

SECOND DIVISION

[G.R. No. 243151, September 02, 2019]

**XXX^[1] PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review on *Certiorari*^[2] filed by the petitioner XXX assailing the Decision^[3] dated July 26, 2018 and Resolution^[4] dated November 6, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 40229, which affirmed the Decision^[5] dated July 12, 2016 of Branch 36, Regional Trial Court of Calamba City, Laguna (RTC) in Criminal Case Nos. 17538-2010, finding XXX guilty beyond reasonable doubt of violating Section 5(b) of Republic Act No. 7610 (R.A. 7610).

The Facts

An Information was filed against XXX for doing lascivious acts against AAA,^[6] which reads:

That sometime in the year 2005 at [YYY],^[7] City of [ZZZ],^[8] Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, through force, intimidation, and coercion, did then and there willfully, unlawfully and criminally, with lewd design, committed lascivious acts against [AAA], eight years old, a child subjected to other sexual abuse, by touching her breasts, and vagina and other parts of her body, against complainant's will and consent, to her damage and prejudice.

CONTRARY TO LAW.^[9]

During the arraignment, XXX pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

The prosecution presented AAA, her older sister BBB,^[10] and social welfare officer Nancy de Castro. The version of the prosecution, as summarized by the CA, is as follows:

Appellant is the common-law husband of private complainant's mother CCC. Private complainant, along with her mother CCC, her sisters DDD and EEE including her younger brother FFF, was living with appellant at [YYY], [ZZZ], Laguna.

Private complainant testified that sometime in 2005, when she was eight

(8) years old, she was at home sleeping when she suddenly felt appellant touch her breasts and vagina. She was so afraid that all she could do was tremble. Worse, the incident was witnessed by her mother, who instead of coming to her aid, said "*kayo na lang ang magsama*". This statement proved hurtful to private complainant.

After the unfateful (*sic*) incident, private complainant tried to distance herself from appellant. However, she was repeatedly molested by appellant almost everyday. There were times when the lascivious conduct would occur during daytime while she was cooking rice and at nighttime while she was asleep. On one occasion, while she and younger brother FFF' were in their room, appellant sexually abused her by touching her breasts and vagina. She tried to resist by screaming and attempting to jump out the window of their house but she was overpowered by appellant's strength. Upon witnessing the incident, her younger brother FFF ran and called their mother.

In order to avoid being sexually molested, private complainant left their house sometime in 2010. She then went to live with her older sister BBB at the Mornese Retreat House in Quezon City, where the latter works.

Thereafter, private complainant recounted to her sister BBB the ordeals she suffered from appellant. This prompted BBB to file the instant case against appellant.

Private complainant's sister BBB testified that private complainant was born on September 1, 1997. They have the same biological parents but their father [had] already died. At the time of the incident, she was not living with her family because she was already working at the Mornese Retreat House in Quezon City. She further testified that private complainant presently lives with her at the Mornese Retreat House in Quezon City. Private complainant ran away from their house sometime in August 2010 because she was being sexually abused by appellant by touching her breasts and vagina.

The prosecution likewise presented private complainant AAA's Certificate of Baptism to establish that she was born on September 1, 1997 and Social Case Study Report dated December 1, 2011 concluding that private complainant was a victim of sexual abuse and recommending her for proper intervention.^[11]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

Appellant was presented as the sole witness for the defense.

Appellant interposed the twin defenses of denial and alibi. He denied that he was living with private complainant's mother in the year 2005. He claims that he was then a construction worker assigned at the Tejeros Cavite Economic Zone. His working hours was from 8:00 a.m. to 4:00 p.m. After the end of his duty, he proceeds to the employee's barracks located at their job site. Moreover, while he admitted that he was

romantically involved with private complainant's mother, he insisted that he never stepped into their house at [YYY], [ZZZ], Laguna. As a matter of fact, it was private complainant's mother who visited him in his rented house located at [WWW],^[12] [ZZZ], Laguna. The distance between these two houses is about 2 kilometers or twenty (20) minutes away by means of a tricycle. Appellant also denied ever having personally met private complainant and claims that he only saw her through the pictures shown to him by her mother. Appellant further pointed out that private complainant holds a grudge against him because he was romantically involved with her mother.^[13]

Ruling of the RTC

After trial on the merits, in its Decision^[14] dated July 12, 2016, the RTC convicted XXX of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing, the Court finds accused [XXX] **GUILTY** beyond reasonable doubt for violation of Section 5(b) of Republic Act 7610. He is hereby sentence (*sic*) to suffer the indeterminate penalty of EIGHT (8) years and ONE (1) day of *prision mayor* as minimum to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of *reclusion temporal*, as maximum, and to pay the amount of FIFTEEN THOUSAND PESOS (P15,000.00) as fine. Likewise, he is ordered to pay AAA the amount of TWENTY THOUSAND Pesos (P20,000.00) as civil indemnity FIFTEEN THOUSAND PESOS (P15,000.00) as moral damages; and FIFTEEN THOUSAND PESOS (P15,000.00) as exemplary damages, with subsidiary imprisonment in case of insolvency

SO ORDERED.^[15]

The RTC found AAA's testimony to be candid and straightforward, with "no tinge of revenge or rancor"^[16] and thus deserving of full faith and credit. The RTC found the five-year delay in reporting the incident to be insignificant, as the victim was only able to run away from her home five years after the incident complained of. The RTC added:

It is herein stressed that the accused failed to show an acceptable motive and the records show none for the private complainant to concoct a story and to testify falsely against him. His claim that private complainant did not want to have a relationship with her mother cannot overcome AAA's positive and forthright testimony which appears to be consistent even under cross-examination. It has been held that the best test of credibility is its compatibility with the common experience of man. A testimony deserves credence if it does not run counter to human knowledge, observation and experience.^[17]

XXX thus appealed to the CA.

Ruling of the CA

In the questioned Decision^[18] dated July 26, 2018, the CA affirmed the RTC's

conviction of XXX.

The CA held that AAA's testimony sufficiently established all the elements of the crime. It ruled that the RTC correctly accorded credence to the testimony of AAA after finding her answers to the questions on direct and cross-examination to be intelligible, candid, and unwavering.^[19] The CA also noted that, contrary to XXX's claim, the prosecution was able to establish AAA's age at the time of the commission of the offense using AAA's baptismal certificate. Finally, the CA ruled against XXX's defenses of alibi and denial, for they were inherently weak as they could be easily contrived. Thus, the CA convicted XXX of the crime of "acts of lasciviousness under

Article 336 of the Revised Penal Code [(RPC)] in relation to Section 5(b) of [R.A.]7610."^[20]

XXX filed a motion for reconsideration of the Decision, however, the same was denied by the CA in a Resolution dated November 6, 2018.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting XXX.

The Court's Ruling

The appeal is partially granted. The Court modifies XXX's conviction from "acts of lasciviousness under Article 336 of the [RPC] in relation to Section 5(b) of [R.A.] 7610" to "Acts of Lasciviousness under Article 336 of the [RPC]."

The CA convicted XXX of "acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of [R.A.] 7610" because of its conclusion that the victim was only eight years old at the time of the commission of the act complained of. The CA was only following the prevailing jurisprudence on the matter, which states that "when the [victim] of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period."^[21]

Thus, while XXX was charged and convicted for the crime "in relation to [R.A.] 7610," the elements of Acts of Lasciviousness under the RPC was what the prosecution essentially needed to prove — which it did so successfully. The only effect of relating the crime to R.A. 7610 was the imposition of *reclusion temporal* in its medium period as the penalty.

To convict XXX of the crime of Acts of Lasciviousness under the RPC, the prosecution, in turn, had to prove the following elements, to wit: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.^[22] The third element is immediately satisfied for the offended party is, naturally, a person of

either sex.

The first element — that the offender commits any act of lasciviousness or lewdness — on the other hand, was satisfied through the testimony of AAA, the offended party. AAA testified:

Q You said that you were abused by [XXX] who is the accused, when did it happen?

A Year 2005, I was in Grade 1, sir.

Q And where did it happen?

A At home while I was sleeping, sir.

Q So, if you were at home and the accused was also at your house, why is he at your house?

A He is the husband of my mother, he is my step father, sir.

Q So, the accused is your step father?

A Yes, sir.

Q Now according to you [AAA], you were abused by the accused in the Year 2005 at your house in [ZZZ], now my question is how did the accused abuse you?

A He was touching my breast and other private parts of my body, sir.

Q Can you be more specific with respect to your private parts?

A He was touching my vagina, sir.

Q Now while he was doing it to you, what was your reaction?

A I was afraid sir, I was trembling.

Q And while he was also doing it to you, what was his reaction?

A Nothing, sir.

Q How long did the accused touch your private parts, for how long?

A He touched my body for a short time and after that he left, sir.

Q Was this incident repeated?

A Yes, sir.

Q How many times did this incident repeated (*sic*)?

A Almost everyday, sir.

Q Did you reveal this incident to a person?

A None, sir.

Q So when did this incident stopped (*sic*)?

A When I ran away, sir.^[23]

Upon cross-examination, AAA was only asked regarding (1) the lighting conditions in the room where the act complained of was done; (2) when AAA was able to run