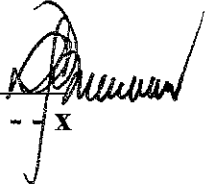


G.R. No. 246146 – XXX, CHILD IN CONFLICT WITH THE LAW (CICL), *petitioner*, versus PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated:

MAR 18 2021



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CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur in the *ponencia* insofar as it affirms the guilt of petitioner for the crime he is charged.<sup>1</sup>

I disagree, however, that the nomenclature of the crime petitioner was convicted of should be modified from “Acts of Lasciviousness” punishable under Article 336 of the Revised Penal Code (RPC), to “Lascivious Conduct under Section 5(b) of Republic Act No. 7610” and the imposition of a heavier penalty of imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional* to ten (10) years, two (2) months and twenty-one (21) days of *prision mayor*.<sup>2</sup>

I reiterate and maintain my position in *People v. Tulagan*<sup>3</sup> that Republic Act No. (RA) 7610 and the RPC, as amended by RA 8353, “have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors.”<sup>4</sup> Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is “exploited in prostitution or subjected to other sexual abuse” (EPSOSA). In all other instances, the provisions on Acts of Lasciviousness, Rape and Sexual Assault under the RPC shall apply.

Thus, for an act to be considered under the purview of Section 5(b), RA 7610, so as to trigger the higher penalty provided therein, “the following essential elements need to be proved: (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.”<sup>5</sup> Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA – *a separate and distinct element* – must first be both alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

<sup>1</sup> Petitioner was charged and convicted by the trial court for the crime of Acts of Lasciviousness under the Revised Penal Code, docketed as Criminal Case No. R-QZN-15-06050-CR.

<sup>2</sup> *Ponencia*, p. 17.

<sup>3</sup> G.R. No. 227363, March 12, 2019.

<sup>4</sup> J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, p. 33; emphasis, italics and underscoring omitted.

<sup>5</sup> *Id.* at 21, citing *People v. Abello*, 601 Phil 373, 392 (2009).



Specifically, in order to impose the higher penalty provided in Section 5(b) as compared to Article 336 of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.<sup>6</sup>

In this case, however, the Information only alleged that the victim was then a 15-year-old minor at the time the incident took place, but did not allege that she was EPSOSA.<sup>7</sup> There was also no proof or evidence presented during trial that the victim indulged in sexual intercourse or lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

To be clear, I do not dispute that petitioner's guilt was proven beyond reasonable doubt. However, it is my view that his conviction should be for Acts of Lasciviousness defined and punished under Article 336 of the RPC, and not for Lascivious Conduct under Section 5(b) of RA 7610. Accordingly, considering petitioner's minority, the penalty to be imposed should be within the range of *arresto mayor*, instead of the one imposed by the *ponencia*, which is within the range of *prision mayor* to *reclusion temporal*.<sup>8</sup>



ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice

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<sup>6</sup> Id. at 28.

<sup>7</sup> See *ponencia*, p. 2.

<sup>8</sup> Before the application of the Indeterminate Sentence Law; see *ponencia*, id. at 14.