Act No. 7610 (RA 7610). He is sentenced to twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

He is further ordered to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. These amounts shall earn six percent (6%) interest per annum from finality of this Resolution until fully paid.

**SO ORDERED.”**

**By authority of the Court:**

  
LIBRADA C. BUENA  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 41176)

The Solicitor General  
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The Hon. Presiding Judge  
Regional Trial Court, Branch 86  
1100 Quezon City  
(Crim. Case Nos. R-QZN-13-04663  
& R-QZN-13-04664)

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