



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

MELVIN ENCINARES y G.R. No. 252267  
BALLON,

Petitioner, Present:

- versus -

PERLAS-BERNABE, S.A.J.,  
Chairperson,

PEOPLE OF THE PHILIPPINES,  
Respondent.

GESMUNDO,  
LAZARO-JAVIER,  
LOPEZ, and  
ROSARIO,\* JJ.

Promulgated:

JAN 11 2021

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated November 27, 2019 and the Resolution<sup>3</sup> dated March 10, 2020 rendered by the Court of Appeals (CA) in CA-G.R. CR No. 42150, which affirmed the Decision<sup>4</sup> dated July 27, 2018 of the Regional Trial Court of [REDACTED] (RTC) in Criminal Case No. R-QZN-17-02854-CR, finding petitioner Melvin Encinares y Ballon (petitioner) guilty beyond reasonable doubt of violation of Section 10 (a) of Republic Act No. (RA)

\* Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

<sup>1</sup> *Rollo*, pp. 12-26.

<sup>2</sup> Id. at 30-39. Penned by Associate Justice Franchito N. Diamante with Associate Justices Pablito A. Perez and Louis P. Acosta, concurring.

<sup>3</sup> Id. at 41-42.

<sup>4</sup> Id. at 63-72. Penned by Presiding Judge Roslyn M. Rabara-Tria.

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7610,<sup>5</sup> otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.”

### The Facts

The instant case stemmed from an Information charging petitioner with violation of Section 10 (a)<sup>6</sup> of RA 7610, which reads:

That on or about the 27<sup>th</sup> day of December 2011, in [REDACTED], Philippines, the said accused, did then and there willfully, unlawfully and feloniously commit an act of child abuse prejudicial to the development and welfare of one [AAA], a minor, 16 years old, by then and there placing the latter’s penis in his mouth and played (sic) with it, which acts debases, degrades or demeans (sic) the intrinsic worth and dignity of said [AAA], as a human being, to his damage and prejudice.

CONTRARY TO LAW.<sup>7</sup>

The prosecution alleged that petitioner was the Vice President of the [REDACTED] High School General Parents Teachers Association while AAA,<sup>8</sup> then sixteen (16) years old, was the Citizenship Advancement Training (CAT) Corps Commander. Sometime between October and November 2011, petitioner approached Perla R. Ragadio (Ragadio), the school’s CAT Commandant, to offer help with the t-shirts and other items that the CAT might need, which the latter accepted. Thereafter, Ragadio asked AAA to follow-up the items they ordered from petitioner. Because of this, AAA and petitioner became text mates. Petitioner would send AAA cellphone load and even offered him “ATM, GSIS, and SSS pensions.”<sup>9</sup>

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Records, p. 1.

<sup>8</sup> The identity of the minor victim or any information which could establish or compromise his identity, as well as those of his immediate family or household members, shall be withheld pursuant to RA 7610; RA 9262, entitled “AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, 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.) See further *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

<sup>9</sup> See *rollo*, pp. 31-32. See also *id.* at 65.

In the evening of December 27, 2011, petitioner invited AAA to a drinking spree in his house. Although AAA does not drink alcohol, petitioner offered him one. Later that night, petitioner told him to sleep in the bedroom since there were no more available means of transportation for AAA to go home. While AAA was sleeping, petitioner put AAA's penis into his mouth and played with it for ten (10) minutes. AAA tried to resist but failed since he was too drunk.<sup>10</sup> Consequently, an Information charging petitioner with violation of Section 10 (a) of RA 7610 was filed before the RTC.

In defense, petitioner denied the charges against him and instead, claimed that he was friends with AAA, who would often ask him for favors such as cellphone load and money. Petitioner averred that on the date and time of the alleged incident, AAA asked permission to sleep in his (petitioner's) house, to which he agreed. AAA arrived at 11 o'clock in the evening while petitioner was watching television with his family. Petitioner then told AAA to sleep in the sofa. He denied that there was a drinking spree at that time and asserted that it was impossible for him to do anything to AAA as there were other persons in the house and the lights were switched on so that he could constantly check on his sick child. He further alleged that AAA was just prodded by his uncle, BBB, to file a case against him to extort money.<sup>11</sup>

