

FIRST DIVISION

[G.R. No. 169718, December 13, 2010]

**DANTE HERNANDEZ DATU, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals dated March 31, 2005 in CA-G.R. CR No. 26159, which affirmed the Decision^[2] of the Regional Trial Court (RTC) of the City of Manila, Branch 38 dated August 28, 2000 in Criminal Case No. 95-144230 that found petitioner Dante Hernandez Datu guilty beyond reasonable doubt of the crime of Acts of Lasciviousness penalized under Section 5, Article III of Republic Act No. 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

The full text of the Information filed against petitioner reads as follows:

The undersigned Assistant Prosecutor upon sworn complaint of Rolando Registrado, complainant herein, in representation of his daughter, Jerica Registrado, whose statement is hereto attached as Annex "A", accuses DANTE DATU Y HERNANDEZ of the crime of Acts of Lasciviousness punishable under RA 7610 otherwise known as the "Special Protection Against Child Abuse, Exploitation and Discrimination Act", committed as follows:

That on or about February 24, 1995, in the City of Manila, Philippines, the said accused, with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon JERICA REGISTRADO, 5 years of age, by then and there inserting his finger in the latter's genitals, against her will and consent.^[3]

Upon arraignment, petitioner pleaded not guilty; thus, trial ensued.

The pertinent facts of this case are as follows:

The evidence for the prosecution shows that in the morning of February 24, 1995, at about 7:00 a.m., Jerica, aged 5, was playing with her friends Khamil and Neeca near the house of their neighbor Boyet Rama (or "Boyet") situated at the corner of a street in Old Sta. Mesa, Manila; that suddenly, [petitioner] grabbed Jerica and inserted his middle finger in her vagina, after which, he warned her not to tell it to anyone; that

immediately, Jerica ran to her house; that while her mother was giving Jerica a bath, she found bloodstain in her (Jerica) panty and blood in her vagina; that upon being informed of her mother's discovery, Rolando, Jerica's father, looked at her vagina and found it swollen; and that asked by her father who did it, Jerica disclosed that it was appellant.

On the same date, February 24, 1995, Jerica was brought to the NBI where she was examined by Dr. Villena, whose findings are as follows:

"GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora and minora, coaptated (sic). Fourchette, tense. Vestibular mucosa, congested. Contusion, purplish, peri-urethral area. Hymen, thin, short, intact. Hymenal orifice measures 0.5 cm. in diameter. Vaginal walls and rugosities, cannot be reached by the examining finger.

CONCLUSION:

Physical Virginity Preserved."

Professing innocence, appellant claimed that commission of the alleged sexual molestation is highly improbable as it supposedly took place in a busy street; that the charge was concocted upon inducement of David Escalo (or "Escalo"), a friend of Jerica's parents, as admitted by Escalo to Zaragosa during one of their drinking sprees; and that a case for oral defamation was filed by him against Jerica's parents for their false accusation.^[4]

In the end, the trial court convicted petitioner of the crime charged in a Decision dated August 28, 2000, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of the crime of Acts of Lasciviousness penalized under Section 5, Article III of Republic Act 7610 and sentences him to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal together with the accessory penalties provided by law, to indemnify private complainant in the sum of P50,000.00 as and by way of moral damages and to pay the costs.^[5]

Taking issue with the said judgment, petitioner appealed the same to the Court of Appeals but the appellate court merely affirmed the assailed lower court ruling in a Decision dated March 31, 2005.

Undaunted, petitioner filed with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court^[6] assailing the aforesaid Court of Appeals' Decision.