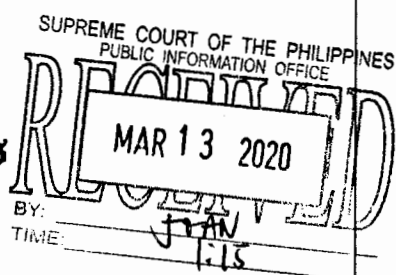




Republic of the Philippines  
Supreme Court  
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, which reads as follows:

“G.R. No. 248393 (*Darwin Casaclang y Somera v. People of the Philippines*). – Before Us is a Petition for Review on *Certiorari*<sup>1</sup> filed by Darwin Casaclang y Somera (petitioner) assailing the Decision<sup>2</sup> dated October 29, 2018 of the Court of Appeals (CA) in CA-G.R. CR. No. 40736, which affirmed the Joint Decision<sup>3</sup> dated November 6, 2017 of the Regional Trial Court (RTC) of Valenzuela City, Branch 270, finding petitioner guilty of violation of Section 5(b) of Republic Act No. (R.A.) 7610, otherwise known as the “Special Protection of Children against Abuse, Exploitation, and Discrimination Act,” in Criminal Case Nos. 437-V-17 and 438-V-17.<sup>4</sup>

**Antecedents**

Petitioner was charged with four counts of violation of Section 5(b), R.A. 7610 under the following Informations:

**Crim. Case No. 436-V-17**

“That sometime between year 2011 to year 2015, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, being the father of the victim [AAA], 12 years old (DOB: November 16, 2003) with lewd and lust designs, by means of coercion, intimidation, and by using his influence and abuse of parental authority, did then and there wilfully, unlawfully and feloniously fondle and lick [the] victim’s breast and vagina in a cunnilingus way, against her will and without her consent, thereby subjecting the victim to sexual abuse.

CONTRARY TO LAW.”<sup>5</sup> (Citations omitted.)

<sup>1</sup> *Rollo*, pp. 11-27.

<sup>2</sup> Penned by Associate Justice Mario V. Lopez (now a Member of this Court), with Associate Justices Carmelita Salandanan Manahan and Pablito A. Perez, concurring; *id.* at 29-39.

<sup>3</sup> Penned by Judge Evangeline M. Francisco; *id.* at 61-71.

<sup>4</sup> *Id.* at 71.

<sup>5</sup> *Id.* at 13.

**Crim. Case No. 437-V-17**

“That on or about October 15, 2016 at around 12 o’ clock midnight, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, being the father of the victim [AAA], 12 years old (DOB: November 16, 2003) with lewd and lust designs, by means of coercion, intimidation, and by using his influence and abuse of parental authority, did then and there willfully, unlawfully and feloniously remove the short pants and underwear of the victim, thereafter, lick [the] victim’s vagina in a cunnilingus way, against her will and without her consent, thereby subjecting the victim to sexual abuse.

CONTRARY TO LAW.”<sup>6</sup>

**Crim. Case No. 438-V-17**

“That on or about October 29, 2016 at around 1 o’ clock in the afternoon, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, being the father of the victim [AAA], 12 years old (DOB: November 16, 2003) with lewd and lust designs, by means of coercion, intimidation, and by using his influence and abuse of parental authority, did then and there willfully, unlawfully and feloniously fondle and lick [the] victim’s breast and vagina in a cunnilingus way, against her will and without her consent, thereby subjecting the victim to sexual abuse.

CONTRARY TO LAW.”<sup>7</sup>

**Crim. Case No. 439-V-17**

“That on or about November 13, 2016 at around 1 o’ clock in the afternoon, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, being the father of the victim [AAA], 12 years old (DOB: November 16, 2003) with lewd and lust designs, by means of coercion, intimidation, and by using his influence and abuse of parental authority, did then and there willfully, unlawfully and feloniously caressed (sic) [the] victim’s buttocks, against her will and without her consent, thereby subjecting the victim to sexual abuse.

