



Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

JERICHO CARLOS y DELA G.R. No. 243034  
 MERCED,

Petitioner, Present:

LEONEN, *J. Chairperson*,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 LOPEZ, *J., JJ.*

- versus -

AAA\* and PEOPLE OF THE Promulgated:  
 PHILIPPINES,

Respondent. June 28, 2021

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RESOLUTION

LOPEZ, J., *J.*:

The petition for review on *certiorari* seeks to reverse and set aside the July 31, 2018 Decision<sup>1</sup> and November 6, 2018 Resolution<sup>2</sup> of the Court of Appeals (*CA*) in CA-G.R. CR. No. 39005, which affirmed the September 9, 2014 Decision of the Regional Trial Court, Branch 93, San Pedro, Laguna (*RTC Laguna*), finding Jericho D. Carlos (*Carlos*) guilty beyond reasonable doubt for three (3) counts of violation of Section 10 (a) of Republic Act No. 7610 (*R.A. No. 7610*), otherwise known as the *Special Protection of Children against Child Abuse, Exploitation and Discrimination Act*. The accusatory portion of the three (3) indictments reads:

\* 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 their immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>1</sup> Penned by Associate Justice Ronaldo Roberto B. Martin, with Justice Ricardo R. Rosario (now a member of the Court) and Justice Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 29-42.

<sup>2</sup> *Id.* at 43-44.

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**Criminal Case No. [10]-7361-SPL**

That sometime in the month of December year 2009, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have carnal knowledge with [AAA], a minor, thirteen (13) years of age, said act is considered by law as "other condition prejudicial to the child's development" for which the accused is responsible, to her damage and prejudice.

CONTRARY TO LAW.<sup>3</sup>

**Criminal Case No. [10]-7362-SPL**

That sometime in the month of December year 2009, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have carnal knowledge with [AAA], a minor, thirteen (13) years of age, said act is considered [by law] as "other condition prejudicial to the child's development" for which the accused is responsible, to her damage and prejudice.

CONTRARY TO LAW.<sup>4</sup>

**Criminal Case No. [10]-7363-SPL**

That on or about January 10, 2010, in the Municipality of [REDACTED], Province of [REDACTED], Philippines, within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have carnal knowledge with [AAA], a minor, thirteen (13) years of age, said act is considered [by law] as "other condition prejudicial to the child's development" for which the accused is responsible, to her damage and prejudice.

CONTRARY TO LAW.<sup>5</sup>

Carlos entered a plea of *not guilty* during the arraignment. As a consequence, trial on the merits then ensued.

***Version of the Prosecution***

The CA succinctly summarized the testimonies of the State's witnesses as follows:

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<sup>3</sup> *Rollo*, p. 15.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 16.

Private complainant testified that she and accused-appellant knew each other as they were former sweethearts. The first incident happened in October 2009 when accused-appellant texted private complainant that he will fetch her so that they could talk. Private complainant and accused-appellant then proceeded to the latter's house in [REDACTED] Laguna. Upon arriving there, accused-appellant asked private complainant to follow him to his room upstairs. Once inside, private complainant and accused-appellant had a brief conversation. After their talk, private complainant testified that accused-appellant suddenly forced her to lie down on the airbed and then pulled down her shorts and panty and inserted his penis inside her vagina. Private complainant told accused-appellant to stop what he was doing as she did not like it. However, accused-appellant allegedly did not listen and continued to satisfy his lust. Thereafter, accused-appellant gave private complainant a "pamunas" to wipe the semen off in her vagina and told her to put her clothes back on. After dressing up, private complainant immediately left the room of accused-appellant and went home. Private complainant narrated that she was terrified so she spoke to no one about what accused-appellant did to her.

Private complainant further testified that a similar incident happened sometime in December 2009. Accused-appellant texted private complainant asking the latter to come to his house. After Accused-appellant fetched private complainant, they proceeded to the former's house. Once inside, accused-appellant told private complainant that he wanted to have sex with her. Private complainant testified that she refused since she was having her menstrual period. However, accused-appellant, forced her to lie down, undressed her, laid on top of her and then inserted his penis into her vagina. Private complainant tried standing but accused-appellant kept pushing her down to the bed. After accused-appellant was through, private complainant immediately left accused-appellant's house and again kept mum about the second incident.

