

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ERNESTO JOAQUIN y G.R. No. 244570
ARQUILLO,

Petitioner,

Present:

PERALTA, C.J.,
Chairperson,
 CAGUIOA,
 CARANDANG,
 ZALAMEDA, and
 GAERLAN, JJ.

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
 Respondent.

FEB 17 2021

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DECISION

CARANDANG, J.:

Before Us is a Petition for Review on *Certiorari*¹ filed by petitioner Ernesto Joaquin y Arquillo (Joaquin) assailing the Decision² dated September 11, 2018 and the Resolution³ dated January 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 39742, which affirmed with modification the Decision⁴ dated February 24, 2017 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 9 in Criminal Case No. 1600-M-2014. The dispositive portion of the CA Decision provides:

¹ *Rollo*, pp. 11-26.

² Penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ricardo R. Rosario (now a Member of this Court) and Ramon Paul L. Hernando (now a Member of this Court); *id.* at 28-40.

³ *Id.* at 43-44.

⁴ Penned by Presiding Judge Veronica A. Vicente-De Guzman; *id.* at 58-66

WHEREFORE, the present appeal is hereby **DENIED**. The appealed *Decision* dated February 24, 2017 in CRIM. CASE NO. 1600-M-2014 is hereby **AFFIRMED** with modifications. As modified, the dispositive portion shall read as follows:

“**WHEREFORE**, the accused Ernesto Joaquin y Arquillo is found **GUILTY** beyond reasonable doubt of the crime of *Violation of Section 10 (a) of R.A. No. 7610*, and is hereby sentenced to suffer an indeterminate prison term of 4 years, 9 months and 11 days of *prision correccional* as minimum, to 6 years, 8 months and 1 day of *prision mayor* as maximum.

Accused is also ordered to pay AAA moral damages in the amount of P50,000.00.00, plus interest thereon at the rate of six percent (6%) per annum computed from the finality of this *Decision* until fully paid, in accordance with prevailing jurisprudence.

SO ORDERED.⁵ (Emphasis in the original)

Antecedents

Joaquin was charged with violation of Section 10(a), Article VI of Republic Act No. (R.A.) 7610, entitled the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, in an Information⁶ dated April 7, 2014 that states:

That on or about the 22nd day of March, 2014, in the municipality of Sta Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit acts of abuse upon [AAA], a nine (9) year old minor, by kissing her and licking her breast, thus placing said minor complainant in conditions prejudicial to her normal growth and development.

Contrary to law.⁷

Joaquin was arraigned on May 13, 2014⁸ and pleaded not guilty.⁹ During the pre-trial on June 13, 2014, the parties stipulated on the following matters: (1) the jurisdiction of the RTC; (2) the identity of Joaquin as the one charged in the information; and (3) the minority of AAA¹⁰ who was born on March 1, 2005.¹¹

⁵ Id. at 40.

⁶ Records, pp. 1-2.

⁷ Id. at 1.

⁸ *Rollo*, p. 58.

⁹ Id. at 29.

¹⁰ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the “*Special Protection of Children against Abuse, Exploitation and Discrimination Act*” and A.M. No. 12-7-15-SC entitled “*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names*”.

¹¹ TSN dated June 13, 2014, p. 2.

Respondent presented AAA and her 12-year old brother BBB¹² as its witnesses. AAA has difficulty expressing herself verbally because she was afflicted with meningitis when she was seven years old.¹³ She is also suffering from epilepsy and is continuously taking medication for her seizure.¹⁴ As such, she testified through gestures in response to questions asked in Filipino.¹⁵ AAA testified that Joaquin licked her breast and vagina.¹⁶ He would remove her shorts and upper garments whenever he did this.¹⁷ AAA confirmed that Joaquin often did it whenever her parents were not around. She took offense so she told her mother about it.¹⁸

