

FIRST DIVISION

[G.R. No. 244570, February 17, 2021]

ERNESTO JOAQUIN Y ARQUILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CARANDANG, J.:

Before Us is a Petition for Review on *Certiorari*^[1] filed by petitioner Ernesto Joaquin y Arquillo (Joaquin) assailing the Decision^[2] dated September 11, 2018 and the Resolution^[3] dated January 25, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 39742, which affirmed with modification the Decision^[4] 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:

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 Information^[6] 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, 2014^[8] 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 AAA^[10] who was born on March 1, 2005.^[11]

Respondent presented AAA and her 12-year old brother BBB^[12] 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 susumbongko kayo sa aking Nanay.*"^[19]

BBB informed his mother CCC^[20] 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) 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 Decision^[28] 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.

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 prison 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 P50,000.00 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 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 one (1) day of *prision mayor* as maximum. The CA also awarded moral damages amounting to P50,0000.00 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 III^[42] 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 it 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. 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

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