



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **15 March 2021** which reads as follows:*

**“G.R. No. 254969 (XXX<sup>1</sup> v. People of the Philippines).** - After a judicious review of the case, the Court resolves to **DENY** the instant petition<sup>2</sup> and **AFFIRM with MODIFICATION** the Decision<sup>3</sup> dated January 10, 2020 and the Resolution<sup>4</sup> dated December 7, 2020 of the Court of Appeals (CA) in CA-G.R. CR No. 41830 for failure of petitioner XXX to sufficiently show that the CA committed any reversible error in finding him criminally liable.

As correctly ruled by the CA, the prosecution was able to prove XXX’s criminal liability beyond reasonable doubt as it was able to establish that XXX inserted the penis into the mouth of AAA, who was then just a 12-year-old minor boy, against the latter’s will. In this regard, AAA’s alleged failure to engage in acts of self-preservation should not be taken against him, as not every victim of sexual abuse should be expected to act with reason or conformably with the usual expectation of mankind, especially when confronted with traumatic experiences.<sup>5</sup> Thus, there being no indication that the courts *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings.<sup>6</sup>

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<sup>1</sup> 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 RA 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.)

<sup>2</sup> Rollo, pp. 12-32

<sup>3</sup> Id. at 33-51. Penned by Associate Justice Walter S. Ong, with Associate Justices Ramon R. Garcia and Zenaida T. Galapate-Laguilles, concurring.

<sup>4</sup> Id. at 53-59. Penned by Associate Justice Walter S. Ong, with Associate Justices Ramon R. Garcia and Zenaida T. Galapate-Laguilles, concurring.

<sup>5</sup> *People v. Ramos y Buenaflores*, G.R. No. 210435, August 15, 2018.

<sup>6</sup> See *Cahulogan v. People*, 828 Phil. 742, 749 (2018), citing *Peralta v. People*, 817 Phil. 554, 563, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

However, there is a need to modify the nomenclature of the crime committed against AAA and the resultant penalties and damages in accordance with the guidelines set in *Tulagan v. People*.<sup>7</sup> As AAA was a 12-year-old when the incident of sexual abuse occurred, Payongayong's conviction should be modified to Lascivious Conduct under Section 5 (b)<sup>8</sup> of Republic Act (RA) 7610, with the prescribed penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Applying the Indeterminate Sentence Law, and further considering the absence of any aggravating or mitigating circumstances, he should be sentenced to suffer the penalty of imprisonment for an indeterminate period 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. Furthermore, pursuant to Section 31 (f), Article XII of RA 7610, the Court deems it proper to impose a fine in the amount of ₱15,000.00. Finally, and pursuant to *Tulagan*, the Court adjusts the award of damages due to AAA to ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.

**WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated January 10, 2020 and Resolution dated December 7, 2020 of the Court of Appeals in CA-G.R. CR No. 41830 and **AFFIRMS with MODIFICATION** said Decision finding petitioner Archie Payongayong y Cabiles **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5 (b) of RA 7610. Accordingly, he is sentenced to suffer the penalty of imprisonment for an indeterminate period 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, and to pay a **FINE** in the amount of ₱15,000.00. Finally, he is also ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, with legal interest of six percent (6%) per annum imposed on all monetary awards from the date of finality of this Resolution until full payment.

**SO ORDERED.**"

<sup>7</sup> See G.R. No. 227363, March 12, 2019.

<sup>8</sup> Section 5 (b) of R.A. 7610 reads:

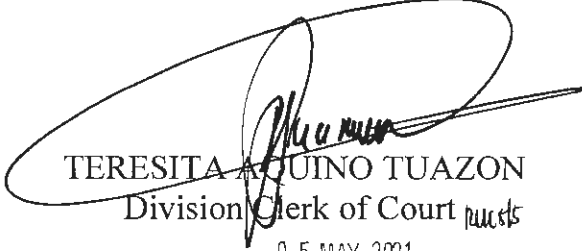
Section 5. Child Prostitution and Other Sexual Abuse. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject 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; and

x x x x

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *rusts*  
05 MAY 2021

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Accused-Appellant  
c/o The Director  
Bureau of Corrections  
1770 Muntinlupa City

THE DIRECTOR (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 136  
Makati City  
(Crim. Case No. R-MKT-17-02827-CR)

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