BBB attested to AAA's accusations and testified that he saw her enter Joaquin's van, which was parked in front of the latter's house, at around 10:00 a.m. on March 22, 2014. BBB calls Joaquin "*Tatay*" as a sign of respect even though they are not related. BBB opened a window of the van and saw that AAA's upper garment was raised up to her chin. Joaquin was licking AAA's breast. When BBB opened the door of the van after a few minutes, AAA ran away. Joaquin apologized but BBB responded that "[w]ala, wala iyan Tay susumbong ko kayo sa aking Nanay."¹⁹

BBB informed his mother CCC²⁰ about what happened. CCC reported the incident to the Barangay (Brgy.). Thereafter, members of the Philippine National Police (PNP) invited Joaquin to the police station.²¹

The parties dispensed with the testimony of PCI Editha B. Martinez and stipulated that she will be able to identify the Medico-Legal Report that she prepared.²² The Medico-Legal Report states that "no evident ano-genital injury at the time of examination. Further investigation, such as careful questioning of the child, is required." Consultation with a psychiatrist of choice was advised.²³ The parties also dispensed with the testimonies of Brgy. Tanods Guillermo Malipot (Malipot) and Orlando Labongray (Labongray) and made the following stipulations instead: (1) the incident was reported to Brgy. Tanods Malipot and Labongray; (2) they invited Joaquin to the Brgy. Hall; (3) after Joaquin went to the Brgy. Hall, Brgy. Tanods Malipot and Labongray asked for assistance from the PNP; and (4)

¹² The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "*Special Protection of Children against Abuse, Exploitation and Discrimination Act*" and A.M. No. 12-7-15-SC entitled "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names*".

¹³ *Rollo*, p. 29.

¹⁴ TSN, March 3, 2015, p. 3.

¹⁵ *Rollo*, p. 29.

¹⁶ *Id.* at 30.

¹⁷ *Id.* at 59.

¹⁸ *Id.* at 30.

¹⁹ *Id.* at 59-60.

²⁰ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "*Special Protection of Children against Abuse, Exploitation and Discrimination Act*" and A.M. No. 12-7-15-SC entitled "*Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names*".

²¹ *Rollo*, pp. 30-31.

²² *Id.* at 60.

²³ *Records*, p. 12.

the existence and due execution of Brgy. Tanods Malipot and Labongray's Sworn Statement and their respective signatures on it.²⁴

Joaquin denied the allegations. He testified that he was a driver who brought his grandchildren and his neighbor's children to and from school using his multicab.²⁵ He allowed AAA and BBB to board the multicab whenever there were vacant seats.²⁶ Joaquin claimed that he was cleaning his multicab on March 22, 2014. He did not recall the occurrence of any untoward incident that day. He also does not know of anyone who would have a grudge against him. Joaquin thinks that AAA and BBB's parents are simply angry at him because he refused to bring their children regularly to school.²⁷

Ruling of the Regional Trial Court

On February 24, 2017, the RTC rendered its Decision²⁸ ruling as follows:

VIEWED IN THE LIGHT OF THE FOREGOING, the accused is hereby found guilty beyond reasonable doubt of the crime of Violation of Section 10 (a) of R.A. No. 7610 and is hereby sentenced to suffer the penalty of imprisonment of prison [*sic*] mayor in its minimum period from six (6) years and one (1) day to eight (8) years.

SO ORDERED.²⁹

According to the RTC, respondent's evidence established that Joaquin, who was old enough to be AAA's grandfather, pulled her dress up to her chin and licked her breast while they were inside a closed multicab.³⁰ AAA was able to recount what Joaquin did to her in spite of her mental and physical condition.³¹ Notwithstanding her difficulty in understanding the questions during her cross-examination, AAA was able to clarify her testimony during her re-direct examination. BBB corroborated the material points of AAA's testimony.³² Joaquin's acts degraded and debased AAA's intrinsic worth and dignity considering her mental condition. It also traumatized her and gravely threatened her normal development. Hence, the RTC convicted Joaquin of the crime charged.³³

Joaquin appealed to the CA.

²⁴ *Rollo*, p. 61 & Records, pp. 201-202.

²⁵ *Rollo*, p. 31.

²⁶ *Id.* at 61.

²⁷ *Id.* at 31.

²⁸ *Supra* note 4.

²⁹ *Rollo*, p. 66.

³⁰ *Id.*

³¹ *Id.* at 63.

³² *Id.* at 64.

³³ *Id.* at 66.

Ruling of the Court of Appeals

In its September 11, 2018 Decision,³⁴ the CA affirmed the RTC's Decision convicting Joaquin of violating Section 10(a) of R.A. 7610 but modified the penalty of imprisonment imposed to four (4) years, nine (9) months, and eleven (11) days of *prision correccional* as minimum, to six (6) years, eight (8) months, and one (1) day of *prision mayor* as maximum and also ordered the payment of moral damages of ₱50,000.00 subject to a legal interest of six percent (6%) *per annum*.³⁵

First, the CA held that the Information sufficiently alleged the elements of Section 10(a) of R.A. 7610 which are: (1) a person commits child abuse, cruelty, exploitation or other conditions prejudicial to a child's growth and development; and (2) the child is a victim. Section 3(b), Article I of R.A. 7610 defines child abuse as maltreatment, whether habitual or not, of the child, specifically psychological and physical abuse, neglect, cruelty, sexual abuse, and emotional maltreatment.³⁶ The Information's statement that Joaquin's act of "kissing her and licking her breast, thus placing said minor complainant in conditions prejudicial to her normal growth and development" duly established the elements of Section 10(a). In any case, Joaquin's failure to question the Information through a motion to a quash on the ground that it did not charge an offense means that he waived his right to raise such ground.³⁷

Second, the CA ruled that Joaquin's defense of denial cannot prevail over the candid and straightforward testimonies of AAA and BBB. BBB's testimony confirmed AAA's testimony and the presence of all the elements of the crime charged. The CA upheld the well-settled rule that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal absent a clear showing that it overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The CA also noted that Joaquin did not establish ill-motive on the part of AAA's family which could have weakened AAA and BBB's testimonies.³⁸

Third, the CA applied Act No. 4103, otherwise known as the "Indeterminate Sentence Law"³⁹ and modified the penalty of imprisonment imposed on Joaquin to four (4) years, nine (9) months, and eleven (11) days of *prision correccional* as minimum to six (6) years, eight (8) months, and

³⁴ Supra note 2.

³⁵ *Rollo*, p. 40.

³⁶ *Id.* at 33-34.

³⁷ *Id.* at 34-35.

³⁸ *Id.* at 35-38.

³⁹ Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

one (1) day of *prision mayor* as maximum. The CA also awarded moral damages amounting to ₱50,0000.00 to AAA in accordance with jurisprudence, subject to legal interest of six percent (6%) *per annum* from the finality of its Decision until it is fully paid.⁴⁰

Joaquin filed a motion for reconsideration. After the CA denied it, he filed a petition for review on *certiorari* before this Court. Though Joaquin admits that this Court is not a trier of facts, he avers that We can review the factual findings of the lower courts when they do not conform to the evidence on record, which is the case here.⁴¹ *First*, Joaquin argues that the Information did not designate a proper offense. Section 10(a) of R.A. 7610 penalizes other acts of neglect, abuse, cruelty, or exploitation and other conditions prejudicial to the child's development. The acts imputed against Joaquin, namely kissing and licking AAA's breast, are not covered by Section 10(a). Respondent's failure to designate the proper offense in the Information given by the relevant statute is a violation of Joaquin's right to be informed of the nature and cause of accusation against him under Section 14(2), Article III⁴² of the 1987 Constitution.⁴³

Second, even assuming that the acts allegedly committed by Joaquin are covered by Section 5(b) of R.A. 7610, he cannot be convicted under this provision. Respondent failed to prove all its elements, to wit: (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 subject to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. Respondent did not show that AAA was subjected to sexual abuse for money, profit, or any other consideration or that she was placed under Joaquin's coercion or influence.⁴⁴

Third, there is reasonable doubt that Joaquin committed the crime imputed against him due to his unceasing denial of it. Respondent failed to discharge its burden of establishing Joaquin's guilt. Consequently, he need not even offer evidence in his behalf. Joaquin thus prays for his acquittal.⁴⁵

Respondent filed a Comment.⁴⁶ Respondent averred that is well-settled that this Court is not a trier of facts. Joaquin raised questions of fact in his petition but failed to show the existence of any of the exceptions to this well-settled rule.⁴⁷ Respondent also refuted Joaquin's claim that the Information did not designate the correct offense. Section 10(a) of R.A.

