

SPECIAL SIXTEENTH DIVISION

[CR No. 31268, June 29, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL
SOSA Y CAMARILLO, ACCUSED-APPELLANT.***

DECISION

Court of Appeals

On appeal is the Decision (Rollo, pp. 44-49) dated November 12, 2007 of the Regional Trial Court, Branch 86 of Quezon City, finding Accused-Appellant Noel Sosa y Camarillo (hereinafter accused-appellant) guilty beyond reasonable doubt of the crime of Acts of Lasciviousness, as defined and penalized under Article 336 of the Revised Penal Code (RPC) in relation to Section 5 (b) of Republic Act No. 7610 (RA 7610). The *fallo* of the appealed Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Noel Sosa y Camarillo, guilty beyond reasonable doubt of the crime of acts of lasciviousness and hereby sentences (sic) to suffer the indeterminate penalty ranging from ten (10) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, and to pay the private complainant the amount of P20,000.00 as moral damages, plus costs.

SO ORDERED." (Rollo, pp. 48-49)

The conviction of the accused-appellant stemmed from an Information in Criminal Case No. Q-06-140983 for Acts of Lasciviousness under the RPC in relation to Section 5 (b) of RA 7610, the accusatory portion of which reads:

"That on or about the 22nd day of April 2006, in Quezon City, Philippines, accused with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of one AAA,^[1] 9 years old, a minor, against her will, by then and there mashing her private parts, to the damage and prejudice of said minor.

CONTRARY TO LAW." (Records, p. 1)

When arraigned on May 30, 2006, accused-appellant, assisted by counsel, pleaded "NOT GUILTY" to the offense charged. (Records, p. 12)

Thereafter, trial on the merits ensued and the prosecution and the defense presented their respective version of the facts surrounding the instant case.

The prosecution tends to establish the following version of facts:

On April 22, 2006 at around 5 o'clock in the afternoon, the victim, AAA who was

then nine (9) years old, was left alone in their house. AAA was then lying on the floor of their living room and watching television. While watching television, accused-appellant knocked on the door. When AM opened the door, accused-appellant forced himself inside the house and told AAA that he wants to buy ice. Accused-appellant likewise told AAA that he wants to borrow a hammer. Thence, AAA got ice from refrigerator and handed it to accused-appellant who in turn gave her the payment. Thereafter, AAA returned to her position. Accused-appellant did not leave yet. Instead, he placed the ice on the top of a table and suddenly touched AAA's sexual organ and mashed her breasts, which acts lasted for about one (1) minute. Accused-appellant left immediately after the incident. When AAA's grandfather arrived, she immediately reported the incident to him. The latter then informed AAA's father. On, the same day AAA's father and grandfather were able to apprehend the accused-appellant and brought him to the barangay hall. Accused-appellant was later brought to the police station.

Refuting the accusations against him, accused-appellant narrated the following version:

Between 4 o'clock to 5 o'clock in the afternoon of April 22, 2006, accused-appellant came to AAA's house to buy ice. Unfortunately, accused-appellant was not able to buy ice since they ran out of it. AAA was alone at that time, watching television. Accused-appellant joined her in watching television for about five (5) minutes. Suddenly, AAA's father and grandfather arrived and he noticed that they were already drunk. Accused-appellant was taken a back when AAA's father told him that he touched his daughter's private parts, an allegation which he outrightly denied. Thereafter, AAA's father told him to go with them to the barangay hall. He voluntarily went with them.

After trial on the merits, the RTC found sufficient evidence against the accused-appellant. Thus, on November 12, 2007, the RTC rendered the appealed Decision, *supra*, finding the accused-appellant guilty beyond reasonable doubt of the crime charged. The dispositive portion of the said appealed Decision was quoted in the early part of this Decision.

Accused-appellant seasonably filed an appeal with this Court raising the following errors-

"I

THE COURT A QUO GRAVELY ERRED IN APPRECIATING SECTION 5(B) OF REPUBLIC ACT NO. 7610 WHEN ITS ESSENTIAL ELEMENTS ARE ABSENT IN THE INFORMATION[;] [AND]

II"

THE COURT, A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED."(Rollo, p. 33)

Accused-appellant assert that he cannot be convicted of acts of lasciviousness in relation to Section 5(b) of RA 7610 since the Information failed to alleged the essential elements of Section 5(b) of RA 7610. Otherwise, his constitutional right to

be informed of the nature and cause of the accusation against him would be violated.

He likewise contends that his guilt for the offense charged was not proven beyond reasonable doubt.

The appeal is not impressed with merit.

Evidently, it is undisputed that at the time of the commission of the sexual abuse, AAA was barely nine (9) years old. (TSN dated September 11, 2006, p. 13; Records, p. 22) As such, the instant case calls for application of RA 7610 otherwise known as "*The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.*" This special law defines sexual abuse of children and prescribes the penalty therefor in Article III, Section 5, to wit:

"SEC. 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.

* * * * *

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

Verily, paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution, but also with a child subjected to other sexual abuses. The provision covers not only a situation where a child is abused for profit, but also where one, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct with a child. (Malto vs. People, 533 SCRA 643, 656-657[2007])

Nonetheless, before an accused can be convicted of child abuse through lascivious conduct committed against a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of RA 7610. (Navarrete vs. People, 513 SCRA 509, 517 [2007])

The crime of Acts of Lasciviousness is defined and penalized under Article 336 of the Revised Penal Code which reads:

"ART. 336. Acts of lasciviousness.- Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional."