Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VIRGILIO LABANDRIA AWAS,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 203114

Present:

VELASCO, JR., *Chairperson,*
*PERALTA,
BERSAMIN,
REYES, and
TIJAM, *JJ.*

Promulgated:

June 28, 2017

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DECISION

BERSAMIN, *J.*:

Under review is the decision promulgated on May 8, 2012,[1] whereby the Court of Appeals (CA) affirmed with modification the decision rendered on February 4, 2011 by the Regional Trial Court, Branch 172, in Valenzuela City finding the petitioner guilty 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.[2]

The information charged the petitioner with rape through sexual abuse, alleging as follows:

> That on or about January 24, 2010 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, by means of force and intimidation employed upon the person of one AAA (victim/complainant), 10 years

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* In lieu of Justice Francis H. Jardeleza, who inhibited due to his prior action as the Solicitor General, per the raffle of June 21, 2017.

1 *Rollo*, pp. 29-41; penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Manuel M. Barrios.

2 Id. at 61-65; penned by Presiding Judge Nancy Rivas-Palmones.

> old (DOB June 30, 1999), did then and there, unlawfully and feloniously insert his finger into the vagina of the victim/complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.
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> CONTRARY TO LAW.[3]

After the petitioner entered his plea of *not guilty* on February 12, 2010,[4] the case proceeded to pre-trial and trial. During the pre-trial on April 16, 2010, the Prosecution and the Defense stipulated, among others, that the victim had been a minor at the time of the commission of the alleged offense.[5]

The evidence of the Prosecution is summarized in the assailed decision of the CA as follows:

> AAA, a Grade III pupil declared that [petitioner] is the boyfriend of her sister. Sometime in January 2010, [petitioner] was in their house in Valenzuela City. [Petitioner] called her and brought her inside the room. [Petitioner] touched her vagina. [Petitioner] made her lie down beside him and again touched her vagina. Thereafter, [petitioner] put on his shoes and warned her not to tell her mother and father about the incident.
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> AAA was wearing leggings and panty at the time of the incident. Petitioner never removed anything from her when he touched her. At the time of the incident, they were the only person (sic) inside the room. Her father and other siblings were then asleep in another room while his brother was downstairs.
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> AAA's brother came to know about the incident when he saw her crying in a corner of their house. Her brother told her mother about the incident. Her mother called a police and petitioner was later apprehended. Her mother gave her statements at the police station.
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> On January 25, 2010, Ortiz, a medico-legal officer of the PNP Crime Laboratory, received a request for Physical/Genital Examination on the person of AAA. His examination states: "ano-genital examination reveals essentially normal gross findings." He observed that AAA's hymen was annular, thin with central orifice and no abnormality noted. There was no evidence of any sexual abuse because of his findings that AAA's genital organ is normal.[6]

On the other hand, the Defense presented the petitioner as its lone witness, and his testimony is synthesized in the assailed decision thusly:

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3 Id. at 61.
4 Id.
5 Id. at 31.
6 Id. at 31-32.

> AAA was the sister of his girlfriend. He and his girlfriend had been a couple for one year and five months. He visited his girlfriend 's house only for three (3) times since August 29, 2008 up to January 24, 2010. He rarely visits his girlfriend at their house because he was busy with his work delivering food in the market. He was an employee of Amado Pingco of Harkmen Company in Marikina Heights as stay-in worker.
>
> On January 24, 2010, his girlfriend called him up and told him to go to their house to give him something. He left Marikina at around 3:30 p.m. and arrived in Valenzuela City at around 5:30 p.m. While he was in front of his girlfriend's house, the mother and brother of his girlfriend went out of the house and said to him "walanghiya ka, bakit mo nirape ang anak ko". At that time, he received a text message from his girlfriend that she was in the market buying something. He was surprised at the accusations against him. His girlfriend's mother and brother told him that if he really did not rape AAA he will go with them to the police block. They forced him to board a tricycle and warned him of being mauled by the persons standing there. A tricycle passed by and he was brought to the police block. He learned that it was AAA who complained against him. But AAA was not at the police block at that time. He was transferred to the police headquarters where he saw AAA with his girlfriend. He attempted to approach his girlfriend but her mother pulled her away. Prior to the incident, his girlfriend told him that he should not show himself to her mother whenever he is drunk. Her mother noticed that he seldom visits her at their house. After the incident, he no longer saw his girlfriend. He denied having entered the house of his girlfriend on January 24, 2010. There were occasions, however, prior to January 24, 2010 that he was able to enter his girlfriend's house. [7]