As additional defense witnesses, Erlinda Gallano testified that she witnessed AAA, who was unassisted by a guardian, sign a handwritten affidavit of withdrawal, recantation, and desistance. Likewise, Rizaldy Sidayon, President of Sitio Ruby Neighborhood Association, Inc., issued a Certification dated June 14, 2012 stating that petitioner was a role model to the youth through his strong moral values. Punong Barangay Jose Arnel Quebal issued a similar Certification dated July 24, 2012.<sup>12</sup>

### The RTC Ruling

In a Decision<sup>13</sup> dated July 27, 2018, the RTC found petitioner guilty beyond reasonable doubt of violation of Section 10 (a) of RA 7610, and accordingly, sentenced him to suffer the penalty of indeterminate imprisonment of four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum, and to pay the costs of suit.<sup>14</sup> It found that the prosecution was able to prove all the elements of the crime charged and gave weight to the positive, direct, spontaneous, and candid testimony of AAA, who positively identified petitioner as the perpetrator. On the other hand, the

<sup>10</sup> See *id.* at 32. See also *id.* at 65.

<sup>11</sup> See *rollo*, pp. 32-33. See also *id.* at 67.

<sup>12</sup> *Id.* at 33. See also *id.* at 68-69.

<sup>13</sup> *Id.* at 63-72.

<sup>14</sup> See *id.* at 71-72.

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RTC rejected petitioner's defense that it was impossible for him to commit said crime as other people were present that time, ratiocinating that lust respects no time and place. As to the letter and affidavit of withdrawal, recantation, and desistance executed by AAA, the RTC stressed that when the latter executed the same, he was still a minor and not assisted by a guardian. Moreover, the letter was not presented before the investigating prosecutor during the preliminary investigation. Finally, the RTC found that petitioner failed to come up with a plausible explanation as to why AAA would file false charges against him.<sup>15</sup>

Aggrieved, petitioner appealed<sup>16</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>17</sup> dated November 27, 2019, the CA affirmed the RTC ruling, concurring with its finding that the prosecution was able to sufficiently establish all the elements of the crime charged. It refused to give credence to petitioner's unsubstantiated defenses of denial and alibi, and instead affirmed the findings of the RTC as regards the credibility of the prosecution witness, there being no reason to disturb said findings. Finally, it reiterated the doctrine that lust is no respecter of time and space, since rape can even be committed in places where other family members are sleeping.<sup>18</sup>

Dissatisfied, petitioner moved for reconsideration,<sup>19</sup> which was denied in a Resolution<sup>20</sup> dated March 10, 2020; hence, the present petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA erred in convicting petitioner of the crime of violation of Section 10 (a) of RA 7610, as charged.

### **The Court's Ruling**

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment, whether assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine

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<sup>15</sup> Id. at 70-72.

<sup>16</sup> See Notice of Appeal dated July 30, 2018; CA *rollo*, pp. 10-11.

<sup>17</sup> *Rollo*, pp. 30-39.

<sup>18</sup> Id. at 34-38.

<sup>19</sup> See motion for reconsideration dated December 20, 2019; CA *rollo*, pp. 155-160.

<sup>20</sup> *Rollo*, pp. 41-42.

records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>21</sup>

Guided by this consideration, the Court finds that based on the established facts and evidence offered in this case, petitioner's conviction should be for a violation of Section 5 (b) of RA 7610, instead of Section 10 (a) of the same Act.

The pertinent provisions of Sections 5 (b) and 10 (a) of RA 7610 respectively state:

**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

(b) Those who commit the act of sexual intercourse or **lascivious conduct** with a child exploited in prostitution or subject 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[.] x x x

**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. (Emphasis and underscoring supplied)

As can be gleaned from the above-mentioned provisions, Section 5 (b) of RA 7610 specifically applies in cases of sexual abuse committed against children, which includes ***lascivious conduct***; whereas, Section 10 (a) thereof punishes *other forms* of child abuse not covered by particular provisions of RA 7610. Evidently, the offense will not fall within the purview of Section 10 (a) of RA 7610 if the same is specifically penalized by a particular provision, such as Section 5 (b).

<sup>21</sup> *People v. De Guzman*, G.R. No. 234190, October 1, 2018; citations omitted.

