SECOND DIVISION

[G.R. No. 239756, September 14, 2020]

RODOLFO C. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

DELOS SANTOS, J.:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated December 7, 2017 and the Resolution[3] dated May 9, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39430, which affirmed with modification the Decision[4] dated November 18, 2016 of the Regional Trial Court (RTC) of [redacted], in finding Rodolfo C. Mendoza (petitioner) guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5 (b), Article III of Republic Act No. (RA) 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Facts

Herein petitioner was charged with the crime of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), RA 7610 in an Information that reads as follows:

> That on or about the 8th day of March 2016, in [redacted], Philippines, the said accused, with lewd designs by means of force and coercion, did then and there, willfully, unlawfully and feloniously perform lascivious acts upon the person of one AAA,[5] a nine (9) years (sic) old, minor, by then and there kissing her lips twice, done against her will and without her consent, which act debase, degrade and demean the intrinsic worth and dignity of the said child as a human being.
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> CONTRARY TO LAW.[6]

When arraigned, petitioner pleaded not guilty to the crime charged. After the pre-trial conference, trial on the merits ensued.

Prosecution's Version of the Facts:

The prosecution presented the child victim, AAA and Police Officer II (PO2) Roygbiv Cristobal as its witnesses. AAA testified that on March 8, 2016, at around 1:00 A.M., she woke up to urinate outside of the "barracks" (a house under construction), where she, her elder sister, BBB, and her brother-in-law, CCC, were sleeping. Suddenly, a man, later identified by AAA as petitioner, pulled her by her right arm, brought her to a dark place in front of the barracks and kissed her twice on the lips, with an interval of two (2) minutes. Allegedly, petitioner threatened AAA not to

report the incident to the police. When petitioner ran towards a well-lighted place, she recognized petitioner, particularly his haircut. AAA also ran towards her father, who was in [redacted], and told him that somebody kissed her. They reported the incident at *Barangay* [redacted]. *Barangay* Police Security Officer (BPSO) Alvin Sausal assisted them and brought them and petitioner to the [redacted] Police Station for investigation.[7]

Even before the kissing incident, she already saw petitioner many times as he works in the area where she lives but does not know his name. AAA observed petitioner's haircut when both of them were buying food at the same time at the tricycle terminal. AAA testified that it was her sister BBB who told her the name of petitioner.[8]

Defense's Version of the Facts:

The defense presented petitioner as its sole witness. Petitioner interposed the defenses of denial and alibi. Petitioner alleged that he was sleeping at a temporary shelter with five (5) other workers, including CCC, AAA's brother-in-law. Upon waking up, he was surprised to learn that he was being charged for kissing AAA.[9]

The Ruling of the RTC

In its Decision[10] dated November 18, 2016, the RTC held that the prosecution was able to establish and prove the elements of the crime of acts of lasciviousness. The direct, clear and straightforward testimony of AAA was given credence by the RTC compared to petitioner's defense of bare denial. The RTC opined that petitioner's act of kissing a nine (9)-year-old child is morally inappropriate and indecent designed to abuse her.

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo Mendoza y Caryl guilty beyond reasonable doubt of Acts of Lasciviousness [Article 336 of the Revised Penal Code in relation to Sec. 5(b), Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act] and is sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period, as maximum.
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> Accused is further ordered to pay private complainant AAA [P]20,000.00 as civil indemnity, [P]30,000.00 as moral damages and [P]2,000.00 as exemplary damages.
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> The amount of damages awarded are subject further to interest of six (6%) percent per annum from the date of finality of this judgment until they are fully paid.
>
> Let Mittimus issue.
>
> SO ORDERED.[11]

The Ruling of the CA

On appeal, petitioner argued that the RTC erred in convicting him considering that his arrest was illegal and that the prosecution failed to establish his identity beyond reasonable doubt. The CA denied his appeal on the following grounds: (a) petitioner is estopped from questioning the illegality of his arrest on appeal due to his failure to object to the illegality of his arrest prior to his arraignment; (b) the prosecution was able to establish the identity of petitioner as even though AAA remembered petitioner mainly by his haircut, she was already familiar with petitioner as she saw him working at the construction site before the incident; and (c) all the elements of the crime of acts of lasciviousness and the elements of sexual abuse under Section 5, Article III of RA 7610 have been proven in this case. The CA, however, modified the penalty imposed on petitioner.