As mentioned, the RTC found the petitioner guilty of acts of lasciviousness as defined in Article 336 of the *Revised Penal Code* and penalized pursuant to Section 5(b), Article III of Republic Act No. 7610, disposing thusly:

> WHEREFORE, premises considered, the court hereby finds accused VIRGILIO LABANDIRA AWAS guilty beyond reasonable doubt as principal for the offense of acts of lasciviousness under Art. 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA 7610 and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of reclusion temporal as minimum, to fifteen years six months and 20 days of reclusion temporal as maximum, ₱15,000.00 as moral damages and ₱10,000 fine.
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> Costs de officio.
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> SO ORDERED. [8]

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7 Id. at 32-33.

8 Id. at 65.

On appeal, the CA promulgated the assailed decision on May 8, 2012,[9] affirming the conviction and decreeing:

> **WHEREFORE,** premises considered, the instant appeal is hereby **DENIED**. The assailed Decision dated February 4, 2011, of the Regional Trial Court, Branch 172, Valenzuela City, in Crim. Case No. 70-V-10 is **AFFIRMED** with **MODIFICATION** that:
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> Appellant is hereby ordered to pay AAA the following:
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> 1. ₱20,000.00 as civil indemnity
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> 2. ₱15,000.00 as moral damages
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> 3. ₱15,000.00 as exemplary damages, and to pay a fine amounting to ₱15,000.00.
>
> **SO ORDERED**.[10]

The petitioner moved for reconsideration, but the CA denied his motion on August 6, 2012.[11]

Hence, this appeal, wherein the petitioner submits as the sole question to be considered and resolved:

> WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION DESPITE THE PROSECUTION'S FAILURE TO PROVE BEYOND REASONABLE DOUBT THE PETITIONER'S GUILT FOR THE CRIME CHARGED[12]

Ruling of the Court

The appeal lacks merit.

The petitioner argues that the circumstances surrounding the alleged lascivious conduct committed against AAA were not in accord with human experience; that it was quite strange that she did not shout for help although the room had no door, and there were then other persons in the house; and that she neither protested nor offered any resistance during the entire time she was being molested, which lasted for quite a time.

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9 Supra note 1.
10 *Rollo,* p. 40.
11 Id. at 43-44.
12 Id. at 15.

The arguments of the petitioner do not persuade.

The petitioner apparently assails the credibility of AAA. In that regard, he fails because the evidence of the Prosecution competently and firmly established his having touched the vagina of AAA at least twice. Also, his insistence that he did not exert any force or perform any act of intimidation lacks persuasion because the absence of force or intimidation was immaterial if AAA as the victim of the acts of lasciviousness was then below 12 years of age.

The failure of AAA to shout during the incident would not exculpate the petitioner. There is no standard behavior for a victim of a crime against chastity. Behavioral psychology teaches that people react to similar situations dissimilarly.[13] AAA could have been submissive due to her tender age, but the fact that she did cry after the incident was a true indication, indeed, that she had felt violated. Worthy to note is that her own brother, upon noticing her crying, inquired why she was crying, and she then told him that the petitioner had touched her vagina.

We reiterate that assigning values to the declarations of witnesses as they testify is best and most competently performed by the trial judges on account of their unique opportunity to personally observe the witnesses and to assess the various indicia of their credibility then available but not reflected in the records. Whenever the credibility of any witness is in issue, the findings thereon of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect.[14]

Moreover, in prosecutions for acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[15] Youth, and, as is more applicable herein, immaturity of the victim are generally badges of truth that the courts cannot justly ignore.[16]

The contention of the petitioner that the charge was a mere fabrication of the victim's mother who held a grudge against him deserves scant consideration. The contention is nothing but a desperate attempt to escape the consequences of his depravity. No mother would contemplate subjecting her very young daughter to the humiliation, disgrace, exposure, anxiety and tribulation attendant to a public trial for a crime against chastity that in all likelihood would result in the incarceration of the accused unless

