



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **18 January 2021** which reads as follows:*

“G.R. No. 252828 (*Marlon Nerizon v. People of the Philippines*). –
The Court resolves to:

(1) **GRANT** petitioner’s first motion for extension of time to file petition for review on *certiorari*; and

(2) **DENY** the petition.

Criminal Case No. 143991-PAT

In *People v. Tulagan*¹ citing *People v. Caoili*,² the Court decreed that when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as “Lascivious Conduct under Section 5(b) of Republic Act No. 7610 (RA 7610),” and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

To sustain a verdict of conviction under Section 5(b) of RA 7610, the prosecution must prove: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child

¹ G.R. No. 227363, March 12, 2019.

² 815 Phil. 839, 893-894 (2017).

exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.³ “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.⁴

Here, all the elements of lascivious conduct under RA 7610 were clearly established. Petitioner Marlon Nerizon (Nerizon) committed acts of lascivious conduct against complainant AAA⁵ when he held her vagina against her will and consent. AAA was twelve (12) years old at the time of the incident.

Criminal Case No. 143994-PAT

Too, the prosecution had established beyond any shadow of doubt that Nerizon committed violation of Section 10(a) of RA 7610, *viz.*:

Sec. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

Section 3(b) (1) of the same law defines child abuse as “maltreatment, whether habitual or not, of the child which includes any of the following: x x x [p]sychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment.”

Here, Nerizon’s act of showing his external genitalia to twelve-year-old AAA was a form of child abuse prejudicial to AAA’s normal growth and development as a child.

³ *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019.

⁴ *People v. ZZZ*, G.R. No. 224584, September 4, 2019.

⁵ 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. The identity of the victim cannot be determined from the *rollo*.

Nerizon's denial and alibi cannot prevail over the credible testimony of the child witness.

The trial court keenly noted that AAA's testimony was forthright, candid, and spontaneous. It is settled that the factual findings of the trial court, more so when affirmed by the appellate court, are entitled to great weight and respect. Particularly, the evaluation of witnesses' credibility is "best left to the trial court" because it has the opportunity to observe the witnesses and their demeanor during the trial. The trial court's findings on witness credibility are binding upon this Court, unless substantial facts were shown to have been overlooked, misapprehended, or misinterpreted where none here is shown to rule otherwise.⁶ To be sure, inconsistencies in the testimony of witnesses with respect to minor details and collateral matters such as the exact time of the day when the crime was committed, the exact place where it happened or whether the people in the locality were taking their siesta at the time the crime took place – do not affect either the substance of their declaration, their veracity, or the weight of their testimony. More so if the alleged inconsistencies do not even relate to the elements of the crime, as in this case.⁷

Verily, Nerizon's denial and alibi cannot overcome AAA's positive declaration. The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.⁸

Penalty and Damages

In line with recent jurisprudence, the nomenclature of the crime charged in **Criminal Case No. 143991-PAT** should be "Lascivious Conduct under Section 5(b) of RA 7610" and the prescribed penalty when the victim is twelve years old, as in this case, is *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law and there being no aggravating or mitigating circumstances here, the Court of Appeals correctly affirmed the trial court's imposition 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.⁹

⁶ *Villarba v. Court of Appeals*, G.R. No. 227777, June 15, 2020.

⁷ *People v. Empuesto*, 823 Phil. 1125, 1138-1139 (2018).

⁸ *People v. Piosang*, 710 Phil. 519, 527 (2013).

⁹ See *XXX v. People*, G.R. No. 248348 (Notice), January 15, 2020.

In accordance with *People v. Tulagan*,¹⁰ however, the awards of **civil indemnity** should be increased from ₱20,000.00 to **₱50,000.00**, **moral damages** from ₱15,000.00 to **₱50,000.00**, and **exemplary damages** from ₱15,000.00 to **₱50,000.00**. The **₱15,000.00** fine imposed on appellant is affirmed.¹¹

In **Criminal Case No. 143994-PAT**, the nomenclature of the crime charged should be “*Child Abuse under Section 10(a) of RA 7610*” and the imposable penalty is *prision mayor* in its minimum period. Applying the Indeterminate Sentence Law, the minimum shall be *prision correccional* maximum which is four (4) years, two (2) months and one (1) day to six (6) years. We therefore affirm the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor* as maximum. In addition, we impose Five Thousand Pesos (₱5,000.00) as fine conformably with Section 31(f) of RA 7160.

All the amounts in both cases shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

ACCORDINGLY, the petition is **DENIED**. The Decision of the Court of Appeals dated August 30, 2019 and Resolution dated July 2, 2020 in CA-G.R. CR No. 41086 are **AFFIRMED** with **MODIFICATION**.

In **Criminal Case No. 143991-PAT**, Marlon Nerizon is found guilty of **Lascivious Conduct under Section 5(b) of Republic Act No. 7610**. He is sentenced to 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. He is further 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 as fine.**

In **Criminal Case No. 143994-PAT**, Marlon Nerizon is found guilty of **Child Abuse under Section 10(a) of Republic Act No. 7610**. He is sentenced to six (6) years of *prision correccional*, as minimum, to seven (7) years and four (4) months of *prision mayor* as maximum. He is further ordered to **pay ₱5,000.00 as fine** conformably with Section 31(f) of Republic Act No. 7610.

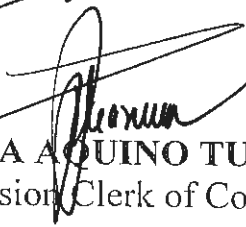
These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

¹⁰ Supra, note 1.

¹¹ See *XXX v. People*, G.R. No. 248348 (Notice), January 15, 2020.

SO ORDERED.” (Rosario, *J.*, additional member per S.O. No. 2797 dated November 5, 2020; On official leave)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *WTF*
18 FEB 2021 *2/18*

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THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 262
Pateros, Metro Manila
(Crim. Case No. 143991-PAT & 143994-PAT)

JUDGMENT DIVISION (x)
Supreme Court, Manila

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*with copy of CA Decision dated 30 August 2019
Please notify the Court of any change in your address.
GR252828. 01/18/2021(197)URES