The last incident of sexual abuse happened on 10 January 2010 when private complainant and accused-appellant had a big fight. In order to resolve it, accused-appellant asked private complainant to come over to his house to discuss their problem. Upon arriving at accused-appellant's house, private complainant immediately proceeded upstairs where accused-appellant was waiting. After their talk, accused-appellant again had sexual congress with her. Accused-appellant then received a text message from one of private complainant's classmates informing him that private complainant's mother knew that she was at accused-appellant's house. When accused-appellant learned about it, he called private complainant's classmate and asked how private complainant's mother knew about her whereabouts. Accused-appellant panicked and forced private complainant to board inside the compartment of his car. Accused-appellant then asked his brother, Jeffrey, to drive his car and bring private complainant to the "court". When they reached the "court", Jeffrey asked private complainant to transfer inside the car. Afterwards, they proceeded to the house of private complainant's classmate, one Diodin (Diodin), located at [REDACTED]. Upon arriving there, private complainant looked for Diodin, but, he was not around. Private complainant waited until Diodin arrived late in the afternoon. Diodin then asked private complainant what happened to her. The latter broke her silence and told Diodin about the sexual abuse committed by accused-appellant against her.

At around six o'clock in the evening of the same date, private complainant's uncle and another classmate of her, came to Diodin's house and fetched her. Upon arriving at their house, private complainant's parents asked her where she went that day. She replied that she just went to the house of one of her classmates.

Out of fear, private complainant testified that she kept silent about her ordeal with accused-appellant. She only disclosed the same to her father, [BBB], on 10 January 2010, after they went to the house of one of her classmates. Thereafter, [BBB] accompanied private complainant to the police station and reported the incidents of sexual abuse.

[BBB] also testified that he filed the "*Salaysay ng Pagreklamo*" against accused-appellant after her daughter told him that she had sexual intercourse with accused-appellant. After the filing of the complaint, he, accompanied by two (2) police officers, brought his daughter to [REDACTED] for medico-legal examination.

x x x x

Dr. Camarillo also testified that based on his examination, private complainant suffered deep fresh laceration at 5:00 o'clock position, deep healed laceration at 2:00 o'clock position and shallow healed laceration at 7:00 o'clock position, indicating that private complainant sustained a very recent hymenal injury and that the old injuries were caused by a blunt hard object such as a penis, a finger or hard object inserted in the vaginal canal.<sup>6</sup>

### *Version of the Defense*

Carlos vehemently denied that he had sexual intercourse with AAA. He however admitted that AAA was his sweetheart from October 2009 until January 2010, the CA abridged the defense's version in this manner:

On the other hand, [a]ccused-appellant denied that he had sexual intercourse with private complainant on the dates alleged in the criminal Information. Accused-appellant, however, admitted that he and private complainant were sweethearts from October 2009 until 10 January 2010. He averred that on 10 January 2010, he and private complainant were in their house just watching television with his brother, Jeffrey.

Jeffrey corroborated the testimony of accused-appellant and averred that he was just in their house watching television when his brother and private [complainant] arrived and thereafter joined him. Jeffrey testified that he never left his brother and private complainant alone in their house. While they were watching, accused-appellant received a text message that the mother of private complainant knew that she was with accused-appellant in their house. Jeffrey further testified that private complainant told accused-appellant to bring her out of their house and even suggested that she be placed in the trunk of the car so that her parents would not see her when the car passes by.<sup>7</sup>

<sup>6</sup> *Rollo*, pp. 31-33. (Citations omitted).  
<sup>7</sup> *Id.*, at 33.

### *Judgment of the RTC*

On September 9, 2014, the RTC Laguna rendered a Decision convicting the accused of three counts of violation of Section 10 (a) of R.A. No. 7610. It observed that the prosecution had sufficiently established the guilt of Carlos beyond reasonable doubt for the crimes charged. The culpability of Carlos was clearly established by prosecution witness AAA. The RTC Laguna further stated that there is nothing in the records to show that the testimony of AAA was motivated by any other reason than her sincere desire to have the culprit apprehended and punished. She has not shown to have any ulterior motive to falsely testify against Carlos. The *fallo* of the decision reads:

WHEREFORE, the Court hereby renders judgment:

1). Finding accused Jericho Carlos y De la Merced guilty beyond reasonable doubt of the crime of Violation of Section 10 (a) of R.A. 7610 in Criminal Case No. 7361, hereby sentencing him to suffer the indeterminate penalty of imprisonment from FOUR (4) YEARS[,] TWO (2) MONTHS AND ONE (1) DAY of *Prision Correccional*[,] as minimum[,] to SIX (6) YEARS, ONE (1) DAY of *Prision Mayor*[,] as maximum, and to pay moral damages in the amount of ₱50,000.00.

2). Finding accused Jericho Carlos y De la Merced guilty beyond reasonable doubt of the crime of Violation of Section 10 (a) of R.A. 7610 in Criminal Case No. 7362, hereby sentencing him to suffer the indeterminate penalty of imprisonment from FOUR (4) YEARS[,] TWO (2) MONTHS AND ONE (1) DAY of *Prision Correccional*[,] as minimum[,] to SIX (6) YEARS, ONE (1) DAY of *Prision Mayor*[,] as maximum, and to pay moral damages in the amount of ₱50,000.00.