The *fallo* of the now assailed CA Decision[12] is hereby reproduced, thus:

> **WHEREFORE**, the appeal is **DISMISSED**. The Decision dated 18 November 2016 of the Regional Trial Court, [redacted], finding accused-appellant Rodolfo C. Mendoza guilty of the crime of Acts of Lasciviousness or Article 336 of the Revised Penal Code, in relation to Sec. 5(b), Republic Act No. 7610 is **AFFIRMED** with **MODIFICATION** in that he is sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period, as minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. The Court likewise upholds the civil indemnity subject to interest of six (6%) percent per annum from the date of finality of this judgment until they are fully paid.
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> **SO ORDERED**.[13]

Aggrieved, petitioner elevated the case before the Court *via* Rule 45 of the Rules of Court submitting the following issues for the Court's resolution:

The Grounds of the Petition

I.

> WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE ILLEGALITY OF HIS ARREST.

II.

> WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ALL THE ELEMENTS OF THE CRIME CHARGED.

III.

> WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT IN CONVICTING THE PETITIONER OF THE CRIME CHARGED DESPITE THE

PROSECUTION'S FAILURE TO ESTABLISH HIS IDENTITY BEYOND REASONABLE DOUBT.

The Court's Ruling

The present petition is unmeritorious.

It bears to emphasize that in a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, the Court is only limited to questions of law. The Court is not a trier of facts and its function is limited to reviewing errors of law that may have been committed by the lower courts.[14]

Petitioner admits in his petition questions of fact and he asserts that this case falls under the exception[15] to the general rule considering that the factual findings of the lower courts do not conform to the evidence on record.

An evaluation of the case shows that none of the exceptions are present in the case to warrant the review and reversal of the factual findings of the lower courts.

Even assuming that the exceptions are present in the case, the grounds interposed in the petition fail to convince the Court.

Petitioner is estopped from questioning the legality of his arrest.

Herein petitioner claims that he was denied due process as his warrantless arrest was illegal. It is well-settled that failure to move for the quashal of an Information on this ground prior to arraignment bars an accused from raising the same on appeal under the doctrine of estoppel.[16] The CA correctly held that any defect on the arrest of petitioner has been cured by his voluntary act of entering a plea and actively participating in the trial.

All the elements of the crime of Acts of Lasciviousness were duly established and proven.

In the present petition, herein petitioner asserts that the prosecution failed to establish elements of the crime charged, particularly the age or the minority of AAA. Petitioner asserts that, other than the allegation of AAA's age in the Information, the prosecution failed to present her birth certificate or any other authentic documentary evidence to prove her age or minority.

It is well-settled that the presentation of a birth certificate or other pieces of evidence are not at all times necessary to prove the age or minority of the victim. The courts may take judicial notice of the age of the victim especially if the victim is of tender age and it is quite manifest or obvious in the physical appearance of the child. The Court held that the crucial years pertain to the ages of 15 to 17 where minority may seem to be dubitable due to one's physical appearance.[17] In *People v. Rivera*,[18] the Court held that the trial court can only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below.[19]

As such, taking judicial notice of the age of AAA by the RTC and the CA is proper. It is worthy to mention that this particular issue is raised for the first time in the

instant petition and petitioner never disputed the age of AAA during the proceedings before the RTC and even before the CA.

The Court concurs with the CA that all the elements of the crime of Acts of Lasciviousness under the RPC and Lascivious Conduct under Section 5 (b), Article III of RA 7610 have been sufficiently established in the case at bench.

Section 5 (b), Article III of RA 7610 provides that:

> 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:
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> x 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 victims 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**[.] (Emphases supplied)

The elements of the foregoing offense are the following:

> (a) The accused commits the act of sexual intercourse or **lascivious conduct**;
> (b) The said act is performed with a child exploited in prostitution or **subjected to other sexual abuse**; and
> (c) The child, whether male or female, **is below 18 years of age**.[20]

When the lascivious act is committed against a minor below 12 years old, Section 5 (b), Article III of RA 7610 requires that, in addition to the foregoing requisites, the elements of the crime of Acts of Lasciviousness under Article 336 of the RPC must likewise be met, to wit:

> (a) that the offender commits any **act of lasciviousness or lewdness**;
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> (b) that it is done under any of the following circumstances:
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> (i) through force, threat, or intimidation,
> (ii) when the offended party is deprived of reason or otherwise unconscious,
> (iii) by means of fraudulent machination or grave abuse of