⁴⁰ *Rollo*, pp. 39-40.

⁴¹ *Id.* at 16.

⁴² Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁴³ *Rollo*, pp. 17-18.

⁴⁴ *Id.* at 19-20.

⁴⁵ *Id.* at 20.

⁴⁶ *Id.* at 112-129.

⁴⁷ *Id.* at 115-116.

7610 penalizes acts of child abuse, cruelty, exploitation, and other conditions prejudicial to the child's development. The definition of child abuse under Section 3(b), Article I of R.A. 7610 includes sexual abuse. Therefore, the allegation in the Information that Joaquin licked and kissed AAA's breast is covered by Section 10(a).⁴⁸ Respondent emphasizes that what is controlling are the facts recited in the Information, not the designation of the offense. The Information sufficiently alleged all the elements of Section 10(a).⁴⁹ In any event, Joaquin merely alleges a formal defect in the Information. This is not a ground for dismissal and courts are directed to give the prosecution the opportunity to amend the Information. Further, any formal defect in the Information is deemed waived once the accused enters his or her plea. Joaquin assailed the validity of the Information for the first time on appeal.⁵⁰

Respondent likewise argued that Joaquin's conviction was based on the evidence it presented and not on the weakness of his defense. AAA's testimony was credible, unrebutted, and consistent. It was corroborated by BBB's clear and unimpeached testimony. Joaquin's only defense was that he was cleaning his van when the incident took place. He did not give any other detail or present other witnesses in support of his defense. The RTC, which was in the best position to rule on the credibility of witnesses, gave more weight to respondent's evidence. Hence, respondent prayed for the dismissal of Joaquin's petition.⁵¹

Issue

Whether the CA erred in upholding the conviction of Joaquin for violation of Section 10(a) of R.A. 7610.

Ruling of the Court

The petition has no merit.

Section 10(a) of R.A. 7610 provides:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period x x x

⁴⁸ Id. at 117-120.

⁴⁹ Id. at 120-121.

⁵⁰ Id. at 122-123.

⁵¹ Id. at 124-126.

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The elements of Section 10(a) are: (1) the victim's minority; (2) the acts constituting physical abuse committed against the victim; and (3) the fact that the said acts are clearly punishable under RA 7610.⁵² In *Escalante v. People*,⁵³ We held that "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."⁵⁴ Section 10 does not cover child prostitution and other sexual abuse because it is specifically penalized under Section 5(b) of R.A. 7610.⁵⁵

The Information against Joaquin alleged that he "willfully, unlawfully and feloniously commit acts of abuse upon [AAA], a nine (9) year old minor, by kissing her and licking her breast, thus placing said minor complainant in conditions prejudicial to her normal growth and development."⁵⁶ Respondent alleges that Joaquin's acts constitute sexual abuse.⁵⁷ That being so, the acts imputed against Joaquin is punishable under Section 5(b) and not under Section 10(a) of R.A. 7610. When the victim is under 12 years of age, such as in this case, the proper designation of the crime should be Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b) of R.A. 7610.⁵⁸

The Information against Joaquin made no mention of either Section 5(b) of R.A. 7610 or Article 336 of the RPC. Nonetheless, failure to designate the proper offense in the Information will not necessarily invalidate it. What is important is that the facts alleged constitute the crime charged.⁵⁹ The question is if the facts in the Information in this case sufficiently alleged acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610.

Section 5(b) states:

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

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

⁵² *People v. Pueyo*, G.R. No. 192327, February 26, 2020.

