



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 15, 2020** which reads as follows:*

“G.R. No. 248348 – (XXX* v. PEOPLE OF THE PHILIPPINES)

The Case

This petition assails the Decision¹ dated February 8, 2019 and Resolution² dated July 9, 2019 of the Court of Appeals in CA-G.R. CR No. 40756 affirming the verdict of conviction against petitioner XXX for sexual abuse defined and penalized under Section 5(b) of Republic Act No. 7610 (RA 7610).

The Proceedings Before The Trial Court

The Charge

By Information dated December 19, 2016, XXX was charged with violation of Section 5(b) of RA 7610, viz.:

X X X X X X X X X

That on or about February 24, 2014 in the City of Valenzuela and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and taking advantage of the innocence of (AAA), 14 years old (March 16, 2001), did then

* In line with the ruling of this Court in *People v. Cabalquinto*, the real name and identity of the rape victim, is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family, are not disclosed in a decision/resolution.

¹ *Rollo*, pp. 32-48.

² *Id.* at 50-52.

and there willfully, unlawfully, and feloniously commit sexual abuse upon her by inserting his finger into the minor child's vagina, against her will and without her consent, which act necessarily include sexual abuse that debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.³

On arraignment, XXX pleaded not guilty. Trial ensued.⁴

The Prosecution's Version

Fourteen (14)-year old AAA lived in an apartment unit adjacent to that of her cousin BBB and live-in partner XXX whom she called "kuya." She would often go to their apartment after school to take care of their child, and sleep in the same room with BBB, XXX, and their child.⁵

On February 24, 2014, AAA was sleeping beside XXX on the same mattress while BBB and her child slept on another mattress. Suddenly, she felt XXX inserting his finger into her vagina. She got scared and did not know what to do. She pretended to be asleep while XXX kept inserting his finger into her vagina for about five (5) minutes.⁶

Despite what happened, AAA continued to sleep in the same room with XXX. In March 2014, while they were alone in the room, XXX, once again, inserted his finger into AAA's vagina, kissed her lips, removed her clothes, and had carnal knowledge of her. Thereafter, AAA and XXX would have frequent sexual intercourse. AAA equated their sexual encounters with love and believed that she and XXX were in a romantic relationship.⁷

AAA's mother discovered that her daughter was no longer a virgin. When she confronted AAA, the latter admitted having sexual intercourse with XXX. Her mother brought her to the Northern Police District Crime Laboratory where Medico-Legal Officer Jocelyn Cruz examined AAA and found healed hymenal laceration at 3 o'clock position was consistent with her allegation of sexual abuse.⁸

³ *Id.* at 33-34.

⁴ *Id.* at 34.

⁵ *Id.* at 34.

⁶ *Id.* at 34-35.

⁷ *Id.* at 35.

⁸ *Id.* at 35-36.

The Defense's Version

XXX averred that on February 24, 2014, he came home exhausted from a party and immediately fell asleep. When he woke up, he saw BBB and their child sleeping on his left side, while AAA, BBB's brother and another cousin on his right side. He could not have had sexual intercourse with AAA because he had back pain which prevented him from moving properly. He was only being charged with sexual assault because BBB's father had a grudge against him.⁹

BBB corroborated XXX's allegations and asserted that her relatives filed the charge against XXX because they were after his money.¹⁰

By Decision¹¹ dated November 15, 2017, the trial court rendered a verdict of conviction, viz.:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding accused (XXX) GUILTY beyond reasonable doubt of violation of Section 5(b) or RA 7610 and he is hereby sentenced to suffer an indeterminate sentence of 8 years and 1 day of prison mayor, as minimum to 17 years, 4 months and 1 day of reclusion temporal, as maximum. He is also ordered to pay the private complainant civil indemnity in the amount of Php 50,000.00, to pay moral damages in the amount of Php 50,000.00 and exemplary damages in the amount of Php 30,000.00.

SO ORDERED.¹²

The trial court gave full credence to AAA's positive testimony pointing to XXX as the person who sexually abused her by inserting his finger into her vagina on February 24, 2014. It noted that fourteen (14)-year old AAA would not have concocted an accusation of sexual abuse against XXX, allow her private parts to be examined, and subject herself to ridicule if the same were not true.

The Proceedings Before The Court of Appeals

On appeal, XXX faulted the trial court for giving credence to AAA's testimony, claiming it was impossible for him to have sexually abused AAA because of the cramped space where he and other members of his family slept, aside from his back injury which

⁹ *Id.* at 36.

¹⁰ *Id.* at 37.

¹¹ *Id.* at 71-83.

