



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 18, 2020 which reads as follows:

“G.R. No. 251598* – BIENVENIDO ROQUE y ROMERO, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

After reviewing the Petition for Review on *Certiorari*¹ and its annexes, inclusive of the Court of Appeal’s (CA) Decision² dated July 23, 2019 and Resolution³ dated January 27, 2020 in CA-G.R. CR No. 40191, and the Regional Trial Court’s (RTC) Decision⁴ dated May 28, 2017 in Criminal Case No. 13-236, the Court resolves to **DENY THE PETITION** for failure of petitioner Bienvenido Roque y Romero (Roque) to sufficiently show that the CA committed any reversible error in the challenged decision as to warrant the exercise of this Court’s discretionary appellate jurisdiction.

The essential elements of sexual abuse under Section 5(b) of Republic Act No. (RA) 7610 are as follows: (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 sexual abuse; (3) the child, whether male or female, is below 18 years of age.⁵

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* No unmodified version because real name of the victim cannot be found in the *rollo*.

¹ *Rollo*, pp. 11-29.

² *Id.* at 31-41. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Myra V. Garcia-Fernandez and Perpetua T. Atal-Paño, concurring.

³ *Id.* at 43-45.

⁴ *Id.* at 58-59. Penned by Presiding Judge Dennis Patric Z. Perez.

⁵ *People v. Ursua*, G.R. No. 218575, October 4, 2017, 842 SCRA 165, 177.

In this case, all the aforementioned elements were clearly proven by the prosecution. Roque committed lascivious acts against AAA,⁶ a five-year-old minor, by intentionally touching her vagina and kissing her, as testified to by AAA:

Q: But before you arrive[d] home, did something happen along the way?

A: Yes[,] Sir.

Q: What was that?

A: Hinalikan ako at hinawakan iyong pepe ko.

Q: Who did that to you?

A: Si Bien po.

Q: Bienvenido Roque?

A: Yes, Sir.

Q: How did Bienvenido Roque able to do that to you AAA? (*sic*)

A: He called me, Sir.

Q: And after he called you, what else did he do if you can still recall?

A: He kissed me and touched my private part[,] Sir.

Q: And after that what else happened if you know?

A: No more[,] Sir, I went home.

Q: Before going home, did he say something to you?

A: Yes, Sir.

Q: Can you tell us what did he tell you?

A: Huwag daw po akong magsusumbong.

Q: What did you feel after he did that to you – he kissed and touched your private part?

A: It hurts[,] Sir.

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⁶ The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to R.A. No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.

- Q: And when he told you not to tell anybody, what did you feel?
A: (witness is crying) That I have to be brave, Sir.
- Q: Meaning to say, he frightened you?
A: Yes[,] Sir.⁷

In *People v. Tulagan*,⁸ (*Tulagan*) the Court prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of RA 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.
2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second proviso in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.⁹
(Emphasis omitted and underscoring supplied)

In this relation, the Implementing Rules and Regulations of RA 7610 defines lascivious conduct as:

"x x x [T]he 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."¹⁰

The CA is thus correct in ruling that the proper nomenclature for the crime that Roque should be convicted of is Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b) of RA 7610, otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

In questioning his conviction, Roque raises the following arguments: (1) that it was contrary to logic and human experience that AAA failed to seek help or even shout; (2) that AAA was not

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⁷ *Rollo*, pp. 34-35.

⁸ G.R. No. 227363, March 12, 2019, p. 14, citing *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 153-154.

⁹ *Id.* at 14.

¹⁰ *Id.* at 9.

subjected to medical examination; and (3) that he merely lifted AAA by the hips to protect the latter from the puppies who were approaching her.

However, these arguments deserve scant consideration.

Anent the first argument of Roque, it is settled jurisprudence that there is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault. The workings of the human mind placed under emotional stress are unpredictable, and people react differently: some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. However, any of these conducts does not impair the credibility of a sexually abused victim.¹¹ Further, the Court has consistently held that when there is no showing of any improper motive on the part of the victim to testify falsely against the accused or to falsely implicate the latter in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence.¹² Thus, the fact that AAA failed to seek help or even shout for help does not dilute her credibility nor negate the clear fact that Roque sexually abused AAA. The defense failed to establish that AAA had any improper motive to testify against Roque. Further, the truthfulness and sincerity of her testimony is bolstered by the fact that after Roque committed the lewd acts against her, she immediately reported the incident to her mother as soon as she got home.¹³

Additionally, it must be noted that AAA was merely five years old when she was sexually abused by Roque. It is well-settled that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been sexually abused, she says in effect all that is necessary to show that sexual abuse has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.¹⁴

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¹¹ *People v. ZZZ*, G.R. No. 238121, July 17, 2019, p. 7 (Unsigned Resolution), citing *People v. Palanay*, G.R. No. 224583, February 1, 2017, 816 SCRA 493, 504-505.