CONTRARY TO LAW.”<sup>8</sup>

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<sup>6</sup> Id.

<sup>7</sup> Id. at 14.

<sup>8</sup> Id.

Upon arraignment, petitioner pleaded not guilty to the charges. During the preliminary conference, the parties stipulated on the following:

1. The identity of the accused as the same person charged in the four (4) Criminal Informations;
2. The territorial jurisdiction of the court;
3. The minority of the complainant;
4. That the accused is the biological father of the complainant;
5. That Social Worker Beverly De Villa prepared the Intake Report, her testimony was dispensed with; and
6. That Social Worker Ma. Lourdes Gardoce is the handling Social Worker and who referred the case to the office of the City Prosecutor, Valenzuela City, her testimony was also dispensed with.<sup>9</sup>

### Version of the Prosecution

AAA<sup>10</sup> testified that from the year 2011 to 2015, petitioner repeatedly licked her private parts and fondled her breasts. On October 15, 2016, at around 12:00 a.m., while AAA was sleeping, petitioner removed her shorts and underwear, thereafter, petitioner licked her vagina.

On October 29, 2016, at around 1:30 p.m., while AAA was showering in the bathroom, petitioner entered the same and fondled her breasts and licked her vagina. Another incident happened on November 13, 2016, at around 6:00 a.m., petitioner touched the buttocks of AAA and told her that he would give her money.<sup>11</sup>

The cousin of AAA, CCC, testified that on November 8, 2016, the friends of AAA namely, Lea Dela Cruz and Emily Robino, approached her and told her that they noticed something strange with AAA. When AAA was asked by Meyca what was wrong, AAA confided to her that petitioner had been molesting her.<sup>12</sup>

BBB,<sup>13</sup> the 11-year old brother of AAA, testified that petitioner covered his eyes with his hands and instructed him to sleep. He did not see how petitioner sexually abused his sister. BBB told the court that he does not pity his father because what he did to his *ate* was wrong.<sup>14</sup>

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<sup>9</sup> Id. at 63.

<sup>10</sup> In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), citing Section 40 of A.M. No. 04-10-11-SC on the Rule on Violence Against Women and Their Children and Section 63, Rule XI of the Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, the real name of the rape victim will not be disclosed.

<sup>11</sup> *Rollo*, p. 15.

<sup>12</sup> Id. at 64-65.

<sup>13</sup> In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), citing Section 40 of A.M. No. 04-10-11-SC on the Rule on Violence Against Women and Their Children and Section 63, Rule XI of the Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, the real name of the rape victim will not be disclosed.

<sup>14</sup> *Rollo*, p. 31.

### Version of the Defense

Petitioner admitted that he is the biological father of AAA. He denied the charges against him. He claimed that there is no truth to any of the allegations against him. He surmised that the charges were orchestrated by Maricris Pelaez (Maricris), the sister of his wife. Petitioner claimed that Maricris wanted to gain custody over his children so that the monthly allowances sent by his wife for their children would be directly remitted to Maricris.<sup>15</sup>

Ofelia Lumaog, petitioner's sister, testified that it was not possible for the petitioner to have molested AAA on October 29, 2016 because there were many people in the area, and the door of the house of the family of petitioner and the door of the house of the neighbor are across each other.<sup>16</sup>

### RTC Ruling

In a Joint Decision<sup>17</sup> dated November 6, 2017, the RTC acquitted petitioner of the charges in Criminal Case Nos. 436-V-17 and 439-V-17.<sup>18</sup> The RTC held that the charge contained in Criminal Case No. 436-V-17 covered not only a single year, but five years where petitioner would account his whereabouts. Thus, the failure of the prosecution to allege, with particularity, the place, date and time of the commission of the crime deprived petitioner of his right to intelligently prepare for his defense.<sup>19</sup>

