



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SHARIFF UDDIN *y* SALI,
Petitioner,

G.R. No. 249588

Present:

LEONEN, *J.*, Chairperson,
HERNANDO,
INTING,
DELOS SANTOS,
ROSARIO, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

November 23, 2020

Mis-ABC Bat

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DECISION

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*¹ filed by Shariff Uddin *y* Sali (petitioner) under Rule 45 of the Rules of Court assailing the Decision² dated June 14, 2019 and the Resolution³ dated September 24, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 42179. The assailed CA Decision affirmed with modification the Decision⁴ dated July 4, 2018 of Branch 68, Regional Trial Court (RTC), [REDACTED] in Criminal Case Nos. L-10872 and L-10873 convicting petitioner of: (1) violation of Section 5(b), Article III of Republic Act No. (RA) 7610;⁵ and (2) Attempted Murder under Article

¹ *Rollo*, pp. 12-32.

² *Id.* at 36-59; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Rodil V. Zalameda (now a member of the Court) and Jhosep Y. Lopez, concurring.

³ *Id.* at 61-62; penned by Associate Justice Fernanda Lampas-Peralta with Associate Justices Jhosep Y. Lopez and Geraldine C. Fiel-Macaraig, concurring.

⁴ *Id.* at 82-93; penned by Judge Maria Laarni R. Parayno.

⁵ Entitled "An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties For Its Violation, And For Other Purposes,"

248 in relation to Article 6 of the Revised Penal Code (RPC). The assailed CA Resolution, on the other hand, denied petitioner's subsequent Motion for Reconsideration.⁶

The Antecedents

Two criminal Informations⁷ were filed in the RTC of ██████████ against petitioner, respectively charging him with: (1) violation of Section 5(b), Article III of RA 7610 in relation to RA 8369;⁸ and (2) Attempted Murder under Article 248, in relation to Article 6 of the RPC. The accusatory portions of the Informations read:

1) Criminal Case No. L. 10872 (violation of RA 7610)

That on or about 10:30 in the morning of February 20, 2016 in ██████████ and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously grab [AAA],⁹ a 13 year old minor (DOB 23 Feb. 2002) to a grassy portion and once thereat [held] her private parts, and then inserted his hand into her panty and [caressed] her vagina, committing sexual abuse upon the said minor complainant thereafter [lifted] her and then [threw] her into a ravine, which act is inimical to the best interest or prejudicial to the child's development, to her damage and prejudice.

CONTRARY TO LAW.¹⁰

approved on June 17, 1992.

⁶ CA rollo, pp. 103-110.

⁷ Records (L-10872), pp. 1-2; Records (L-10873), pp. 1-2.

⁸ Entitled, "An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child And Family Cases, Amending Batas Pambansa Bilang 129, As Amended, Otherwise Known As Act Of 1980, Appropriating Funds Therefor And For Other Purposes," approved on October 8, 1997.

⁹ The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and For Other Purposes;" RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and For Other Purposes;" Section 40 of Administrative Matter No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

¹⁰ Record (L-10872), p. 1.

2) *Criminal Case No. L-10873 (Attempted Murder)*

That on or about 10:30 in the morning of February 20, 2016 in [REDACTED] and within the jurisdiction of this Honorable Court, with intent to kill, and abuse of superior strength, did, then and there, wilfully, unlawfully and feloniously, after committing sexual abuse upon [AAA] (offended party), a 13 year old minor (DOB 23 Feb. 2002) and in order to conceal his crime of sexual abuse, lifted and threw the said minor-complainant into a ravine, which cause her injuries to wit: multiple abrasions, upper and lower extremities, accused however was not able to [perform] all the acts of execution which could produce the crime of Murder as a consequence thereof as the injuries sustain[ed] by the minor-complainant [were] not fatal, to the prejudice and damage of the minor complainant.

Contrary to Article 248 in relation to Article 6 of the Revised Penal Code.¹¹

Upon arraignment on March 8, 2016, petitioner pleaded “not guilty” to both charges.¹² Pre-trial and trial ensued.

The RTC synthesized the evidence of the parties as follows:

Evidence for the Prosecution

On the date [of] the incident, February 20, 2016, AAA was 13 years old, having been born on February 23, 2002.