¹² *People v. Tabayan*, G.R. No. 190620, June 18, 2014, 726 SCRA 587, 601.

¹³ *Rollo*, p. 37

¹⁴ *People v. Cadano, Jr.*, G.R. No. 207819, March 12, 2014, 719 SCRA 234, 245.

With regard to the second contention of Roque, the fact that AAA was not subjected to medical examination is irrelevant. As correctly held by the CA, case law states that medical reports are merely corroborative in character and are not essential for a conviction because the credible testimony of a victim would suffice.¹⁵ AAA's testimony, which the trial court found credible, sufficiently established that Roque committed lascivious acts against AAA.¹⁶ Also, even if AAA was subjected to a medical examination, the results of the medical examination would not significantly change the Court's decision. Roque merely touched the outer part of AAA's vagina, hence there would be no finding of laceration or any physical manifestation of sexual abuse in AAA's vagina.

Lastly, Roque's contention that he merely lifted AAA by the hips to protect the latter from the puppies which were approaching her is a flimsy excuse to exculpate himself from liability. It is well-settled that alibi and denial are inherently weak defenses, which cannot prevail against positive identification of the accused as the perpetrator. It is facile to fabricate and difficult to disprove, and is generally rejected.¹⁷ Moreover, if he really only intended to lift AAA and assuming that he only accidentally touched AAA's vagina, his act of kissing AAA belies his defense. Also, as pointed out by the RTC, although Roque's testimony was corroborated by his daughter, his daughter did not personally witness the incident and her testimony is "shaky as she admitted that she did not immediately come to his defense at the first instance and that she has an interest in his freedom."¹⁸

Finally, in accordance with *Tulagan*,¹⁹ the imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610 is *reclusion temporal* in its medium period, which ranges from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Thus, applying the provisions of the Indeterminate Sentence Law in imposing the penalty upon the accused who was similarly charged with the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610, 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*, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to

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¹⁵ *Rollo*, pp. 37-38.

¹⁶ *Id.* at 38.

¹⁷ *People v. Mapalo*, G.R. No. 172608, February 6, 2007, 514 SCRA 689, 708-709.

¹⁸ *Rollo*, p. 59.

¹⁹ *Supra* note 8.

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.²⁰

Hence, from the foregoing, the penalty imposed by the CA, which is twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal* minimum, as minimum penalty, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* medium, as maximum penalty should be modified to conform to existing jurisprudence.²¹ Roque is sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum.²²

Also, consistent with *Tulagan*,²³ the Court modifies the monetary awards:

For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. **Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each.** The said amount is based on *People v. Jugueta* which awards civil indemnity and moral damages in the amount of ₱50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal*. In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of ₱50,000.00 should likewise be awarded.²⁴ (Emphasis and underscoring supplied)

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals dated July 23, 2019 and Resolution dated January 27, 2020 in CA-G.R. CR No. 40191, finding petitioner

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²⁰ *People v. Dagsa*, G.R. No. 219889, January 29, 2018, 853 SCRA 276, 296-297; *People v. Santos*, G.R. No. 205308, February 11, 2015, 750 SCRA 471, 487; *Quimvel v. People*, G.R. No. 214497, April 18, 2017, 823 SCRA 192, 251.

²¹ *Id.*

²² *People v. Dagsa*, *id.*; *Quimvel v. People*, *id.*

²³ *Supra* note 8.

²⁴ *Id.* at 60.

Bienvenido Roque y Romero guilty beyond reasonable doubt 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, are hereby **AFFIRMED with MODIFICATION** by sentencing said petitioner to an indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty-one (21) days of *reclusion temporal* in its medium period, as maximum, and he is ordered to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages to the victim. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.” *Carandang, J., on official leave.*

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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