

## SECOND DIVISION

[ G.R. No. 218970, June 28, 2017 ]

**RICHARD ESCALANTE, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This petition for review on *certiorari* seeks to reverse and set aside the October 13, 2014 Decision<sup>[1]</sup> and June 9, 2015 Resolution<sup>[2]</sup> of the Court Appeals (CA) in CA-G.R. CR No. 35771, which affirmed the May 22, 2013 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 172, Valenzuela City (RTC), finding petitioner Richard Escalante (*Escalante*) guilty of violating Section 10(a) of Republic Act (R.A.) No. 7610 or the "*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*."

Escalante was charged with the crime of child abuse committed against AAA, who was then a twelve (12) year old minor. When arraigned, he pleaded "not guilty." Thereafter, trial ensued.

#### *Evidence of the Prosecution*

The prosecution presented private complainant, AAA, and Leonora Abrigo Mariano (*Mariano*), Records Custodian of Fatima Medical Center. Their combined testimonies tended to prove that at around midnight of December 24, 2006, AAA accompanied his classmate Mark in going home. On his way back from Mark's house, AAA was called by Escalante and was pulled into a comfort room at the Divine School in Parada, Valenzuela City. Once inside, Escalante pulled down AAA's shorts and sucked the latter's penis for about ten (10) minutes. Shortly thereafter, he forcibly inserted AAA's penis into his anus.

Four (4) days after the incident, AAA complained to his mother that he was experiencing pain in his penis and had difficulty in urinating. He divulged the incident to his mother, who then brought him to the Fatima Medical Center for examination. In the course of the examination, it was determined that he was afflicted with gonorrhoea, a sexually-transmitted disease and urinary tract infection.  
<sup>[4]</sup>

#### *Evidence of the Defense*

The defense presented Escalante, his father Nicomedes Escalante, and their neighbor Josephine Salada (*Salada*). Their combined testimonies tended to establish that at around midnight of December 24, 2006, Escalante was in Salada's house celebrating Christmas Eve; that the celebration started at 10:00 o'clock in the evening and lasted between 1:00 o'clock and 3:00 o'clock the following morning;

that he could not have been in the school because he never left Salada's house as he was tasked with passing around shots of liquor; and that Salada's house was only a thirty (30)-minute ride away from the place where the incident occurred.

### *The RTC Ruling*

In its May 22, 2013 Decision, the RTC found Escalante guilty of violating Section 10(a) of R.A. No. 7610. It ruled that the totality of the prosecution's evidence was sufficient to establish that he physically and sexually abused AAA. The RTC did not give credence to Escalante's alibi as it found AAA's identification of the accused as his assailant credible. It added that Escalante's alibi was not convincing enough to prove that it was physically impossible for him to be at the location of the crime. The dispositive portion of the decision reads:

WHEREFORE, the court finds the accused RICHARD ESCALANTE guilty beyond reasonable doubt as principal for violation of Section 10(a) of R.A. 7610 in relation to Sec. 3(b), No. 1 & 2, and in the absence of any modifying circumstances, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of 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 accused is likewise ordered to pay AAA the amount of Php50,000.00 as moral damages and to pay a fine of Php15,000.00.

SO ORDERED.<sup>[5]</sup>

Aggrieved, Escalante appealed before the CA. In his Appellant's Brief,<sup>[6]</sup> he contended that he was not positively identified by AAA as his abuser; that AAA could not readily recognize him as the former testified that the place where he was abused was dark; that more than three (3) years had passed when AAA testified in court, making his recollection doubtful; and that AAA only identified the supposed culprit by a mere photograph which had not been authenticated and its origins as well as its processing were never established.

### *The CA Ruling*

In its assailed Decision, dated October 13, 2014, the CA affirmed Escalante's conviction for the crime of child abuse under Section 10(a) of R.A. No. 7610. It held that AAA's testimony was credible because there was no reason for him to fabricate such a story, considering that he was only a child and it was unlikely that he would place himself in such a humiliating experience. It disregarded Escalante's alibi as he was positively identified and it was not physically impossible for him to be at the scene of the crime at the time of the incident.

Escalante moved for reconsideration, but his motion was denied by the CA in its assailed Resolution dated June 9, 2015.

Hence, this appeal raising:

### **SOLE ISSUE**

**WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING HEREIN PETITIONER GUILTY DESPITE REASONABLE DOUBT OWING TO THE FACT THAT THE PETITIONER WAS NOT REALLY POSITIVELY IDENTIFIED BY THE PRIVATE COMPLAINANT.<sup>[7]</sup>**

Escalante averred that AAA merely pointed to a picture of him during trial. He argued that he was not positively identified as the photograph used to identify him was not authenticated and its origins were never established. Moreover, he challenged the credibility and accuracy of AAA's testimony as it was given after more than three (3) years from the date of the alleged abuse.

