



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 13, 2020 which reads as follows:*

**“G.R. No. 250968 – YYY<sup>1</sup> CR No. 01625-MIN [CRIM. CASE Nos. 2012-5028 to 2012-5029] v. People of the Philippines**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>2</sup> dated April 26, 2019 and Resolution<sup>3</sup> dated November 6, 2019 both issued by the Court of Appeals Cagayan De Oro City (CA) in CA- G.R. CR No. 01625-MIN, which denied the accused’s appeal and motion for reconsideration, respectively.

YYY<sup>4</sup> (accused) was charged with acts of lasciviousness and rape before the Regional Trial Court (RTC), Misamis Oriental of 10<sup>th</sup> Judicial Region, Branch 27.

In Criminal Case No. 2012-5028, the accused was charged with acts of lasciviousness, in relation to Republic Act (R.A.) No. 7610, as follows:

That in the evening of the second week of April 2012, x x x in [S]itio [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named

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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 their immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials 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 Walter S. Ong, with Associate Justices Edgardo A. Camello and Florencio M. Mamauag, Jr., concurring; *rollo*, pp. 35-61.

<sup>3</sup> Id. at 63-64.

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

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accused who is the grandfather of the private offended party, did then and there wilfully, unlawfully and feloniously, with lewd design, commit an [sic] acts of lasciviousness upon the person of [AAA],<sup>5</sup> 8 years old child, by then and there touching her private parts, against her will and by means of force and intimidation.

Contrary to and in violation of Article 336 of the Revised Penal Code, in relation to Section 5, paragraph (b) of [R.A.] No. 7610.<sup>6</sup>

In Criminal Case No. 2012-5029, the accused was charged with rape through sexual assault, as follows:

That in the second week of April 2012, in the evening in [S]itio [REDACTED], Philippines and within the jurisdiction of this Honorable Court, the above-named accused who is the grandfather of the private offended party, did then and there wilfully, unlawfully and feloniously assaulted [AAA],<sup>7</sup> 8 year old child, by forcing her to sleep with him, and laid down beside her, and accused put his hand inside the panty of the said child and inserted his finger on [sic] the vagina of [AAA], and made the push and pull movement many times, against her will.

Contrary to and in violation of Article 266-A, Second Form, of the Revised Penal Code, in relation to Section 5, paragraph b of Republic Act No. 7610.<sup>8</sup>

In presenting the testimony of AAA, the prosecution was able to establish the age of the victim, her relationship to the accused, and the event that transpired sometime in the second week of April 2012 when she slept on the floor inside the house together with her cousins and the accused. On said date, she was suddenly awakened when she felt the accused place his hand inside her panty and inserted his finger into her vagina making a push and pull movement. The same thing happened the following day.<sup>9</sup>

For his defense, the accused merely denied the allegations and claimed that the cases were filed as a form of vengeance when he reprimanded his daughter, the mother of AAA for stealing coconuts owned by another person.<sup>10</sup>

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<sup>5</sup> Id.  
<sup>6</sup> Id. at 36.  
<sup>7</sup> Supra note 3.  
<sup>8</sup> Id. at 36-37.  
<sup>9</sup> Id. at 100-101.  
<sup>10</sup> Id.

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**RTC Ruling**

The RTC found the accused guilty beyond reasonable doubt of two (2) counts of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 in Criminal Cases No. 2012-5028 and No. 2012-5029 on November 29, 2017.

The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused, [REDACTED], GUILTY beyond reasonable doubt of two (2) counts of the crime of Sexual Abuse under Section 5(b), Article III of [R.A.] No. 7610, and hereby sentences him to suffer for each count the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to fifteen (15) years of *reclusion temporal* medium, as maximum; to pay a fine of [P]15,000.00 and the costs of the suit; and to pay [AAA] P20,000.00 as civil indemnity and [P]15,000.00 as moral damages.

SO ORDERED.<sup>11</sup>

The RTC reasoned that the prosecution was able to establish beyond reasonable doubt all the elements of sexual abuse under Section 5(b), Article III R.A. No. 7610 which are: (1) that the accused committed the act of sexual intercourse or lascivious conduct; (2) that the said act is performed with a child exploited in prostitution or subjected to sexual abuse; and (3) that the child, whether male or female, is below 18 years of age.<sup>12</sup>

The first and second elements were proven when AAA testified that the accused is her grandfather and that she was not able to resist the advances of her grandfather because he covered her mouth and placed his legs around her and that her *lolo* threatened to kill her if she would tell on him. This sufficiently exhibited that the child was made a subject of sexual abuse under the “influence” and “coercion” of the accused.<sup>13</sup>

The prosecution also presented AAA’s Certificate of Live Birth showing that she was born on June 9, 2004 and therefore is only seven (7) years and ten (10) months old when the incident happened, proving the third element of Section 5(b), Article III, R.A. No. 7610.<sup>14</sup>

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<sup>11</sup> Id. at 38-39.

<sup>12</sup> Id. at 102.

<sup>13</sup> Id. at 103-104.

<sup>14</sup> Id. at 104.

In imposing the penalty, the RTC applied the indeterminate sentence law and declared that the maximum term should be *reclusion temporal* in its medium period while the minimum term should be *reclusion temporal* in its minimum period. The RTC also awarded ₱20,000.00 as civil indemnity *ex delicto* and a fine of ₱15,000.00 in accordance with Section 31(f), Article XII of R.A. No. 7610.<sup>15</sup>

### CA Ruling

The CA denied the appeal and affirmed the Judgment of the RTC<sup>16</sup> with modification regarding the penalty imposed. The *fallo* reads:

The appeal is DENIED. The appealed *Judgment* dated [November 29, 2017] issued by the [RTC], 10<sup>th</sup> Judicial Region, Branch 27, █████, Misamis Oriental finding appellant █████ guilty beyond reasonable doubt of two (2) counts of sexual abuse under Section 5, Article III of R.A. No. 7610, in Criminal Cases No. 2012-5028 and No. 2012-5029 is AFFIRMED with MODIFICATIONS, in that appellant █████ is sentenced to a prison term of fourteen (14) years and eight (8) months of *reclusion temporal* minimum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, without eligibility for parole. Appellant █████ is also directed to pay the victim, AAA, for each count of lascivious conduct, the following amounts: (i) ₱15,000.00 as fine; (ii) ₱50,000.00 as civil indemnity; [iii] ₱50,000.00 as moral damages; and [iv] ₱30,000.00 as exemplary damages.

Upon finality of this decision, appellant is directed to pay interest, at the rate of 6% *per annum*, on all the monetary awards for damages from the date of finality until fully paid.

IT IS SO ORDERED.<sup>17</sup>

As the accused puts in issue the lack of laceration in AAA's vagina as shown in the medical certificate issued by the physician, the CA echoed the decision of the RTC and added that proof of hymenal laceration is not an element of rape. The CA also emphasized that the medical examination of the victim or the presentation of the medical certification is not essential to prove the commission of rape, as the testimony of the victim alone is sufficient to convict the accused of the crime. A medical examination is merely corroborative evidence to

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<sup>15</sup> Id. at 104-105.

<sup>16</sup> Id. at 99-106.

<sup>17</sup> Id. at 59-60.

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the testimony of the victim in a rape case. The CA further ruled that the testimony of a rape victim who is of tender age is credible as youth and immaturity are generally badges of truth and sincerity.<sup>18</sup>

However, the CA modified the ruling of the RTC with regard to the penalty imposed. The CA considered the alternative circumstance of relationship as aggravating since the accused is the grandfather of the victim. Hence, with the presence of this aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period. The CA imposed the penalty of 17 years and four months, as maximum, and the minimum term shall be taken from the penalty next lower to *reclusion temporal* minimum, and which ranges from 12 years and one day to 14 years and eight months.<sup>19</sup>

### **Present Petition**

The present petition raises the issue of whether the accused's guilt, based on the law and evidence, was proven beyond reasonable doubt.

