

FIRST DIVISION

[G.R. No. 218592, August 02, 2017]

CHRISTOPHER FIANZA A.K.A. "TOPEL," PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated November 24, 2014 and the Resolution^[3] dated May 29, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35293, which upheld the Decision^[4] dated September 6, 2012 of the Regional Trial Court of Tayug, Pangasinan, Branch 52 (RTC) in Criminal Case Nos. T-5144 and T-5145, finding petitioner Christopher Fianza a.k.a. "Topel" (Fianza) guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b),^[5] Article III of Republic Act No. (RA) 7610,^[6] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

The Facts

Fianza was charged with two (2) counts of violation of Section 5 (b), Article III of RA 7610 under two (2) Informations^[7] dated April 6, 2011 filed before the RTC.^[8] The prosecution's version of the incidents are as follows:

Sometime in July 2010,^[9] AAA,^[10] who was then 11 years old, was called by Fianza to his house and thereupon, was asked to wash his clothes. After AAA was finished with the laundry, Fianza asked her to go with him to the *kamalig*. Thereat, they proceeded to the second floor where Fianza removed his pants and briefs, lied down, and ordered AAA to hold his penis and masturbate him. After ejaculating, Fianza put on his clothes, and gave P20.00 to AAA who, thereafter, went home.^[11]

On November 30, 2010, while AAA was home, Fianza called her to his house, and asked her to clean the same. After she was done sweeping the floor, they proceeded to the second floor of the *kamalig*. Thereat, Fianza again removed his pants and briefs, lied down, and ordered AAA to fondle his penis. After the deed, he gave P20.00 to AAA who, thereafter, went home.^[12]

After the second incident, AAA related the matter to her cousin, CCC,^[13] who, in turn, told BBB,^[14] AAA's mother, who reported the matter to the police.^[15]

For his part, Fianza interposed the defense of denial and alibi. He claimed that he lived with his uncle in Andalasi, Pangasinan (Andalasi), while the rest of his family resided in Sapinit, Pangasinan (Sapinit), and were neighbors with AAA. He averred

that in July 2010, he went to Sapinit to gamble all night, and went to his parents' house the following morning to sleep before going home to Andalasi.^[16] As for the November 30, 2010 incident, he maintained that he was in Andalasi drinking with his friends as he had just sold a carabao. The next day, he went to get the carabao that he sold, and bought more liquor. He proceeded to Sapinit to have another drinking session that lasted until December 4, 2010.^[17]

The RTC Ruling

In a Decision^[18] dated September 6, 2012, the RTC found Fianza guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b), Article III of RA 7610, and sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, and ordered him to pay AAA the amount of P30,000.00 as moral damages for each count.

The RTC held that for an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years old, the requisites for acts of lasciviousness under Article 336^[19] of the Revised Penal Code (RPC) must be met in addition to the requisites of sexual abuse under Section 5 of RA 7610,^[20] which the prosecution was able to establish. It gave full faith and credence to the testimony of AAA who remained steadfast in her claim and who was not shown to have been impelled by any ill-motive to testify falsely against Fianza.^[21] On the other hand, it declared that Fianza's actions showed that he took advantage of AAA's naivete and innocence to satisfy his lewd designs.^[22]

Aggrieved, Fianza elevated^[23] his conviction to the CA, docketed as CA-G.R. CR No. 35293.

The CA Ruling

In a Decision^[24] dated November 24, 2014, the CA upheld Fianza's conviction for two (2) counts of violation of Section 5 (b), Article III of RA 7610.

The CA observed that while Fianza was charged with violations of Section 5 (b), Article III of RA 7610 (sexual abuse), the proper appellation of the crimes should be violations of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5 (b), Article III of RA 7610, and found that the prosecution was able to establish all the requisites for both Acts of Lasciviousness and sexual abuse. It declared that Fianza, a 35-year old adult, had moral ascendancy over 11-year-old AAA; hence, his act of coercing AAA to engage in lascivious conduct falls within the meaning of the term sexual abuse.^[25]

However, the CA reduced the award of moral damages to P25,000.00, and further ordered Fianza to pay a fine in the amount of P15,000.00 for each count of sexual abuse, with legal interest at the rate of six percent (6%) per annum on the amounts due from the finality of judgment until full payment.^[26]

Dissatisfied, Fianza moved for reconsideration,^[27] which was, however, denied in a Resolution^[28] dated May 29, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly upheld Fianza's conviction.