3). Finding accused Jericho Carlos y De la Merced guilty beyond reasonable doubt of the crime of Violation of Section 10 (a) of R.A. 7610 in Criminal Case No. 7363, hereby sentencing him to suffer the indeterminate penalty of imprisonment from FOUR (4) YEARS[,] TWO (2) MONTHS AND ONE (1) DAY of *Prision Correccional*[,] as minimum[,] to SIX (6) YEARS, ONE (1) DAY of *Prision Mayor*[,] as maximum, and to pay moral damages in the amount of ₱50,000.00.

SO ORDERED.<sup>8</sup>

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<sup>8</sup> *Id.* at 33-34.

### *Appeal before the Court of Appeals*

Carlos appealed his conviction, arguing that the trial court erred in finding him guilty beyond reasonable doubt of Section 10 (a) of R.A. No. 7610 as charged in the three informations when the evidence tended to establish the commission of sexual abuse punished under Section 5 (b) which the prosecution also failed to prove; and that the trial court erred in not applying a settled jurisprudence.<sup>9</sup>

### *The Ruling of the Court of Appeals*

In a Decision dated July 31, 2018, the CA modified the conviction of Carlos for three (3) counts of sexual abuse under Section 5 (b) of R.A. No. 7610, instead for Section 10 (a) of the same law. The dispositive portion of the assailed decision reads:

WHEREFORE. premises considered, the 9 September 2014 Decision of the Regional Trial Court, Branch 93, San Pedro, Laguna in CR Nos. 10-7361-SPL to 10-7363-SPL is AFFIRMED with MODIFICATION in that in the three (3) separate Informations, accused-appellant is found guilty of violation of Section 5 (b) of R.A. No. 7610 and is therefore sentenced to suffer an indeterminate penalty of 14 years and 8 months of *reclusion temporal*[.] as minimum[.] to 20 years of *reclusion temporal*[.] as maximum[.] in each criminal Information. In addition to the moral damages awarded by the RTC, accused-appellant is also ordered to pay private complainant PhP50,000.00 each as civil indemnity. All damages shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment.

SO ORDERED.<sup>10</sup>

The subsequent motion for reconsideration filed by Carlos was denied by the CA in a Resolution dated November 6, 2018, for lack of merit.

Hence, this petition.

Carlos argues that the CA erred in interpreting Section 10 (a) of R.A. No. 7610 more specifically the words “any person who shall commit any act of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development”;<sup>11</sup> and that the provisions of Section 5 (b) of R.A. No. 7610 was erroneously applied more specifically the words “due to coercion or influence of any adult, syndicate or group, indulge in

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<sup>9</sup> *Id.* at 35.

<sup>10</sup> *Id.* at 41.

<sup>11</sup> *Id.* at 21.

sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.”<sup>12</sup>

The State, in its Comment prepared by the Office of the Solicitor General, maintains that the CA correctly affirmed the trial court’s decision convicting Carlos of child abuse;<sup>13</sup> and that Carlos’ reliance on *People v. Olayon*<sup>14</sup> is misplaced.<sup>15</sup>

Carlos, in his Reply, substantially repeats his arguments raised in his petition.<sup>16</sup>

### *The Court’s Ruling*

The petition has no merit.

The wordings of Section 5 (b) of R.A. No. 7610, otherwise known as “*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes,*” provides the following:

#### ARTICLE III

##### Child Prostitution and Other Sexual Abuse

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

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<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.* at 68.

<sup>14</sup> 584 Phil 594 (2008).

<sup>15</sup> *Rollo*, p. 69.

<sup>16</sup> *Id.* at 83-84.

(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; x x x.

We rule that the CA correctly convicted Carlos for violation of Section 5 (b) instead of Section 10 (a). *First*, the three separate indictments sufficiently alleged the punishable acts and its elements punished by Section 5 (b). The elements of Section 5 (b) for sexual abuse are: (a) the commission by the accused of the act of sexual intercourse (b) the act is performed on a child exploited in prostitution or subjected to other sexual abuse; and (c) the child, whether male or female, is below 18 years of age. And, *second*, as can be gleaned from the above-mentioned provisions of Section 5 (b) of R.A. No. 7610 specifically applies in case of sexual abuse committed against children; whereas, Section 10 (a) thereof punishes other forms of child abuse not covered by other provisions of R.A. No. 7610. Parenthetically, the offense will not fall under Section 10 (a) of R.A. No. 7610 if the same is specifically penalized by a particular provision of the law such as Section 5 (b) for sexual abuse.<sup>17</sup>