As to the charge in Criminal Case No. 439-V-17, the circumstances leading to the act of petitioner of touching the buttocks of AAA were not alleged clearly by the prosecution. Considering that AAA testified that it occurred in the morning, there was a possibility that petitioner was just waking up AAA to give her allowance for the day.<sup>20</sup>

However, as to the charges in Criminal Case Nos. 437-V-17 and 438-V-17, the prosecution was able to prove the elements of sexual abuse under Section 5(b) of R.A. 7610, thus:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows, to wit:

In Criminal Case No/s 436-V-17 and 439-V-17, finding accused DARWIN CASACLANG y Somera NOT GUILTY on account of reasonable doubt and he is hereby acquitted of the offenses as charged.

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<sup>15</sup> Id. at 31-32.

<sup>16</sup> Id.

<sup>17</sup> Id. at 61-71.

<sup>18</sup> Id. at 71.

<sup>19</sup> Id. at 70.

<sup>20</sup> Id. at 71.

In Criminal Case No/s 437-V-17 and 438-V-17, finding accused DARWIN CASACLANG y Somera GUILTY beyond reasonable doubt of two (2) counts of violation of Section 5(b) of RA 7610. He is hereby sentenced to suffer for each of the Criminal Information, 14 years, minimum to 17 years, maximum imprisonment, and to pay [AAA] the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages.

SO ORDERED.<sup>21</sup>

### CA Ruling

On appeal, the CA affirmed with modification the ruling of the RTC, to wit:

WHEREFORE, the appeal is DENIED. The November 6, 2017 Joint Decision of Regional Trial Court of Valenzuela City, Branch 270, is AFFIRMED with the MODIFICATION that accused appellant Darwin Casaclang y Somera is DIRECTED TO PAY interest for all damages awarded at the rate of 6% per annum from date of finality of the judgment until fully paid.

SO ORDERED.

### Petitioner's Arguments

Petitioner claimed that the prosecution was not able to establish petitioner's guilt for violation of Section 5(b) of R.A. 7610. He argued that the testimony of AAA was incredible and contrary to human experience. Despite the absence of any form of threat from petitioner, AAA claimed fear of petitioner to justify her failure to shout for help. Further, the testimony of BBB, that petitioner covered both his eyes while molesting AAA, is contrary to human experience – how can petitioner use both his hands to cover the eyes of BBB and at the same time lick the vagina of AAA?

Also, the fact that the friends of AAA noticed something strange from her and reported the same to Meyca is insufficient to arouse suspicion that petitioner was molesting AAA. Petitioner claimed that the charges against him were orchestrated by Maricris in order to gain custody over his children so that the monthly allowances sent by his wife for their children will be directly remitted to Maricris.

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<sup>21</sup> Id.

### The Court's Ruling

After a perusal of the records of the case, this Court resolves to deny the petition of petitioner for his failure to show that the CA committed any reversible error in affirming the findings of the RTC. However, a modification of the nomenclature of the crime and the damages awarded is necessary, following this Court's pronouncement in *People v. Caoili*<sup>22</sup> and *People v. Tulagan*.<sup>23</sup>

Petitioner questions the credibility of AAA by alleging that her testimony is contrary to human experience because AAA failed to shout for help despite the absence of any form of threat from petitioner.

The absence of any bodily threat does not negate the molestation committed by petitioner against AAA. It has been ruled that there must be some form of compulsion equivalent to intimidation, which subdues the free exercise of the offended party's will. However, intimidation need not be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.<sup>24</sup> Pertinently, in case of molestation of a minor committed by a family member, the moral ascendancy of the ascendant substitutes force or intimidation.<sup>25</sup> Actual force or intimidation of petitioner need not be employed where his moral and physical dominion is sufficient to cow AAA into submission to his beastly desires.<sup>26</sup>

As to petitioner's claim that it is impossible for him to lick AAA's vagina and at the same time use both his hands to cover BBB' eyes, the CA found that both acts were not done simultaneously. Based on the testimony of BBB, petitioner would let him sleep first before doing the dastardly acts to AAA. In case BBB is awakened by petitioner's acts, the latter would cover his eyes and allow him to fall asleep first before continuing with the molestation.<sup>27</sup>

As to the allegation that the charges were orchestrated by Maricris in order to get the monthly allowances from petitioner's wife, it is too flimsy to be considered. No woman would concoct a story of defloration, especially of a minor, allow an examination of her private parts and submit herself to public humiliation and scrutiny, if her charges were not true and only orchestrated and motivated by her aunt for the above reasons. The charges against petitioner are motivated by a fervent desire to seek justice.

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<sup>22</sup> G.R. No. 196342, August 8, 2017, 835 SCRA 107.

<sup>23</sup> G.R. No. 227363, March 12, 2019.

<sup>24</sup> *People v. Dagsa*, G.R. No. 219889, January 29, 2018, 853 SCRA 276, 295.

<sup>25</sup> *People v. Bugna*, G.R. No. 218255, April 11, 2018, 861 SCRA 137, 152.

<sup>26</sup> *People v. Castel*, 593 Phil. 288 (2008).

<sup>27</sup> *Rollo*, p. 36.

Under Section 5(b) of R.A. 7610, the elements of sexual abuse are:

- (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 of age. (Emphasis supplied.)

Section 2 in the Rules and Regulations of R.A. 7610 defines sexual abuse and lascivious conduct in this wise:

(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, **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.)

Clearly, the acts of petitioner in repeatedly licking the vagina and fondling the breasts of AAA on different occasions constitute lascivious conduct that is punishable under Section 5(b) of R.A. No. 7610.

As to the proper nomenclature of the crime, this Court in the case of *People v. Caoili*<sup>28</sup> instructs Us that if the victim is 12 years of age or more but below 18 years of age, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610" and the penalty imposed is *reclusion temporal* medium to *reclusion perpetua*.<sup>29</sup>

In this case, the prosecution established and the defense admitted that AAA was born on November 16, 2003, making her 12 years old at the time of the commission of the crime. The relationship of petitioner with AAA was alleged in the Informations charging petitioner, and the same was established during the trial because the defense admitted that petitioner is the biological father of AAA. Under Section 31(b) of R.A. 7610, the penalty provided shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity. As such, petitioner is sentenced to suffer the penalty of *reclusion perpetua*.

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<sup>28</sup> Supra note 22.

<sup>29</sup> Supra note 22 at 154.

As to the damages awarded, this Court in the recent case of *People v. Tulagan*<sup>30</sup> provides that for those convicted of the crime of Lascivious Conduct under Section 5(b) of R.A. 7610 and the penalty imposed is *reclusion perpetua*, the amounts of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱75,000.00 as exemplary damages are to be imposed.

Further, a legal interest of six percent *per annum* is to be imposed on the total damages awarded reckoned from the date of finality of this Resolution until full payment thereof.

**WHEREFORE**, the instant petition is **DENIED**. The Decision dated October 29, 2018 of the Court of Appeals in CA-G.R. CR No. 40736 is hereby **MODIFIED** as follows:

- a. In Criminal Case No. 437-V-17 and 438-V-17, petitioner Darwin Casaclang y Somera is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 and is sentenced to suffer the penalty of *reclusion perpetua* on each count;
- b. Petitioner Darwin Casaclang y Somera is further **ORDERED** to pay to the victim the amounts of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱75,000.00 as exemplary damages, each for Criminal Case Nos. 437-V-17 and 438-V-17; and
- c. A legal interest of six percent (6%) *per annum* is to be imposed on the total damages awarded, reckoned from the date of finality of this Resolution until full payment thereof.

**SO ORDERED.**"

Very truly yours,

*Mis PDC Batt*  
**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

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<sup>30</sup> Supra note 23.