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13 *People v. Manalili*, G.R. No. 184598, June 23, 2009, 590 SCRA 695, 712.
14 *People v. Basao*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 542-543.
15 *People v. Mendoza*, G.R. No. 180501, December 24, 2008, 575 SCRA 616, 633.
16 *People v. Cataytay*, G.R. No. 196315, October 22, 2014, 739 SCRA 201.

she was motivated solely by the honest and sincere desire to have the person responsible apprehended and punished.[17]

The acts committed by the petitioner against AAA constituted acts of lasciviousness. The elements of acts of lasciviousness under Article 336 of the *Revised Penal Code* are, to wit: (1) the offender commits any act of lasciviousness or lewdness; (2) the act is done under any of the following circumstances: (a) by using force or intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex.[18] Such acts are punished as sexual abuse under Republic Act No. No. 7610,[19] whose elements under Section 5 of the law are namely: (1) the accused commits the acts 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*.[20]

Section 2(h) of the Implementing Rules and Regulations of Republic Act No. No. 7610 defines *lascivious conduct* as:

> 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.[21]

Anent the penalty to be imposed on the petitioner, Section 5(b), Article III of Republic Act No. 7610 pertinently 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 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.
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> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
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> (a) x x x

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17 *People v. Ortoa*, G.R. No. 174484, February 23, 2009, 580 SCRA 80, 93.
18 *People v. Banan*, G.R. No. 193664, March 23, 2011, 646 SCRA 420, 434.
19 *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.*
20 *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243, 253-254.
21 *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 639.

> (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 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

Pursuant to the foregoing, the penalty for lascivious conduct when the victim is under 12 years of age is *reclusion temporal* in its medium period, which ranges from 14 years, eight months and one day to 17 years and four months. Applying the *Indeterminate Sentence Law*, the penalty next lower to the statutory penalty is *reclusion temporal* in its minimum period (*i.e.*, 12 years and one day to 14 years and eight months). Due to the absence of modifying circumstances, the statutory penalty is imposed in its medium period (*i.e.*, 15 years, six months and 21 days to 16 years, five months and 10 days).

The gravity of the imposable penalty serves the declared policy of the State expressed in Section 2 of Republic Act No. 7610, *viz.*:

> Section 2. *Declaration of State Policy and Principles.* – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.
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> It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.
>
> The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

The CA affirmed the imposition of the indeterminate sentence of 12 years and one day of *reclusion temporal* in its minimum period as the

minimum to 15 years, six months and 20 days of *reclusion temporal* in its medium period as the maximum. However, the maximum of the indeterminate sentence was short by *one* day, with the effect of imposing the legal penalty in its minimum period. We correct the penalty as a matter of course by fixing the indeterminate sentence of the petitioner at 12 years and one day of *reclusion temporal* in its minimum period, as the minimum, to 15 years, six months and **21** days of *reclusion temporal* in its medium period, as the maximum.

Another error of the CA that requires correction as a matter of course is the imposition of the fine of ₱15,000.00, increasing even the ₱10,000.00 set by the RTC as fine. The imposition of the fine by the lower courts had no legal basis because the law nowhere imposes it.[22] *Nullum poenum sine lege*.[23] Considering that neither Article 336 of the *Revised Penal Code* nor Section 5 of Republic Act No. 7610, the laws governing this case, prescribes any fine, the imposition thereof is deleted.

Lastly, although there has been no issue raised as to the civil indemnity, moral and exemplary damages, we prescribe interest of 6% *per annum* on them reckoned from the finality of this decision until full payment.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 8, 2012 subject to the **MODIFICATIONS** that: (1) the petitioner shall suffer the indeterminate penalty of 12 years and one day of *reclusion temporal* in its minimum period, as the minimum, to 15 years, six months and 21 days of *reclusion temporal* in its medium period, as the maximum; (2) the fine of ₱15,000.00 is deleted; and (3) the petitioner shall pay interest of 6% *per annum* on the civil indemnity, moral and exemplary damages reckoned from the finality of this decision until full payment.

Costs of suit to be paid by the petitioner.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[22] See Article 21, *Revised Penal Code*, which states: "No felony shall be punishable by any penalty not prescribed by law prior to its commission."

[23] Literally translated - *There is no penalty without a law imposing it.*

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

NOEL GIMENEZ TIJAM
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 28 2017