In the present case, the Court finds that the State was able to prove all the elements. The CA aptly observed:

In the instant case, the existence of the first and third elements remains undisputed. Accused-appellant committed an act of sexual intercourse, on three (3) separate dates, when he inserted his penis into the vagina of private complainant, who was only thirteen (13) years old, having been born on 12 January 1996 as shown by her Birth Certificate. Thus, the only bone of contention lies in the presence of the second element. On this note, the defense submits that accused-appellant cannot be convicted of Section 5(b) absent any allegation that there was persuasion, enticement or coercion on his part.

Section 5, Article III of RA 7610 provides 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." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty,

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<sup>17</sup> *Escalante v. People*, 811 Phil. 769, 779 (2017).



exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

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.

To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of . . . power to compel another to submit to the wishes of one who wields it."

This Court finds that accused-appellant's actuations may be classified as "coercion" and "influence" within the purview of Section 5, Article III of RA 7610. First, the most crucial element is private complainant's minority. It is undisputed that private complainant was only 13 years old at the time of the commission of the crime and is, hence, considered a child under the law. In this respect, private complainant was not capable of fully understanding or knowing the import of her actions and in consequence, remained vulnerable to the cajolery and deception of adults, as in this case.<sup>18</sup>

Even if we affirm the conviction of Carlos, the Court deems it proper to modify the imposed penalties for each count. The penalty for sexual abuse under Section 5 (b), Article III of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. Considering that no aggravating or mitigating circumstance is present, the penalty should be imposed in its medium period. Moreover, notwithstanding the fact that R.A. 7610 is a special law, petitioner may still enjoy the benefits of the Indeterminate Sentence Law. In applying its provisions, the minimum term shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period.<sup>19</sup>

Applying the Indeterminate Sentence Law, Carlos should be sentenced to an indeterminate penalty of *prision mayor* in its medium period to *reclusion temporal* in its minimum period (eight years and one day to fourteen years and eight months), as minimum, and *reclusion temporal* in its medium period to *reclusion perpetua* in its medium period (seventeen years, four months and one day to twenty years), as maximum.<sup>20</sup>

<sup>18</sup> *Rollo*, pp. 37-38. (Citations omitted).

<sup>19</sup> *Melvin Encinares y Ballon v. People*. G.R. No. 252267, January 11, 2021.

<sup>20</sup> *Martines v. People*. G.R. No. 223537 (Minute Resolution), July 11, 2016.

Finally, and conformably with the ruling in *People v. Tulagan*,<sup>21</sup> the amount of civil indemnity, moral damages, and exemplary damages awarded for Lascivious Conduct under Section 5 (b) of R.A. 7610, where the victim is a child below eighteen (18) years of age and the penalty imposed is within the range of *reclusion temporal* medium, is ₱50,000.00<sup>22</sup> for each count of sexual abuse. All amounts awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.<sup>23</sup>

**WHEREFORE**, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 39005, dated July 31, 2018 and November 6, 2018, respectively, are **AFFIRMED WITH MODIFICATION** finding Jericho Carlos y Dela Merced **GUILTY** of violation of Section 5(b) of R.A. No. 7610. Accordingly, he is sentenced to suffer the indeterminate penalty of imprisonment 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, for each count of sexual abuse under Section 5 (b) of R.A. No. 7610.

Petitioner is, likewise, **ORDERED** to **PAY** AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages for each count. All amounts awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until full payment.

**SO ORDERED.**

  
**JHOSEP Y. LOPEZ**  
Associate Justice

<sup>21</sup> 783 Phil. 806 (2016).

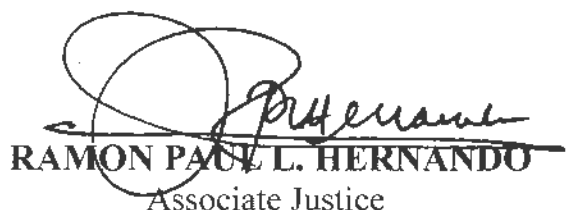
<sup>22</sup> *Melvin Encinares y Ballon v. People*, *supra* note 16.

<sup>23</sup> *People v. XXX*, G.R. No. 241011 (Minute Resolution), June 10, 2019.

**WE CONCUR:**



**MARVIC M.V.F. LEONEN**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
Associate Justice




**HENRI JEAN PAUL B. INTING**  
Associate Justice



**EDGARDO L. DELOS SANTOS**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution 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, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ALEXANDER G. GESMUNDO**  
Chief Justice