The Court's Ruling

At the outset, the Court deems it appropriate to correct the appellation of the crime with which Fianza was charged to Acts of Lasciviousness under Article 336 of the RPC considering that the victim, AAA, was only 11 years old at the time of the incidents. In instances where the child subjected to sexual abuse through lascivious conduct is below twelve (12) years of age, the offender should be prosecuted under Article 336 of the RPC, but suffer the higher penalty of *reclusion temporal* in its medium period in accordance with Section 5 (b), Article III of RA 7610, which pertinently reads:

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:

x x x x

(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 victims [sic] 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** x x x.
(Emphasis and underscoring supplied)

Pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct on 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 thereunder.^[29]

The elements of Acts of Lasciviousness under Article 336 of the RPC are: (a) the offender commits any **act of lasciviousness or lewdness**; (b) the lascivious act is done under any of the following circumstances: (i) by using force or intimidation; (ii) when the offended party is deprived of reason or otherwise unconscious; or (iii) **when the offended party is under twelve (12) years of age**; and (c) the

offended party is another person of either sex.^[30] On the other hand, sexual abuse, as defined under Section 5 (b), Article III of RA 7610 has three (3) elements: (a) the accused commits an 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 is below eighteen (18) years old.^[31]

The term "**lewd**" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. **The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.** Hence, whether or not a particular conduct is lewd, by its very nature, cannot be pigeonholed into a precise definition.^[32]

Lascivious conduct, on the other hand, is defined under Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases) as:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus, or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, **masturbation**, lascivious exhibition of the genitals or pubic area of a person;

In the present case, the existence of **all** the elements of Acts of Lasciviousness under Article 336 of the RPC, as well as the **first** and **third** elements of sexual abuse under Section 5 (b), Article III of RA 7610, remains undisputed. Records disclose that on two (2) occasions in July 2010 and on November 30, 2010, Fianza induced AAA, an 11-year-old minor, to hold his penis and masturbate him. The only point of dispute is with regard to the existence of the **second** element of sexual abuse, *i.e.*, whether or not the lascivious conduct was performed on a child subjected to other sexual abuse.

A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. Case law further clarifies that lascivious conduct under the coercion or influence of any adult exists when **there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.**^[33] Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that **sexual abuse involves the element of influence which manifests in a variety of forms.** It is defined as:

[T]he employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children x x x

The term "**influence**" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." On the other

hand, "**coercion**" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."^[34]

With the foregoing parameters considered, the Court finds that Fianza's acts were attended by coercion or influence within the contemplation of Section 5 (b), Article III of RA 7610.

It is undisputed that AAA was only 11 years old at the time of the incidents, hence, considered a **child** under the law. Section 3 (a), Article I of RA 7610 defines children in this wise:

(a) "*Children*" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]

Case law states that a child, such as AAA in this case, is presumed to be incapable of giving rational consent to any lascivious act. In *Malto v. People*,^[35] the Court explained:

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, **a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.**^[36]

Records likewise indicate that Fianza was about 35 years old at the time of the commission of the offense,^[37] or 24 years older than AAA, more or less. The age disparity between them clearly placed Fianza in a stronger position over AAA which enabled him to wield his will on the latter.^[38]

However, Fianza assails his conviction for the prosecution's failure: (a) to specify in the Information in Criminal Case No. T-5144 the date of the commission of the offense;^[39] and (b) to indicate in the information in both cases that the complained acts were performed with a child exploited in prostitution or subjected to other sexual abuse^[40] in violation of his right to be informed of the nature and cause of the accusations against him.