¹² *Id.* at 83.

prevented him from moving properly. Even arguing that he and AAA indeed had sex, the same was consensual as AAA herself admitted that they were lovers. Thus, AAA was never intimidated, influenced, or coerced to have sexual intercourse with him. He also questioned the trial court's reliance on the inconclusive medico-legal report to support its conclusion that AAA was indeed sexually abused.¹³

For its part, the Office of the Solicitor General (OSG), through State Solicitor Emmeree C. Sison-Atanis countered in the main: AAA positively identified XXX as the one who abused her, taking advantage of her young age and her immaturity. XXX's contention that he and AAA had consensual sexual intercourse must fail because AAA was a minor whom the law considers incapable of giving consent to any lascivious act or sexual intercourse. More, XXX's denial and alibi are weak and must necessarily fail in light of AAA's positive identification of him as the person who sexually abused her.¹⁴

By Decision¹⁵ dated February 8, 2019, the Court of Appeals affirmed with modification, *viz.*:

WHEREFORE, premises considered, the Decision dated 15 November 2017 of the RTC, Branch 270, Valenzuela City, is AFFIRMED with the following MODIFICATION:

1. The award for civil indemnity is reduced to P20,000.00.
2. The award for moral damages is reduced (to) P15,000.00.
3. The award for exemplary damages is reduced to P15,000.00.

SO ORDERED.¹⁶

Under Resolution¹⁷ dated July 9, 2019, the Court of Appeals denied XXX's motion for reconsideration.

The Present Appeal

XXX now seeks affirmative relief from the Court and prays anew for his acquittal.

Issue

Did the Court of Appeals err in affirming XXX's conviction for sexual abuse under Section 5(b) of RA 7610?

¹³ *Id.* at 55-68.

¹⁴ *Id.* at 88-112.

¹⁵ *Id.* at 33-48.

¹⁶ *Id.* at 47.

¹⁷ *Id.* at 50-52.

Ruling

Under Section 5(b) of RA 7610,¹⁸ the elements of sexual abuse are:

- 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) the child, whether male or female, is below 18 years of age.¹⁹

These elements are all present in this case.

First, AAA narrated that on February 24, 2014, she was sleeping beside XXX when she felt him inserting his finger into her vagina for about five (5) minutes. She got afraid and simply pretended to be asleep. XXX's act of inserting his finger into AAA's vagina is covered by the respective definitions of "sexual abuse" and "lascivious conduct" under Section 2(g) and (h) of the rules and regulations of RA 7610, *viz.*:

X X X

X X X

X X X

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or **coercion** of a child to engage in, or assist another person to engage in, sexual intercourse or **lascivious conduct or the molestation, prostitution, or incest with children;**

(h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the **genitalia**, anus, groin,

¹⁸ 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 X X X X X

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse;** Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x (Emphasis supplied)

¹⁹ *People v. Dagsa*, G.R. No. 219889, January 29, 2018, 853 SCRA 276, 294.

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.

X X X X X X X X X

Second, Section 5(b) of RA 7610 states that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a “*child exploited in prostitution and other sexual abuse*.” Here, AAA was only fourteen (14) years old at the time of the sexual abuse. She would have been easily intimidated by XXX, who was not only older (thirty-four [34] years old)²⁰ but also one whom she treated as family, being the live-in partner of her cousin BBB. In fact, she even called him “kuya.”

Pros. Fajardo:

Q: You mean to say that you are not afraid of Kuya XXX at that time?

A: No, Sir.

Q: Do you have a relationship with him, nadevelop na ba?

A: Parang ganun na nga po.

Q: So there was now a relationship between you and Kuya XXX.

Court:

Q: What do you mean relationship?

A: Parang ganun po, boyfriend/girlfriend.

Q: You learn to love him?

A: Sa tingin ko ganun na nga po.²¹

Whether or not AAA consented to their so-called sexual relation is immaterial. For violation of Section 5 of RA 7610 is *malum prohibitum*, the mere act of committing lascivious conduct with a child who is subjected to sexual abuse constitutes the offense.²²

Another. Although AAA herself testified that she and XXX later became lovers, this did not negate XXX’s culpability that had already attached arising from the February 24, 2014 incident of sexual abuse. XXX’s sexual relation with AAA on the pretext of love can hardly be considered voluntary or consensual on her part. Thus, even

²⁰ *Rollo*, p. 41.

²¹ *Id.* at 43-44.

²² *People v. Caoili*, 815 Phil. 839, 890 (2017).

granting that XXX and AAA were really sweethearts, that fact alone would not negate the commission of sexual abuse.²³

Third, AAA was fourteen (14) years old at the time of the sexual abuse. Her minority was sufficiently alleged and proved.

XXX, nonetheless, faults the Court of Appeals for affirming his conviction despite AAA's supposed improbable testimony and for dismissing his denial and alibi that it was impossible for him to have sexually abused AAA because other members of his family were sleeping in the same room and he had back pain which prevented him from moving properly. He also alleged that BBB's relatives had ill-motive in charging him because they were against their relationship.

As discussed, AAA positively identified XXX as the one who sexually abused her on February 24, 2014 by inserting his finger into her vagina for about five (5) minutes. Indeed, when a testimony is given in a candid and straight forward manner, there is no room for doubt that the witness is telling the truth. The Court has consistently given full weight and credence to a child's testimony as youth and immaturity are badges of truth and sincerity.²⁴ Further, since AAA's credible testimony is corroborated by the medical findings of the examining physician, the same is sufficient to sustain a verdict of conviction.²⁵

XXX, however, insists that he could not have sexually abused AAA because BBB, their child, and AAA's cousin were in the same room during the said incident.

We are not persuaded. It is settled that lust is no respecter of time and place. As *People v. Elimancil* ordains, sexual abuse can be committed in the same room with the assailant's spouse or where other members of the family are also sleeping.²⁶

Too, XXX's argument that it was impossible for him to have sexually abused AAA because he had back pain which prevented him from moving properly, We agree with the Court of Appeals that the same is inconsequential as said condition does not prevent him from inserting his finger into AAA's vagina. XXX had fully mobile hands and his back pain could not have impaired the use thereof. In *People v. De La Cuesta*, the Court rejected the accused's contention that he

²³ *People v. Dumadag*, 667 Phil. 664, 676-677 (2011).

²⁴ *Supra* note 19, at 292.

²⁵ *People v. De Chavez*, G.R. No. 218427, January 31, 2018, 853 SCRA 543, 551.

²⁶ G.R. No. 234951, January 28, 2019.

was incapable of committing rape against the victim due to, among other, his physical condition, as self-serving because he did not present any evidence to substantiate his alleged dysfunction.²⁷

XXX further claims that he was charged with sexual abuse because BBB's family were against their relationship. The argument must fail. The Court finds the defense of ill-motive shallow, specious, and downright incredulous. The purported resentment, family feud, or revenge is too flimsy a reason for any relative to force AAA to accuse XXX with a serious crime, publicly disclose that she was sexually abused, and subject her to trauma, humiliation and anxiety concomitant to a public trial in order to exact revenge. The revelation of an innocent child whose chastity has been abused deserves full credit as she could only have been impelled to tell the truth, especially in the absence of proof of ill motive.²⁸

Surely, as between AAA's categorical testimony, as corroborated by medical findings consistent with her claim of sexual abuse, on one hand, and XXX's mere denial and alibi, on the other, the former prevails.²⁹ More so because AAA was not shown to have been moved by any ill-will to falsely testify against XXX.³⁰

It is settled that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will generally not over turn these findings. For the trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals,³¹ as in this case.

As for the penalty, Section 5(b) of RA 7610 provides that *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed on those who commit sexual abuse against a child. Applying the Indeterminate Sentence Law and as decreed in *Escalante v. People*, the Court of Appeals correctly affirmed the trial court's

²⁷ 363 Phil. 425, 435 (1999).

²⁸ *People v. Garcia*, 695 Phil. 576, 590-591 (2012).

²⁹ *People v. Piosang*, 710 Phil. 519, 527 (2013).

³⁰ *Supra* note 19, at 293.

³¹ *People v. Gerola*, 813 Phil. 1055, 1063-1064 (2017).

imposition of the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.³²

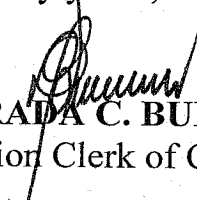
Applying *People v. Tulagan*, however, the award of civil indemnity, moral damages, and exemplary damages are increased to ₱50,000.00 each.³³ In addition, XXX should also be ordered to pay ₱15,000.00 fine and legal interest of six percent (6%) *per annum* on the monetary awards from finality of this Resolution until fully paid.³⁴

WHEREFORE, the petition is **DENIED**, and the assailed Decision dated February 8, 2019 and Resolution dated July 9, 2019 of the Court of Appeals in CA-G.R. CR No. 40756, **AFFIRMED** with **MODIFICATION**.

Petitioner XXX is sentenced to an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum; and ordered to pay ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱50,000.00 as exemplary damages; and ₱15,000.00 fine. Legal interest of six percent (6%) *per annum* is imposed on the monetary awards from finality of this Resolution until fully paid.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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³² 811 Phil. 769, 783 (2017).

³³ G.R. No. 227363, March 12, 2019.

³⁴ Id.



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