



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **September 8, 2020** which reads as follows:*

“G.R. No. 251328 - ARNOLD TIZON y NIDO vs. PEOPLE OF THE PHILIPPINES - The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

The Antecedents

Petitioner Arnold Tizon y Nido was charged with acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b), Article III of Republic Act No. 7610 (RA 7610), *viz.*:

That on or about the 5th day of February 2017, in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court; while the eight (8) year old (DOB-October 13, 2008), AAA¹ (.) was sleeping and therefore unconscious, accused did then and there willfully, unlawfully and feloniously committed lascivious conduct against said minor private complainant in the following manner (:) said accused prompted by lust and lewd design (kissed), (groped) and touched the genital area of the minor private complainant against her will. The aforementioned acts of the accused are prejudicial to the development of said minor private complainant.

CONTRARY TO LAW.²

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¹ 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.

² *Rollo*, p. 33.

The case was raffled to the Regional Trial Court (RTC)-Branch 124, Caloocan City. On arraignment, petitioner pleaded not guilty.³ Trial ensued.

The victim AAA and her aunt FFF testified for the prosecution while petitioner alone testified for the defense.⁴

Version of the Prosecution

The testimonies of AAA and FFF may be summarized, in this wise:

Eight (8) year-old AAA lived in Caloocan City with her grandmother BBB and two (2) uncles, CCC and DDD. Petitioner was their neighbor.⁵

On February 4, 2017, around 5 o'clock in the afternoon, CCC, DDD, EEE (AAA's aunt), and petitioner were having a drinking spree in the *sala* of BBB's house. At that time, AAA was sleeping on the floor of the *sala*. Beside her was a sofa where BBB was also sleeping.⁶

The following day or on February 5, 2017, around 4 o'clock in the morning, AAA was roused from sleep when she noticed that petitioner was already lying beside her on the mattress. AAA just ignored petitioner and went back to sleep. A few minutes later, however, AAA was shocked when petitioner placed his hand on top of her vagina over her panty. Petitioner groped and fondled AAA's vagina by doing circular motions for ten (10) minutes. AAA got scared. Then, petitioner kissed her neck. AAA cried and shouted catching the attention of her aunt FFF who lived in the adjacent house. When AAA shouted, petitioner immediately stood up and sat down on the nearby bench. FFF, on the other hand, rushed into the house where AAA was. FFF noticed that the house was very dark. She immediately entered the house and switched on the lights. There, she saw AAA crying on the mattress while petitioner was sitting on the bench. AAA ran towards FFF and embraced her. FFF asked AAA what happened. AAA was reluctant to reply at first but after persistent questioning, AAA finally said that petitioner fondled her vagina.⁷

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³ *Id.* at 70.

⁴ *Id.*

⁵ *Id.* at 32.

⁶ *Id.* at 71-72.

⁷ *Id.*

EEE immediately called her husband and told him not to let petitioner leave the house. FFF went to the *barangay* hall to report the incident. Members of the Barangay Peace Keeping Action Team of Caloocan City responded and went to the house. When asked, AAA told the *barangay* officials that petitioner molested her.⁸

Version of the Defense

Petitioner denied the charge. He testified that on February 4, 2017, around 5:30 in the afternoon, he was resting at his friend Amet's house after a tiring day at work. He fell asleep in the house after drinking some alcohol. He woke up around 11 o'clock in the evening and decided to go home. His cousin Roland accompanied him. But before reaching his house, they stopped at the store to buy cigarettes. There, he met DDD and EEE who invited him to join them in a drinking spree at DDD's house. He accepted the invitation.⁹

While they were drinking, AAA came and slept on the mattress placed on the floor of the *sala* where they were drinking. Beside the mattress was a sofa where BBB was sleeping. Meanwhile, he felt sleepy so he lay down on the other sofa also located in the *sala*. Suddenly, he was awakened when he heard AAA crying and shouting. He asked AAA what happened, but she did not answer. A few minutes later, FFF came and talked to AAA.¹⁰ Thereafter, the *barangay* officials arrived and arrested him.¹¹

The Trial Court's Ruling

By Decision¹² dated October 30, 2018, the trial court found petitioner guilty as charged, *viz.*:

WHEREFORE, the court finds accused ARNOLD TIZON Y NIDO GUILTY beyond reasonable doubt of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum term, to fifteen (15) years, six (6) months and twenty (20) days, as maximum term, with the accessory penalties prescribed by law.