In its Comment,<sup>[8]</sup> dated January 25, 2016, the Office of the Solicitor General (OSG) countered that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. At any rate, the OSG argued that even if the petition be given due course, it is still without merit as Escalante's conviction was proven beyond reasonable doubt. It explained that AAA had positively identified Escalante as the assailant, and the fact that it was done through photographs did not diminish the veracity of the identification. The OSG pointed out that in spite of notice and warning, Escalante failed to appear in court for identification, and his counsel did not object to the manner of identification adopted because of his absence. At any rate, it argued that in-court identification is not essential when there is no doubt as to the identity of the accused as the person charged in the Information.

The OSG contended that the evidence on record sufficiently established Escalante's guilt of the crime charged. It stated that his act constituted child abuse as it amounted to sexual, physical and psychological abuse. The OSG bewailed that Escalante's act was an assault on the dignity and intrinsic worth of AAA as a human being.

In his Manifestation in lieu of Reply,<sup>[9]</sup> dated August 3, 2016, Escalante averred that he was adopting his Appellant's Brief before the CA as his Reply as all the relevant issues had been extensively and exhaustively argued therein.

**The Court's Ruling**

The petition is bereft of merit.

*Only questions of law may be raised*

Only questions of law may be raised in a petition for review on *certiorari* before the Court.<sup>[10]</sup> A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal **on pure questions of law** and only in exceptional circumstances has the Court entertained questions of fact.<sup>[11]</sup>

Although Escalante admits that his petition presents questions of fact, he insists that his case is an exception to the general rule because the factual findings of the lower courts are not supported by the records. A scrutiny thereof, however, shows that none of the exceptions are present to warrant a review.

Granting that exceptional circumstances exist warranting the Court to entertain the present petition, the merits of the case still fail to convince.

*Escalante was sufficiently and appropriately identified*

In *People v. Pineda*,<sup>[12]</sup> the Court laid down the guidelines in identifications of accused through photographs, to wit:

The first rule in proper photographic identification procedure is that a **series of photographs must be shown**, and **not merely of that of the suspect**. The second rule directs that when a witness is shown a group of pictures, their **arrangement and display should in no way suggest which one of the pictures pertains to the suspect**.<sup>[13]</sup>  
[Emphases supplied]

The said guidelines are necessary considering that the out-of-court identification of an accused is susceptible to suggestiveness. These parameters are in place to make the identification of the accused as objective as possible.

In the case at bench, there is no reason to doubt AAA's identification of Escalante. It is noteworthy that the identification was done in open court. Further, the trial court adopted a similar manner with out-of-court identifications through photographs. As culled from the records, AAA was presented with several pictures in open court from which he was asked to pinpoint who was his abuser. He was able to identify Escalante without any leading question which clearly suggests that the picture identified was that of the latter.

Thus, AAA's identification was objective enough to be credible because it was done under court supervision and with the added parameters usually observed in out-of-court identifications. Significantly, no objections were raised over the manner in which Escalante was identified, which, it must be noted, was only resorted to because he failed to appear in court for identification.

*Escalante's alibi fails to impress*

In *People v. Ramos*,<sup>[14]</sup> the Court explained that in order for alibi to prosper, the accused must be able to establish that it was physically impossible for him to be at the crime scene. It wrote:

However, for the defense of alibi to prosper, the accused must prove (a) that she was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for her to be at the scene of the crime during its commission. Physical impossibility refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. She must demonstrate that she was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.<sup>[15]</sup>

Escalante himself admitted that Salada's house was merely a thirty (30)-minute ride away from the scene of the crime. Obviously, it was very possible for him to be at the place at that time. Escalante's witnesses even testified that they were not with

him the entire time. He could have easily left Salada's house and return without his absence being noticed considering the number of people present and the proximity of Salada's house from the crime scene. Thus, Escalante failed to prove that it was physically impossible for him to be at the crime scene at the time of the incident.

Further, AAA positively identified Escalante. Alibis and denials are worthless in light of positive identification by witnesses who have no motive to falsely testify.<sup>[16]</sup> The RTC and the CA found no cogent reason for AAA to fabricate his allegations against Escalante.

*Child Abuse under Section 5(b) of R.A. No. 7610, not Section 10(a) thereof*

It is axiomatic that when an accused appeals his judgment of conviction, he waives his constitutional guarantee against double jeopardy and throws the entire case open for appellate review.<sup>[17]</sup> The Court is tasked to render such judgment as law and justice dictate in the exercise of its concomitant authority to review and sift through the whole case and correct any error, even if unassigned.<sup>[18]</sup> This authority includes modifying the penalty imposed—either increasing or decreasing the same.

Escalante was convicted by the RTC of child abuse under Section 10(a) of R.A. No. 7610. The correct provision, however, should be Section 5(b) of R.A. No. 7610, which imposes a higher penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Section 5(b) of R.A. No. 7610 reads:

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**.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

xxx

**(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: xxx**

On the other hand, Section 10(a) thereof states:

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.