The accused asserts that the CA erred in heavily relying on the testimony of the victim which, in his opinion, is incredible and highly improbable since the victim was not the only one inside the small room. She was with her cousins and their parents at the time of the incident. Also, the 8-year-old-victim could have escaped the next day to seek help in order to prevent the same ordeal from happening. But she did not do so.<sup>20</sup>

We are not persuaded.

The fact that the victim's relatives were inside the room sleeping with AAA and their grandfather does not foreclose the possibility that sexual abuse had indeed been done against the 8-year-old child. Lust, as we have sadly witnessed in several cases, as is no respecter of time and place.<sup>21</sup>

Here, the child-victim was clear in her testimony that her grandfather abused her on two occasions. Both the RTC and the CA found her testimony worthy of belief. We find no reason to disturb such findings. Factual findings of trial courts carry great weight and

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<sup>18</sup> Id. at 51-52.

<sup>19</sup> Id. at 58-59.

<sup>20</sup> Id. at 24.

<sup>21</sup> *People v. Elimancil*, G.R. No. 234951, January 28, 2019.

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respect due to the unique opportunity afforded them to observe the witnesses' demeanor at the stand. Greater weight is accorded to these findings when affirmed by the CA.<sup>22</sup>

Also, well settled is the principle that no young girl, such as AAA, would concoct a sordid tale, undergo an invasive medical examination, and then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. Testimonies of child-victims are normally given full weight and credit. Courts are inclined to give credit to the account of an offended party of tender age, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.<sup>23</sup>

Meanwhile, all petitioner could offer is his bare denial. Denial, like *alibi* is an intrinsically weak defense which must be corroborated with strong evidence of non-culpability to merit credibility. Between a categorical statement of the child victim on the one hand and bare denial of the accused, on the other, the former generally prevails.<sup>24</sup>

As for the failure of the victim to immediately run away, we find it unfair to expect a particular standard of behavior from a child-victim given that even full-grown rape victims find it difficult to seek help from other people and might even take them several years just to be able to find the courage to talk about such vile experience. It is similarly unfair to take it against the innocent child for not making any resistance while she was being violated by her own grandfather, whom she probably looked up to with respect, especially at such tender age.<sup>25</sup>

We, therefore, affirm the accused's conviction. Nevertheless, we find it appropriate to correctly designate the proper nomenclature of the offenses.

Here, the CA affirmed the ruling of the RTC, 10<sup>th</sup> Judicial Region, Branch 27, Misamis Oriental in convicting the accused beyond reasonable doubt of two counts of sexual abuse under Section 5, Article III of R.A. No. 7610. However, it was clearly stated in the case of *People v. Tulagan*<sup>26</sup> that the proper designation for the crime

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<sup>22</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

<sup>23</sup> *Supra*.

<sup>24</sup> *See People of the Philippines v. Jessie Gabriel y Gajardo*, 807 Phil. 516-529 (2017).

<sup>25</sup> *See People of the Philippines v. Sonny Ramos y Buenaflor*, G.R. No. 210435, August 15, 2018.

<sup>26</sup> G.R. No. 227363, March 12, 2019.

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committed in Crim. Case No. 2012-5029 is **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code(RPC) in relation to Section 5(b) of R.A. No. 7610**. As discussed in *People v. Tulagan*:

In light of the foregoing disquisition, We hold that Tulagan was aptly prosecuted for sexual assault under paragraph 2, Article 266-A of the RPC in Criminal Case No. SC-6210 because it was alleged and proven that AAA was nine (9) years old at the time he inserted his finger into her vagina. Instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor*, the proper penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct." Hence, the proper nomenclature of the offense should be Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

In the instant case, the victim was proven to be eight years of age or under 12 years old at the time of sexual assault just like in the case of *Tulagan*, whose victim was nine years old at the time of the commission of the crime. Also, both victims were sexually violated when both of their aggressors feloniously inserted their finger into their victim's vagina against their will and consent.