⁵³ 811 Phil. 769 (2017).

⁵⁴ Id. at 779.

⁵⁵ *People v. Rayon, Sr.*, 702 Phil. 672, 681 (2013).

⁵⁶ Records, p. 1.

⁵⁷ *Rollo*, p. 120.

⁵⁸ *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

⁵⁹ *People v. Nocido*, G.R. No. 240229, June 17, 2020.

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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; and

x x x x

The elements of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610 are:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:
 - a. Through force, threat, or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; x x x
3. That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
4. That the offended party is a child, whether male or female, below 18 years of age.⁶⁰

Lascivious conduct is defined as 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.⁶¹

A child is said to be exploited in prostitution when: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.⁶²

⁶⁰ *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

⁶¹ *Id.*, citing Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

⁶² *Supra* note 58.

As for the term ‘other sexual abuse,’ it is broad enough to cover all other acts of sexual abuse other than prostitution.⁶³ We explained in *Ramilo v. People*⁶⁴ that the term ‘other sexual abuse’ should be construed in relation to the definitions of ‘child abuse’ under Section 3, Article I of RA No. 7610 and of ‘sexual abuse’ under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases:

In the former provision, “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “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. x x x⁶⁵

The Information stated that Joaquin “willfully, unlawfully and feloniously commit acts of abuse upon [AAA], a nine (9) year old minor, by kissing her and licking her breast, thus placing said minor complainant in conditions prejudicial to her normal growth and development.”⁶⁶ This sufficiently alleges the elements of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610. It accused Joaquin of sexually abusing nine-year old AAA by committing lascivious acts against her. Joaquin was therefore informed of the nature of the charge against him.

The next question is whether respondent was able to prove all the elements of acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610. We believe so.

It is well-settled that the trial court’s assessment of the credibility of the witnesses deserve great respect especially when it is affirmed by the CA.⁶⁷ We uphold the uniform findings of the RTC and the CA that Joaquin licked AAA’s breast.

AAA identified Joaquin as her assailant.⁶⁸ When asked, she confirmed that he licked her breast. AAA testified as follows:

T: *Ano ba iyong masama na ginawa sa iyo nitong si Ernesto Joaquin?*

FISCAL MARTIN: May we manifest, Your Honor, that the witness opened her mouth showed her tongue and in a licking manner.

T: *Kanina nung tinanong kita kung ano ayung masamang ginawa sa iyo di ba nilabas mo yung dila mo?*

S: The witness nodded.⁶⁹

T: *Ano yung ginawa sa dila mo?*

⁶³ Id.

⁶⁴ Supra note 60.

⁶⁵ Id.

⁶⁶ Records, p. 1.

⁶⁷ *People v. Pagkatipunan*, G.R. No. 232393, August 14, 2019.

⁶⁸ TSN dated March 3, 2015, p. 5.

⁶⁹ Id.



S: The witness opened her mouth showed her tongue and pointed to her private tongue [*sic*] and her breasts.⁷⁰

x x x x

T: *Kapag ba ginagawa ito sa iyo ni Ernesto Joaquin ay tinatanggal ang shorts mo?*

S: The witness nodded.

T: *Yung damit mo na pang-itaas tinatanggal din niya?*

S: The witness nodded.⁷¹

When asked if she liked what Joaquin did to her, AAA shook her head.⁷² BBB corroborated AAA's testimony. He recounted what he personally witnessed:

Q: *Ngayon noong sundan mo ang iyong kapatid na si [AAA] saan mo siya nakita?*

A: *Sa loob, pumasok kasi yung kapatid ko sa loob.*

Q: *Sa loob ng?*

A: *Van ni Ernesto Joaquin.*

Q: *Noong makita mo siya sa loob ng van na saradong sarado ano ang nakita mong ginagawa niya?*

A: *Doon na niya pinagsasamantalahan niya yung kapatid ko.*

Q: *Ano ang nakita mong ginagawa niya sa iyong kapatid na si [AAA]?*

A: *Nakita ko po nakataas po ang kanyang damit at saka dinidilaan po iyong kanyang dede.⁷³*

Clearly, Joaquin sexually abused AAA. He took advantage of AAA and forced himself upon her, a minor by his own admission,⁷⁴ even though he is old enough to be her grandfather.⁷⁵ Though the incident occurred only once, it is enough to qualify as 'other sexual abuse' because sexual maltreatment need not be habitual.⁷⁶

Joaquin only offered denial in his defense. We cannot give credence to his denial unless it is supported by clear and convincing evidence.⁷⁷ But Joaquin failed to present any proof of his defense. He even admitted that he was fixing⁷⁸ and cleaning his multicab on the day of the incident.⁷⁹ Joaquin posited that AAA and BBB's parents might have been angry at him for not allowing them to ride his multicab to and from school when it is already full.⁸⁰ It is absurd that any parent would subject their children to the rigors of trial which could result in embarrassment and trauma for their

⁷⁰ Id. at 6.

⁷¹ Id. at 7.

⁷² Id. at 6.

⁷³ TSN dated June 16, 2015, p. 5.

⁷⁴ Records, p. 51.

⁷⁵ Joaquin was 83 years old when he testified on September 9, 2016. TSN dated September 9, 2016, p. 2.

⁷⁶ Supra note 55.

⁷⁷ Supra note 60.

⁷⁸ TSN dated September 9, 2016, p. 6.

⁷⁹ Id. at 8.

⁸⁰ Id. at 4.

children for such a petty reason. Joaquin's defense is implausible and unsubstantiated.

Based on the foregoing, respondent has proven beyond reasonable doubt that Joaquin committed acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610. The penalty for acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. 7610 is *reclusion temporal* in its medium period, or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Since the Indeterminate Sentence Law is applicable, the appropriate penalty of imprisonment for Joaquin is 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 (20) days of *reclusion temporal* in its medium period as maximum.⁸¹ In addition, Joaquin is also liable to pay civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each pursuant to Our ruling in *People v. Tulagan*.⁸² The amounts awarded shall be subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until full payment.⁸³

WHEREFORE, the petition is **DENIED**. The Decision dated September 11, 2018 and the Resolution dated January 25, 2019 of the Court of Appeals in CA-G.R. CR No. 39742 are **AFFIRMED** with the **MODIFICATION** in that petitioner Ernesto Joaquin y Arquillo is found **GUILTY** of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." He is hereby sentenced to a penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal* as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal* as maximum. He is also ordered to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. The amounts awarded are subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until its full satisfaction.

SO ORDERED.

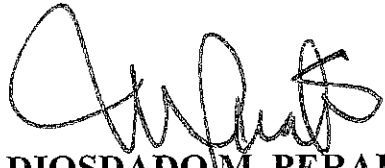

ROSMARI D. CARANDANG
Associate Justice

⁸¹ *People v. Eulalio*, G.R. No. 214882, October 16, 2019.

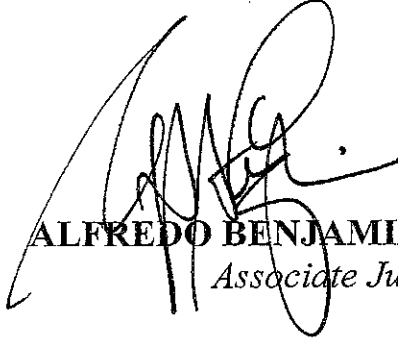
⁸² *Supra* note 60.

⁸³ *Id.*


WE CONCUR:



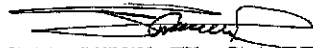
DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



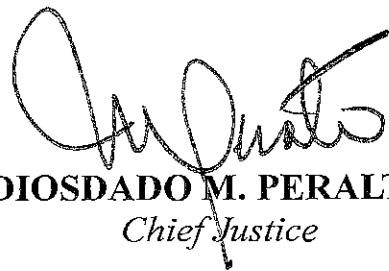
RODIL N. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice