



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 3, 2020 which reads as follows:*

**“G.R. No. 216102 – RIZALINO LEONOR y CONCEPCION, petitioner versus PEOPLE OF THE PHILIPPINES, respondent.**

RESOLUTION

After a careful review of the Petition and its annexes, inclusive of the Decision<sup>1</sup> dated April 18, 2013 and Resolution<sup>2</sup> dated November 28, 2014 of the Court of Appeals, Twelfth Division (CA) in CA-G.R. CR No. 34130 and the Decision<sup>3</sup> dated January 10, 2011, Branch 9 of the Regional Trial Court of Balayan (RTC), the Court resolves to **DENY** the petition for failure of petitioner Rizalino Leonor y Concepcion (Leonor) to sufficiently show that the CA committed any reversible error in the challenged Decision and Resolution.

Leonor comes before this Court, claiming that the RTC misappreciated certain facts which, if reviewed, would warrant his acquittal. He claims that AAA’s<sup>4</sup> assertion that he succumbed to

<sup>1</sup> Rollo, pp. 40-55.

<sup>2</sup> Id. at 57-58.

<sup>3</sup> Id. at 72-91.

<sup>4</sup> The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to Republic Act No. (R.A.) 7610, titled “AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES,” approved on June 17, 1992; R.A. 9262, titled “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, titled

Leonor's threats and intimidation is unbelievable. According to AAA's testimony, Leonor had claimed to have certain supernatural abilities and supposedly threatened that he would "enlarge" AAA's private parts and make boils appear on his face if he did not submit to Leonor's will.<sup>5</sup> Leonor claims that being already 15 years old and having taken science subjects in school, AAA could not have easily been fooled by such claims. Leonor also faults AAA for delaying in reporting the first three instances of sexual abuse.<sup>6</sup>

The Court notes that these arguments involve questions of fact and will require review of evidence. Settled is the rule that this Court is not a trier of facts, and will only entertain questions of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court.<sup>7</sup> In an attempt to carve out an exception for himself, Leonor asserts that his conviction is based on a misappreciation of facts. Records on hand, however, would show that the RTC's and CA's findings are supported by the testimonies of the witnesses for the prosecution, which the defense had failed to controvert.

Even if the Court were to consider the questions of fact raised by Leonor, these would not negate the fact that Leonor coerced and exerted influence upon AAA in order to commit lascivious conduct upon him. Neither does this render the supposed delay in reporting the first three incidents of abuse enough to discredit AAA's testimony. The CA and RTC decisions are in agreement that Leonor's constant threats of inflicting various kinds of physical harm upon AAA created fear in the latter's mind, which led him to succumb to Leonor's abuse. Whether or not it is improbable that Leonor had the supernatural powers to inflict such harm is beside the point. At the end of the day, AAA was a child, whose impressionability precisely merits the protection of R.A. 7610. AAA cannot be faulted for believing the threats of Leonor when even adults today entertain various superstitions and unscientific beliefs.

Leonor also claims that the RTC and CA erred in convicting him under Section 5(b) of R.A. 7610, saying that the element of performing the act of lascivious conduct with a child "exploited in prostitution or other sexual abuse" was not proven by the prosecution.

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"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; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018.)

<sup>5</sup> *Rollo*, p. 85.

<sup>6</sup> *Id.*

<sup>7</sup> *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 609.

Hence, if indeed he is found to have committed an offense, it should only be Acts of Lasciviousness under Article 366 of the Revised Penal Code.

The prevailing rule on child abuse cases under Section 5(b) of R.A. 7610 is that expressed by the majority ruling in *People v. Tulagan*<sup>8</sup> (*Tulagan*), which effectively considers the following as the elements of the said crime:

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 other sexual abuse. Section 5 of R.A. No. 7610 deems as “children exploited in prostitution and other sexual abuse” those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the **coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or lascivious conduct.
3. The child, whether male or female, is below 18 years of age.

Pursuant to the majority ruling in *Tulagan*, the second element is satisfied if the child indulges in lascivious conduct due to the coercion and influence of any adult. As earlier discussed, AAA was coerced and threatened by Leonor into submitting to lascivious conduct. Hence, this element has likewise been complied with.

There is a need, however, to correct the nomenclature of the crime mentioned in the Decision of the RTC, which was affirmed *in toto* by the CA. The correct designation of the offence is Lascivious Conduct under Section 5(b) of R.A. 7610, without further reference to Article 336 of the Revised Penal Code, consistent with the ruling in *Tulagan*, which states:

In *People v. Caoili*, We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:

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<sup>8</sup> G.R. No. 227363, March 12, 2019.

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.
3. **If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as “Lascivious Conduct under Section 5(b) of R.A. No. 7610,” and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.**

Based on the *Caoili* guidelines, it is only when the victim of the lascivious conduct is 18 years old and above that such crime would be designated as “Acts of Lasciviousness under Article 336 of the RPC” with the imposable penalty of *prision correccional*.<sup>9</sup>



**WHEREFORE**, premises considered, the petition is **DENIED** for lack of merit. The Court hereby **ADOPTS** the findings of fact and conclusions of law in the Decision dated April 18, 2013 of the Court of Appeals, Twelfth Division, in CA-G.R. CR No. 34130. The Decision finding petitioner Rizalino Leonor y Concepcion guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 is **AFFIRMED**.

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<sup>9</sup> Id. Emphasis supplied; citations omitted.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court 

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**136-A**

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