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⁸ *Id.*

⁹ *Id.* at 73-74.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 69-84.

Further, the accused is hereby ordered to pay fine in the amount of Ten Thousand Pesos (Php10,000.00), pursuant to Section 31(f) of Republic Act 7610.

In addition, the court finds the accused civilly liable to the minor victim. Thus, the accused is hereby ordered to pay the minor victim the amount of Twenty-Five Thousand Pesos (Php25,000.00) as moral damages and the amount of Twenty-Five Thousand Pesos (Php25,000.00) as exemplary damages, with interest thereon at the rate of 6% per annum from the time of the finality of this Decision until fully paid.

Costs against the accused.

SO ORDERED.¹³

The trial court gave full weight and credence to AAA's positive and categorical testimony pointing to petitioner as the person who sexually abused her. AAA's testimony was corroborated by her aunt FFF.¹⁴ It also found that the prosecution was able to establish the elements of acts of lasciviousness defined and penalized under Article 336 of the RPC¹⁵ in relation to Section 5(b), Article III of RA 7610,¹⁶ viz.: (1) petitioner's acts of fondling AAA's vagina through her clothing and kissing her on the neck against her will constituted "lascivious conduct"¹⁷ and (2) AAA was only eight (8) years old when petitioner molested her.¹⁸

Proceedings before the Court of Appeals

On appeal, petitioner faulted the trial court for ruling that the elements of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610 were present based on the purported incredible testimonies of AAA and FFF. He argued that it was highly improbable for AAA to notice the lascivious conduct

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¹³ *Id.* at 83.

¹⁴ *Id.* at 74-80.

¹⁵ Elements: (1) 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 12 years of age.

¹⁶ Elements: (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**; and (3) the child, whether male or female, is **below 18 years old**. *Amployo v. People*, 496 Phil. 747 (2005)

¹⁷ "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 gratify the sexual desire of any person**, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. (*Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, IRR of RA 7610, (1993)*).

¹⁸ *Rollo*, pp. 74-80.

when both of them were asleep. He was only awakened when AAA cried and shouted. It was possible that AAA was touched by BBB since the latter was just sleeping on the sofa beside the mattress. Too, FFF did not witness the alleged molestation, thus, her testimony was unworthy of belief.¹⁹

The People, through the Office of the Solicitor General (OSG), riposted that the trial court correctly convicted petitioner of the crime charged. AAA categorically testified that petitioner fondled her vagina and kissed her neck against her will. These acts squarely fall under the definition of “lascivious conduct” in RA 7610. FFF may not have seen the molestation but her testimony was credible enough since she rushed to AAA’s rescue right after the child cried and shouted for help.²⁰

The Court of Appeals’ Ruling

In its assailed Decision²¹ dated October 18, 2019, the Court of Appeals affirmed in the main, with modification of the monetary award, thus:

WHEREFORE, the trial court’s Decision dated October 30, 2018 is affirmed, subject to the modification that accused-appellant is ordered to pay AAA civil indemnity in the amount of Php50,000.00, moral damages in the increased amount of Php50,000.00 and exemplary damages in the increased amount of Php50,000.00. Accused-appellant is also ordered to pay a fine in the increased amount of Php15,000.00. All damages awarded shall earn legal interest at the rate of six percent (6%) per annum from finality of this Decision until full paid. In all other respects, the trial court’s Decision dated October 30, 2018 is affirmed.

SO ORDERED.²²

The Court of Appeals agreed that the prosecution succeeded in proving beyond reasonable doubt all the elements of acts of lasciviousness. Records showed that petitioner intentionally touched AAA’s vagina over her panty and kissed her neck to satisfy his sexual desires.²³

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¹⁹ *Brief for the Accused-Appellant* dated June 20, 2019; *rollo*, pp. 54-58.

²⁰ *Brief for the Plaintiff-Appellee* dated December 9, 2019; *id.* at 85-108.

²¹ Penned by Associate Justice Fernanda Lampas Peralta and concurred in by of Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin, *id.* at 31-49.

²² *Id.* at 48.

²³ *Id.* at 31-49.

Petitioner's motion for reconsideration was denied under Resolution²⁴ dated January 14, 2020.

The Present Petition

Petitioner now invokes the Court's discretionary appellate jurisdiction to review and reverse the verdict of conviction.²⁵

Issue

Did the Court of Appeals err in finding petitioner guilty of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610?

Ruling

We affirm the conviction.

In the recent case of *People v. Pagkatipunan*,²⁶ the Court reiterated that when the victim is under twelve (12) years of age at the time the offense was committed, the offense shall be designated as "*Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.*" Thus, before an accused can be convicted of child abuse through lascivious conduct on a minor below twelve (12) years of age, the requisites of acts of lasciviousness under Article 336 of the RPC must be present in addition to the requisites of sexual abuse under Section 5(b) of RA 7610.

The elements of acts of lasciviousness under Article 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness; (b) the lascivious act is done under any of the following circumstances: (i) by using force or intimidation; (ii) when the offended party is deprived of reason or otherwise unconscious; **or** (iii) when the offended party is under twelve (12) years of age; and (c) the offended party is another person of either sex.²⁷

On the other hand, sexual abuse under Section 5(b), Article III of RA 7610 has three (3) elements: (a) the accused commits an act of sexual intercourse or lascivious conduct; (b) the said act is performed

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²⁴ *Id.* at 51-52.

²⁵ See *Petition for Review on Certiorari* dated March 03, 2020; *id.* at 11-29.

²⁶ G.R. No. 232393, August 14, 2019; citing *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

²⁷ *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019.

with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child is below eighteen (18) years old.²⁸

We agree with the uniform findings of the trial court and Court of Appeals that all the elements of acts of lasciviousness under Article 336 of the RPC²⁹ and lascivious conduct under Section 5(b), Article III of RA 7610 are present here. Records bear AAA's straightforward narration on how petitioner sexually abused her when he placed his hand on top of her panty, groped and fondled her vagina by doing circular motions for ten (10) minutes, and kissed her on the neck. AAA got so scared that she cried and shouted catching the attention of her aunt FFF who lived in the adjacent house, viz.:

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On direct examination:

Q: So, what happened after Arnold Tizon went beside you?

A: He started **stroking me or "hinipuan nya po ako", touching me, and kissed me.**

Q: What part of your body was touched by Arnold Tizon?

A: **"Gitna po."**

Q: "Gitna ng"? What part of your body?

A: "Yung gitna"

Q: "Gitna ng tyan?" Can you point to us, where is that gitna that you are referring to?

A: **"Sa baba"**

Q: Can you point to us?

INTERPRETER:

Your Honor, at this juncture, the witness pointed to **her vagina** using her right hand.

Q: I'm giving you a doll. Can you tell us, assuming this is you, what part of your body was touched by Arnold Tizon?

INTERPRETER:

Your Honor, at this juncture, **the witness pointed to the vagina of the doll.**

Q: What was the position of Arnold Tizon at the time when he touched your vagina?

A: He was lying, ma'am.

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²⁸ *Fianza v. People*, 815 Phil. 379, 390 (2017).

²⁹ *Supra*, note 14.

Q: And were you wearing any panty at that time?
A: I was wearing a panty, ma'am.

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Q: How long did Arnold try to touch your vagina?

INTERPRETER

The witness is raising ten fingers, Your Honor.

Q: About ten minutes? Ten seconds?
A: **Ten minutes, ma'am.**

Q: You also stated a while ago that Arnold Tizon also kissed you am I correct?
A: "Dito lang."

INTERPRETER

The witness pointed to **her neck**.

Q: And what was your reaction when you noticed that Arnold Tizon was kissing your neck?
A: **I was surprised and when he kissed me, I shouted suddenly and Tita FFF woke up.**³⁰

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On cross examination:

Q: So was the hand of that person moving while on top of your "harapan"?
A: Yes ma'am.

Q: **How was the hand moving?**
A: **[the witness demonstrating by rubbing her right hand on a circular motion].**³¹

AAA's testimony was positive, straightforward, and categorical. AAA was only eight (8) years old at the time of the sexual abuse and could not have narrated in detail what petitioner did to her had she not actually experienced it. Settled is the rule that testimonies of child-victims are normally given full weight and credit. Youth and immaturity are generally badges of truth and sincerity.³² This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.³³ For indeed, the

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³⁰ *Rollo*, pp. 39-41.

³¹ *Id.* at 43.

³² *People v. Padit*, 780 Phil. 69, 80 (2016).

³³ See *People v. Regaspi*, 768 Phil. 593 (2015).

trial court is in a better position to decide the question since it heard the witnesses themselves and observed their deportment and manner of testifying during the trial.³⁴ Clearly, AAA's credible testimony alone is sufficient to establish petitioner's guilt even in the absence of FFF's testimony.³⁵

FFF's testimony, nonetheless, bolsters the fact that petitioner sexually abused AAA. FFF testified that she rushed to BBB's house right after she heard AAA crying and shouting. There, she saw AAA crying on the mattress while petitioner was sitting on the bench. AAA then ran towards her and embraced her. Petitioner did not deny this. On FFF's prodding, the child revealed that petitioner fondled her vagina and kissed her neck.³⁶ FFF immediately reported the incident to the *barangay* officials.

Notably, against AAA's direct and straightforward testimony, petitioner only offered denial as defense. We have pronounced time and again that denial is inherently a weak defense which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, 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.³⁷

All told, petitioner's intentional touching of AAA's vagina over her panty to gratify his sexual desires clearly constitutes "lascivious conduct" under Section 2 of the rules and regulations of RA 7610,³⁸ viz.:

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

In *Awat v. People*,³⁹ the Court found the accused guilty of Acts of Lasciviousness under Article 336 of the RPC in relation to Section

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³⁴ See *People v. Mabalo*, G.R. No. 238839, February 27, 2019; also see *People v. Bay-Od*, G.R. No. 238176, January 14, 2019.

³⁵ *Awat v. People*, 811 Phil. 700 (2017).

³⁶ *Rollo*, pp. 71-72.

³⁷ *People v. Batalla*, G.R. No. 234323, January 07, 2019.

³⁸ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, IRR of RA 7610, (1993).

³⁹ *Supra*, note 34.

5(b), Article III of RA 7610 when he asked the child victim to lie down beside him and thereafter repeatedly touched her vagina against her will even though she was wearing panty and leggings.

Clearly, therefore, petitioner's conviction for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610 stands.

Section 5 (b), Article III of RA 7610⁴⁰ provides that *reclusion temporal* in its **medium** period⁴¹ shall be imposed on those who commit lascivious conduct on a child under twelve (12) years old.⁴²

Applying the Indeterminate Sentence Law,⁴³ the Court of Appeals correctly affirmed petitioner's sentence of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty days (20) days of *reclusion temporal*, as maximum.⁴⁴

The Court of Appeals also correctly awarded ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages⁴⁵ and imposed a fine of ₱15,000.00 in accordance with Section 31(f), Article XII of RA 7610.⁴⁶ These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.⁴⁷

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⁴⁰ **ARTICLE III** (*Child Prostitution and Other Sexual Abuse*)

SECTION 5. *Child Prostitution and Other Sexual Abuse.* – xxx

(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.** (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, Republic Act No. 7610, June 17, 1992*)

⁴¹ Ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; See *People v. Dagsa*, 824 Phil. 704 (2018).

⁴² *People v. Dagsa*, supra.

⁴³ In *Quimvel v. People*, 808 Phil. 889 (2017)), the Court applied the Indeterminate Sentence Law when it imposed the penalty on the accused who was similarly charged with acts of lasciviousness.

⁴⁴ **In the absence of any mitigating or aggravating circumstance**, the maximum term of the sentence to be imposed shall be taken from the medium period of reclusion temporal in its medium period, which ranges from **fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days**. On the other hand, the **minimum term** shall be taken from the penalty next lower to reclusion temporal medium, that is **reclusion temporal minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months**; See *People v. Dagsa*, supra.

⁴⁵ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁴⁶ A fine in the amount of **₱15,000.00** should also be imposed upon appellant in accordance with Section 31 (f), Art. XII of (RA 7610), *People v. Macapagal*, 821 Phil. 569 (2017).

⁴⁷ Supra, note 44.

ACCORDINGLY, the petition is **DENIED**. The Decision dated October 18, 2019 and Resolution dated January 14, 2020 of the Court of Appeals in CA-G.R. CR No. 42816 are **AFFIRMED**.

Petitioner **ARNOLD TIZON y NIDO** is **GUILTY** of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA 7610.

He is sentenced to twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty days (20) days of *reclusion temporal*, as maximum.

He is further ordered to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱50,000.00 as exemplary damages, and a fine of ₱15,000.00 in accordance with Section 31(f), Article XII of RA 7610. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED.” *Peralta, C.J., took no part; Gaerlan, J., designated Additional Member per Raffle dated September 7, 2020.*

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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