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The term “**lascivious conduct**” was given a specific definition in the Implementing Rules and Regulations of RA 7610, *viz.*: “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.”<sup>22</sup>

In light of the clear definition of the term *vis-à-vis* the evidence presented in this case, the Court finds that petitioner’s acts of putting AAA’s penis inside his mouth and playing with it for ten (10) minutes constitute **Lascivious Conduct** under Section 5 (b) of RA 7610. As such, it was an error for the courts *a quo* to have convicted him under Section 10 (a) of the same Act. True, the Information filed against petitioner charged him under Section 10 (a) of RA 7610. However, it is a well-settled rule that “the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated but by the facts alleged in the indictment, *that is*, the actual recital of the facts as alleged in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law. The facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.”<sup>23</sup> Further, the information must sufficiently allege the acts or omissions complained of to inform a person of common understanding what offense he is being charged with – in other words, the elements of the crime must be clearly stated.<sup>24</sup>

A perusal of the Information filed against petitioner in this case discloses that it is sufficient to charge him with **Lascivious Conduct** under Section 5 (b) of RA 7610, as it reads:

That on or about the 27<sup>th</sup> day of December 2011, in [REDACTED], Philippines, the said accused, did then and there willfully, unlawfully and feloniously commit an act of child abuse prejudicial to the development and welfare of one [AAA], a minor, 16 years old, by then and there placing the latter’s penis in his mouth and played (sic) with it, which acts debases, degrades or demeans (sic) the intrinsic worth and dignity of said [AAA], as a human being, to his damage and prejudice.

CONTRARY TO LAW.<sup>25</sup>

Here, as both the recital in the Information and the evidence presented by the prosecution provide for a case that can be prosecuted and penalized as

<sup>22</sup> *People v. Tulagan*, G.R. No. 227363, March 12, 2019; emphasis supplied.

<sup>23</sup> *People v. Delector*, 819 Phil. 310, 320-321 (2017); citations omitted.

<sup>24</sup> See *People v. Dimaano*, 506 Phil. 630, 649 (2005).

<sup>25</sup> Records, p. 1.

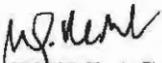
**Lascivious Conduct** under Section 5 (b) of RA 7610, petitioner should be properly convicted and penalized therefor.

Due to the modification of petitioner's conviction, a change in the imposable penalty, as well as the awards of damages, is in order. The prescribed penalty for violation of Section 5 (b) of RA 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period of the prescribed penalty. Moreover, notwithstanding the fact that RA 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. Thus, petitioner is sentenced to suffer the indeterminate penalty of imprisonment of ten (10) 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 violation of Section 5 (b) of RA 7610.

Finally, and conformably with the ruling in *People v. Tulagan*,<sup>26</sup> the amount of civil indemnity, moral damages, and exemplary damages awarded for Lascivious Conduct under Section 5 (b) of RA 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 each.

**WHEREFORE**, the petition is **DENIED**. The Decision dated November 27, 2019 and the Resolution dated March 10, 2020 of the Court of Appeals in CA-G.R. CR No. 42150 are hereby **AFFIRMED** with **MODIFICATION**, finding petitioner Melvin Encinares y Ballon **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5 (b) of Republic Act No. 7610. Accordingly, he is sentenced to suffer the indeterminate penalty of imprisonment of ten (10) 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 AAA the amounts of ₱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 finality of this Decision until full payment.

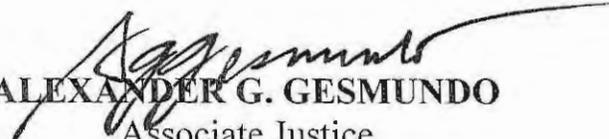
**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

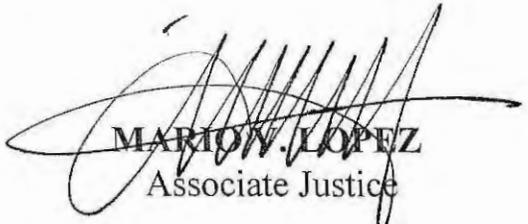
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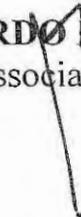
<sup>26</sup> Supra.

**WE CONCUR:**

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

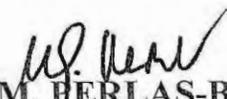
  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

  
**MARION LOPEZ**  
 Associate Justice

  
**RICARDO R. ROSARIO**  
 Associate Justice

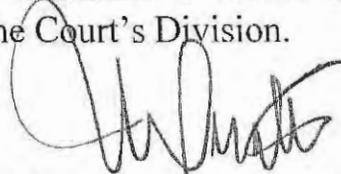
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case wa assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. BERLAS-BERNABE**  
 Senior Associate Justice  
 Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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