On February 20, 2016 at 10:30 a.m., while AAA was on her way to buy their food and chicken feed per order of her father, she saw [petitioner] from the opposite direction around 15 to 18 meters away from her. At the place where there were no houses, [petitioner] blocked her way, then pulled her to a forested (“*masukal*”) area, and started touching her breast in a circular motion while he was pulling her. She pleaded for him to stop and also tried to resist or pull herself away from him. At that time, [petitioner] also inserted his hand inside her panty and touched her private part. She could not move at that time because she was already afraid. He embraced her while pulling her towards the forested area for around 35 minutes. The

¹¹ Record (L-10873), p. 1.

¹² See Order dated March 8, 2016 penned by Judge Maria Laarni R. Parayno, records (L-10872), pp. 22-23.

[petitioner] also told her not to be noisy. After pulling each other for some time, [petitioner] suddenly carried her and threw her into the ravine which was around 25 meters high from where they were. She then rolled down and hit her head on the ground. She also looked for her other slipper which fell one meter lower from where she fell. Her further rolling down the ravine was prevented by the vines that wrapped around her body. When she finally stood up, she removed the vines from her body, looked for her slipper, and run [sic]. Then, [she] saw a man at the top part of the mountain from where she and [petitioner] were before she was thrown by the latter, and she asked for that man's help. Then, the man came down, got her out of the ravine and brought her to a place where there were already some houses. She learned that the man who helped her was Alvin Santos. At that time, she had many bruises and her body was very painful. She relayed to the people there what happened to her. Subsequently, her father, mother, and elder sister arrived. Then, they proceeded to the police to report. Afterwards, she was brought to the house of the [petitioner] where the [petitioner] and his wife were. When she identified the [petitioner], the police arrested him. Then she was brought to [REDACTED] for medical examination. Because of the incident, she felt very afraid and thought[t] that she was going to die.

Alvin Santos testified that while he was walking along the road on February 20, 2016 at 10:30 a.m. in order to get some cogon grass, he saw AAA, a daughter of his relative, being pulled by [petitioner]. Then, he saw the [petitioner] carry AAA and throw her into the cliff. He was around 10 meters away from them. After the [petitioner] threw AAA to the cliff, he asked the [petitioner] why he threw AAA into the ravine, but the [petitioner] only looked at him and ran away. AAA, on the other hand, was already on the ground asking for help ("*saklolo*"). When he heard that, he went down and brought AAA up to the road. AAA sustained several injuries on her face, legs, and head. Then, he brought her to his niece's house where AAA was made to drink water. He also proceeded to AAA's house and informed her father about the incident. After informing AAA's father, AAA was brought to a doctor. In the afternoon of that same day, he again saw [petitioner] at the house of the latter's parents-in-law. He informed the police and the barangay captain that the [petitioner] did something to AAA, so the [petitioner] was arrested.

Dr. Joy Cristobal-Gonzalo testified that she examined AAA on February 20, 2016, the date of the incident, at 4 p.m. She found on AAA's hymen old laceration at 1, 3, 6 and 9 o'clock positions which she opined were sustained around more than six months before the date of the incident.

As for PO3 Quezada, she only read aloud certain entries in the police blotter which the defense stipulated upon.

Thereafter, the prosecution rested its case with the admission of its following documentary evidence:

x x x x

Evidence of the Defense

[Petitioner] denied having committed the crimes charged against him because he was inside his house taking care of his child.

He testified that he is a native of Zamboanga City, while his live-in partner is from [REDACTED]. On February 20, 2016, they had already been staying for three weeks with the parents of his live-in partner in [REDACTED]. They were just on vacation, so he did not work as a construction worker during that time. For said three weeks, he did not go out of the house as he only took care of his one-year-old child.

He first saw AAA in [REDACTED] when AAA went to the house of his live-in partner and asked him if there was a man who ran towards his house. On cross-examination, however, he changed his answer and testified that he was asked by a man first. The next time, it was AAA who already talked to his live-in partner. He denied that he [knew] Alvin Santos before the date of the incident.

The defense rested its case when it failed to present its second witness who could no longer be located.¹³

The Ruling of the RTC

In its Decision¹⁴ dated July 4, 2018, the RTC convicted petitioner of violation of Section 5(b),¹⁵ Article III of RA 7610 and of Attempted

¹³ *Rollo*, pp. 84-87.

¹⁴ *Id.* at 82-93.

¹⁵ Section 5(b), Article III of Republic Act No. 7610 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 subjected to other sexual abuse; *Provided*, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under

Murder under Article 248 in relation to Article 6 of the RPC. It ruled that the prosecution was able to prove the guilt of petitioner beyond reasonable doubt.

Likewise, the RTC found AAA and her testimony to have stood the test of credibility. It declared that AAA was consistent and natural, and had positively identified petitioner as the perpetrator. It was also convinced that there was no tinge of fabrication or concoction of the incident on the part of AAA, noting that she was unwavering even during her cross-examination.¹⁶

As to the case for violation of Section 5(b), Article III of RA 7610, the RTC held that petitioner's acts of touching AAA's breasts and inserting his finger inside her panties constituted lascivious conduct. It ruled that when petitioner approached AAA and intercepted her along the way and suddenly performed the aforesaid acts, it was clear that he had the intention to touch her private parts.¹⁷

As regards the case for Attempted Murder, the RTC ruled that petitioner's intent to kill was flagrant when he carried AAA and then threw her into the ravine of around 25 to 30 meters below the road. Further, the RTC found petitioner to have employed abuse of superior strength in executing the intended felony. It noted that AAA was only 13 years old at the time of the incident; hence, her strength could not overcome that of petitioner who is a male and who claimed that he was a construction worker.¹⁸

The RTC further held that petitioner's defense of denial did not deserve credence. It declared that denial is an intrinsically weak defense and should be supported by strong evidence to merit credibility.¹⁹

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~~

¹⁶ *Rollo*, p. 88.

¹⁷ *Id.* at 89.

¹⁸ *Id.* at 92.

¹⁹ *Id.* at 90.

Thus, with respect to the case for violation of Section 5(b), Article III of RA 7610, the RTC sentenced petitioner to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* maximum, as maximum. Moreover, it ordered the payment of ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages, both with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid. It further ordered the payment of a fine of ₱15,000.00 with subsidiary imprisonment in case of non-payment.²⁰

As to the case for Attempted Murder, the RTC imposed the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Further, it ordered the payment of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.²¹

Petitioner appealed to the CA.

The Ruling of the CA

In the assailed Decision²² dated June 14, 2019, the CA affirmed the RTC's factual findings and accordingly found proper the conviction of petitioner for the two charges. However, it made modifications as to the penalties imposed.

Citing *People v. Caoili*,²³ the CA held that when the victim at the time of the commission of the offense is aged 12 years or over but under 18 years, or is 18 or older but 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,

²⁰ *Id.* at 92-93.

²¹ *Id.* at 93.

²² *Id.* at 36-59.

²³ 815 Phil. 839 (2017).

the nomenclature of the offense should be Lascivious Conduct under Section 5(b), Article III of RA 7610.

The CA ruled that the correct penalty for Lascivious Conduct under Section 5(b) of RA 7610 is the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

The CA modified the damages awarded by the RTC with respect to the case for Lascivious Conduct. Aside from the fine of ₱15,000.00 and moral damages of ₱50,000.00 already imposed by the RTC, the CA ordered petitioner to pay ₱50,000.00 as civil indemnity and increased the amount of exemplary damages to ₱50,000.00. The CA also ordered the payment of interest on the damages awarded at the rate of 6% *per annum* from the date of finality of the judgment until full payment.

On the penalty for Attempted Murder, the CA also modified the RTC's imposition, ruling that petitioner should be imposed the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum.

With respect to the award of damages in the case for Attempted Murder, the CA ruled that the amounts imposed by the RTC, to wit: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of the judgment until fully paid, are all consistent with prevailing jurisprudence.

In the assailed Resolution²⁴ dated September 24, 2019, the CA denied petitioner's Motion for Reconsideration²⁵ for lack of merit.

Thus, the instant petition.

²⁴ *Rollo*, pp. 61-62.

²⁵ *CA rollo*, pp. 103-110.

Issue

Whether the CA erred in affirming petitioner's conviction for (1) Lascivious Conduct under Section 5(b), Article III of RA 7610 and (2) Attempted Murder under Article 248, in relation to Article 6 of the RPC.

The Court's Ruling

The petition lacks merit.

At the outset, the Court affirms the CA in declaring that the proper nomenclature of the offense charged against petitioner for violation of Section 5(b), Article III of RA 7610 should be Lascivious Conduct. This is in light of the fact that AAA was only 13 years old at the time of the incident.

In *People v. Tulagan*²⁶ (*Tulagan*), the Court pronounced that if the victim is 12 years old or above but under 18 years old, or at least 18 years old under special circumstances, "*the nomenclature of the crime should be 'Lascivious Conduct under Section 5 (b) of R.A. No. 7610' with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the RPC.*"

Lascivious Conduct is defined in the rules and regulations of RA 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, as follows:

Section 2. *Definition of Terms.* — As used in these Rules, unless the context requires otherwise —

x x x x

- (h) "Lascivious conduct" means 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

²⁶ G.R. No. 227363, March 12, 2019.

gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.] (Italics supplied)

Lascivious Conduct is penalized under Section 5(b), Article III of RA 7610:

SECTION 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

- (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims 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

x x x x

The essential elements of Section 5(b), Article III of RA 7610 are:

1. The accused commits the act of sexual intercourse or *lascivious conduct*.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.²⁷

Under Section 3(a) of RA 7610, the term “children” refers to persons below 18 years of age, or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. In this case, it is undisputed that AAA was only 13 years old at the time of the incident. This was alleged in the Information and evidenced by her Certificate of Live Birth.²⁸

Petitioner, however, contends that the prosecution failed to establish the presence of the second element, *i.e.*, that the lascivious act is performed with a child exploited in prostitution or subjected to other sexual abuse. He argues that the prosecution neither alleged nor proved that AAA was exploited in prostitution or subjected to other sexual abuse besides the alleged incident.

Petitioner is mistaken.

As held in *Olivarez v. Court of Appeals*,²⁹ the phrase “other sexual abuse” 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.³⁰ The very definition of “child abuse” under Section 3(b)³¹ of RA 7610 does not require that the victim suffer a separate and distinct act of

²⁷ *People v. Dagsa*, 824 Phil. 704, 721 (2018), citing *People v. Garingarao*, 669 Phil. 512, 523 (2011).

²⁸ Records (L-10873), p. 15.

²⁹ 503 Phil. 421 (2005).

³⁰ *Id.* at 432.

³¹ Section 3(b) of RA 7610 provides:

SECTION 3. *Definition of Terms.* —

x x x x

(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.

sexual abuse aside from the act complained of; it refers to the maltreatment whether habitual or not, of the child.³² Thus, contrary to petitioner's argument, there can be a violation of Section 5(b), Article III of RA 7610 even though the sexual abuse against the child victim was committed only once, even without a prior sexual offense.³³

Further, in the offense of Lascivious Conduct, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.³⁴ The intimidation, however, need not necessarily be irresistible.³⁵

In this case, coercion or intimidation was present when petitioner, at the place where there were no houses, blocked AAA's way and then pulled her to a forested area, where he then succeeded in performing his lascivious acts with her. AAA pleaded for petitioner to stop and also tried to resist and pull herself away from him. AAA could not move when petitioner inserted his hand inside her panties and touched her private part as she was already afraid. Moreover, petitioner told AAA not to be noisy.³⁶ Evidently, the second element of the offense is present in this case.

Considering the presence of all the elements of Lascivious Conduct under Section 5(b), Article III of RA 7610, the RTC, as affirmed by the CA, correctly convicted petitioner for the offense charged.

With respect to the charge for Attempted Murder, the Court affirms the RTC and the CA in holding that petitioner's intent to kill AAA was ~~proved~~ beyond reasonable doubt. However, their finding that the qualifying circumstance of abuse of superior strength attended petitioner's attempt to kill AAA should be reversed.

³² *People v. Tulagan*, *supra* note 26.

³³ *Id.*

³⁴ See *Olivarez v. Court of Appeals*, *supra* note 29.

³⁵ *Id.*

³⁶ *Rollo*, pp. 45-46.

Both the RTC and the CA found petitioner guilty of Attempted Murder. The crime of Murder is defined and punished by Article 248 of the RPC, as amended by RA 7659, to wit:

Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, *taking advantage of superior strength*, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
x x x x (Italics supplied.)

To successfully prosecute Murder, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.³⁷

A felony in the attempted stage is explained in the paragraph 3, Article 6 of the RPC as follows:

ART. 6 *Consummated, frustrated, and attempted felonies*. —
x x x x

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

The essential elements of an attempted felony are: (1) the offender commences the commission of the felony directly by overt acts; (2) he does not perform all the acts of execution which should produce the felony; (3) the offender's act be not stopped by his own spontaneous desistance; and (4) the non-performance of all acts of execution was due to cause or accident other than his or her spontaneous desistance.³⁸

³⁷ *People v. Kalipayan*, 824 Phil. 173, 183 (2018), citing *People of the Philippines v. Bensig*, 437 Phil. 748, 763 (2002).

³⁸ *Yap v. People*, G.R. No. 234217, November 14, 2018, 885 SCRA 599, 616-617 (2018), citing *Fantastico v. Malicse, Jr.*, 750 Phil. 120, 131 (2015).

With regard to Murder in its attempted or frustrated stage, the Court, in *Yap v. People*,³⁹ explained:

With respect to attempted or frustrated murder, the principal and essential element thereof is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor. Intent to kill is a specific intent that the State must allege in the information, and then prove by either direct or circumstantial evidence, as differentiated from a general criminal intent, which is presumed from the commission of a felony by *dolo*. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, *i.e.*, the acts and conduct of the accused at the time of the assault and immediately thereafter. The following factors are considered to determine the presence of intent to kill, namely: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.⁴⁰

Petitioner's intent to kill AAA was evident in his acts of carrying AAA and throwing her into the ravine of about 25 to 30 meters below the road after performing his lascivious conduct with AAA.⁴¹ Apparently, petitioner did so in an attempt to conceal the sexual abuse he committed against AAA. When asked to estimate the depth of her fall into the ravine, AAA testified that it was comparable to falling from the third floor of a building.⁴² Remarkably, the killing of AAA would have been consummated if not for the vines that wrapped around her body which prevented her from further rolling down the ravine.⁴³

However, the Court disagrees with the RTC and the CA that abuse of superior strength attended petitioner's attempt to kill AAA. In this case, the RTC, as affirmed by the CA, ruled that AAA's young age of 13 years is an obvious indication that her strength could not overcome that

³⁹ *Id.*

⁴⁰ *Id.* at 617.

⁴¹ *Rollo*, p. 92.

⁴² *Id.* at 46.

⁴³ *Id.*

of petitioner “who is a male and who claimed to work at a construction.”⁴⁴

*“The circumstance of abuse of superior strength is present whenever there is inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor, and the latter takes advantage of it in the commission of the crime.”*⁴⁵ The appreciation of abuse of superior strength depends on the age, size, and strength of the parties.⁴⁶

It is beyond doubt that petitioner was superior to AAA in terms of age, size, and strength. Nonetheless, the records fail to show that petitioner purposely selected or took advantage of such inequality to facilitate the commission of the crime. As held in *People v. Evasco*,⁴⁷ the assailant “must be shown to have consciously sought the advantage or to have the deliberate intent to use [his] superior advantage.” Thus, to take advantage of superior strength means to purposely use force *excessively out of proportion* to the means of defense available to the person attacked.⁴⁸

In his attempt to kill AAA after performing his lascivious acts, petitioner did not purposely use and take advantage of his superior strength. After petitioner and AAA pulled each other for about 35 minutes, petitioner merely carried AAA and threw her into the deep ravine.⁴⁹ There is no showing that he used force excessively out of proportion before throwing her into the ravine. Observably, while the Information alleges that AAA sustained multiple abrasions in the upper and lower extremities, the examination conducted by Dr. Joy Cristobal-Gonzalo was only on the hymen of AAA. Likewise, no evidence was offered by the prosecution to prove the physical injuries allegedly sustained by AAA. Thus, the Court finds erroneous the appreciation by the RTC and the CA of the qualifying circumstance of abuse of superior strength.

⁴⁴ *Id.* at 92.

⁴⁵ *People v. Mat-an*, 826 Phil. 512, 526 (2018), citing *Espineli v. People*, 755 Phil. 530, 544-545 (2014) and *People v. Quisayas*, 731 Phil. 577, 596 (2014).

⁴⁶ *Id.*, citing *People v. Calpito*, 462 Phil. 172, 179 (2003).

⁴⁷ G.R. No. 213415, September 26, 2018. 881 SCRA 79.

⁴⁸ *Id.* at 91.

⁴⁹ *Rollo*, p. 46.

Consequently, the absence of any of the circumstances enumerated in Article 248 necessitates the Court to hold petitioner liable only for Attempted Homicide under Article 249 in relation to Article 6 of the RPC, as follows:

Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246,⁵⁰ shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

In an attempt to assail the credibility of AAA's testimony, petitioner claims inconsistency in AAA's statements. He points out that AAA testified during direct examination that he pulled her to the forested area⁵¹ but stated during cross-examination that he was not able to pull her.⁵² Additionally, he avers that AAA's actuation after the alleged incident lies outside human experience and fails to inspire belief. He particularly mentions AAA's testimony that right after rolling to the ground, she took her slipper and tried to look for the other one. He opines that "*a person who has just been sexually abused would not bother to look for her belongings. Instead, he/she would exert effort to escape as soon as possible.*"⁵³

The Court is not swayed.

The alleged inconsistency in AAA's testimony appears minor and inconsequential. It does not hinge on any essential element of Lascivious Conduct or Attempted Homicide. Besides, leeway is generally given to minor witnesses when relating traumatic incidents of the past.⁵⁴ Jurisprudence dictates:

⁵⁰ Article 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

⁵¹ TSN, October 17, 2016, p. 8.

⁵² *Id.* at 20.

⁵³ *Rollo*, p. 22.

⁵⁴ *People v. Rupal*, G.R. No. 222497, June 27, 2018, 869 SCRA 66, 87, citing *People v. Divinagracia*, 814 Phil. 730, 747 (2017).

x x x When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, 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. Youth and immaturity are generally badges of truth and sincerity.⁵⁵

Moreover, it bears emphasizing that “[t]he credibility of the witnesses is best addressed by the trial court, it being in a better position to decide such question, having heard them and observed their demeanor, conduct, and attitude under grueling examination.”⁵⁶ Considering the absence of any showing that the RTC’s assessment on the credibility of the AAA’s testimony was tainted with arbitrariness or oversight of a fact, it is entitled to great weight, if not conclusive or binding on the Court.⁵⁷

Lastly, petitioner’s bare assertion of denial and alibi cannot prevail over the positive and categorical testimony of AAA. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.⁵⁸ Likewise, alibi is one of the weakest defenses; it is not only inherently frail and unreliable but also easy to fabricate and difficult to check or rebut.⁵⁹

As regards the penalties imposed, the Court finds a need to make modifications.

With respect to the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610, the CA imposed the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

The penalty to be imposed for the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610 is *reclusion temporal* in its

⁵⁵ *People v. Bay-od*, G.R. No. 238176, January 14, 2019, citing *People v. Piosang*, 710 Phil. 519, 526 (2013).

⁵⁶ *People v. Manson*, 801 Phil. 130, 140 (2016).

⁵⁷ *Id.*

⁵⁸ *People v. XXX*, G.R. No. 235662, July 24, 2019.

⁵⁹ *Id.*, citing *People v. Molejon*, 830 Phil. 519, 534 (2018).

medium period to *reclusion perpetua*. The Indeterminate Sentence Law is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal* medium, a divisible penalty.⁶⁰ Since none of the circumstances under Section 31⁶¹ of RA 7610 is present, and applying the Indeterminate Sentence Law, the minimum term shall be taken from the penalty next lower in degree which is *prision mayor* medium to *reclusion temporal* minimum, and the maximum term to be taken from *reclusion temporal* maximum, there being no other modifying circumstances attending the commission of the offense.⁶²

Thus, the Court finds that the proper penalty for the offense of Lascivious Conduct under Section 5(b), Article III of RA 7610 should be the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as the minimum term, to twenty (20) years of *reclusion temporal* maximum, as the maximum term.

With respect to the crime of Attempted Homicide, Article 249 of the RPC provides the penalty of *reclusion temporal* for Homicide in its consummated stage. Article 51 of the RPC states that the penalty for an attempted felony is two (2) degrees lower than that prescribed for the consummated felony. The penalty that is two (2) degrees lower than

⁶⁰ *People v. Nocido*, G.R. No. 240229, June 17, 2020.

⁶¹ Section 31. *Common Penal Provisions*. —

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is *reclusion perpetua* or *reclusion temporal*, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is *prision correccional* or *arresto mayor*, the penalty of suspension shall also be imposed; and

(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.

⁶² *People v. Nocido*, *supra* note 60.

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reclusion temporal is *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years.

Under the Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be taken in view of the attending circumstances that could be properly imposed under the rules of the RPC, and the minimum term shall be within the range of the penalty next lower to that prescribed by the RPC. Thus, the maximum term of the indeterminate sentence shall be taken within the range of *prision correccional*, depending on the modifying circumstances. In turn, the minimum term of the indeterminate penalty to be imposed shall be taken from the penalty one degree lower of *prision correccional*, that is, *arresto mayor* with a duration of one (1) month and one (1) day to six (6) months.

In view of the absence of any modifying circumstance, the maximum term of the indeterminate penalty shall be taken from the medium period of *prision correccional* or two (2) years and four (4) months and one (1) day to four (4) years and two (2) months; and the minimum term shall be taken within the range of *arresto mayor*. Hence, the penalty for the crime of Attempted Homicide is the indeterminate penalty of six (6) months of *arresto mayor*, as the minimum term, to four (4) years and two (2) months of *prision correccional*, as the maximum term.

The Court also finds a need to modify the monetary awards.

As to the amount of damages for the offense of Lascivious Conduct, the Court affirms the CA in upholding the moral damages of ₱50,000.00 already imposed by the RTC, in increasing the exemplary damages to ₱50,000.00, and in imposing the additional amount of ₱50,000.00 as civil indemnity. These amounts are in accordance with prevailing jurisprudence.⁶³ However, for lack of legal basis, the imposed fine of ₱15,000.00 should be deleted.

⁶³ See *People v. Tulagan*, *supra* note 26.

As regards the damages for the crime of Attempted Homicide, the case of *People v. Jugueta*⁶⁴ instructs that the accused shall be liable only for ₱20,000.00 as civil indemnity and ₱20,000.00 as moral damages. Further, no exemplary damages shall be awarded in view of the absence of any aggravating circumstance.⁶⁵

Lastly, in consonance with prevailing jurisprudence, all the monetary awards shall earn interest at the rate of six percent 6% *per annum* from the date of finality of the judgment until fully paid.⁶⁶

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated June 14, 2019 and the Resolution dated September 24, 2019 of the Court of Appeals in CA-G.R. CR No. 42179 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Shariff Uddin y Sali is found guilty beyond reasonable doubt of:

- (1) *Lascivious Conduct* under Section 5(b), Article III of Republic Act No. 7610 and is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium, as minimum, to twenty (20) years of *reclusion temporal* maximum, as maximum, and to pay the victim, AAA, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages; and
- (2) *Attempted Homicide* under Article 249, in relation to paragraph 3 of Article 6, of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. He is further ordered to pay the victim, AAA, the amounts of ₱20,000 as civil indemnity and ₱20,000.00 as moral damages.

The civil indemnity, moral damages and exemplary damages so imposed are subject to interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

⁶⁴ 783 Phil. 806 (2016).

⁶⁵ *People v. Evasco*, G.R. No. 213415, September 26, 2018.


⁶⁶ See *People v. Tuiagan*, *supra* note 26.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



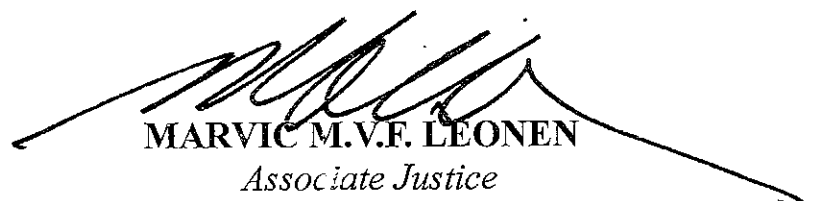
EDGARDO L. DELOS SANTOS
Associate Justice



RICARDO B. ROSARIO
Associate Justice

ATTESTATION

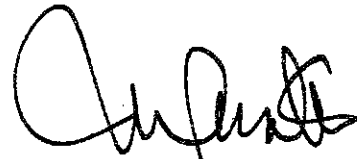
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.



DIOSDADO M. PERALTA

Chief Justice