Despite the ruling in the case of *People v. Caoili*,<sup>27</sup> stating that if the victim is under 12 years of age, the nomenclature of the crime is "**Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610**" pursuant to the second *provisio* in Section 5(b) of R.A. No. 7610, to which the imposable penalty is *reclusion temporal* in its medium period, it was discussed in the case of *Tulagan* that upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness no longer falls under Article 336 of the RPC, but now falls under "sexual assault" under paragraph 2, Article 266-A of the RPC.<sup>28</sup>

This is supported by the case of *Dimakuta v. People*,<sup>29</sup> wherein it stated that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266A, paragraph 2 of the RPC, which is punishable by

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<sup>27</sup> 815 Phil. 839-954, (2017).

<sup>28</sup> Supra note 21.

<sup>29</sup> G.R. No. 206513, October 20, 2015.

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*prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No.7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim.

However, if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim who is at least eighteen (18) years of age is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability, or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

To take the cases of *Dimakuta* and *Caoli* both into consideration, if the victim is under 12 years of age or is demented, the nomenclature of the offense should be “Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610” and no longer “Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610”, as stated in the case of *Caoli* since sexual assault as a form of acts of lasciviousness no longer falls under Article 336 but now falls under Article 266-A(2) of the RPC, as amended by R.A. No. 8353.<sup>30</sup>

For Crim. Case No. 2012-5028, the nomenclature is “Acts of Lasciviousness under Art. 366 RPC, in relation to Sec. 5(b) of R.A. No. 7610.”

### Penalty

With regard to the penalty, we affirm the ruling of the CA in the imposition of the penalty in accordance with Section 1 of Act No. 4103 otherwise known as The Indeterminate Sentence Law.

Since R.A. No. 7610 uses the technical nomenclature of the RPC which is “*reclusion temporal* in its medium period, ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months” in providing for the penalty for lascivious conduct, it is clear that the statutory intent is to give the related provisions on penalties for felonies under the RPC the corresponding application to said special laws.<sup>31</sup>

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<sup>30</sup> Supra note 21.

<sup>31</sup> See *People of the Philippines v. Martin Simon y Sunga*, 304 Phil. 725-758 (1994).

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The CA thus correctly appreciated the aggravating circumstance of relationship in this crime of sexual assault although punished under a special law. Hence, we find the penalty of fourteen (14) years and eight (8) months of *reclusion temporal* minimum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, without eligibility for parole to be in order.

### Damages

With respect to damages, we apply again the ruling in the case of *Tulagan*:

For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each. The said amount is based on *People v. Jugueta* which awards civil indemnity and moral damages in the amount of ₱50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal*. In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of ₱50,000.00 should likewise be awarded.<sup>32</sup>

Applying the foregoing, we affirm the CA ruling imposing civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00. As for exemplary damages, we find that the amount should be increased to ₱50,000.00. These awards shall further incur interest at the rate of 6% per annum from the date of finality of this Resolution until fully paid.

**WHEREFORE** the Decision dated April 26, 2019 of the Court of Appeals in CA-G.R. CR No. 01625-MIN is hereby **AFFIRMED** with **MODIFICATION**, in that YYY is found **GUILTY** beyond reasonable doubt of two (2) counts of sexual assault under paragraph 2, Article 266-A of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610 and shall be sentenced, for each count, to prison term of fourteen (14) years and eight (8) months of *reclusion temporal* minimum, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, without eligibility of parole. In addition, YYY is **DIRECTED** to **PAY** the victim, AAA, for each count, civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; and ₱50,000.00 as exemplary damages.

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<sup>32</sup> Supra note 21.

Upon finality of this Resolution, YYY is directed to pay interest, at the rate of 6% per annum, on all the monetary awards for damages from the date of finality until fully paid.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *Librada C. Buena*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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