

EN BANC

[G.R. No. 214497, April 18, 2017]

EDUARDO QUIMVEL Y BRAGA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

VELASCO JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the May 29, 2014 Decision^[1] and September 15, 2014 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 35509.^[3] The challenged rulings sustained the petitioner's conviction^[4] of the crime of Acts of Lasciviousness in relation to Sec. 5(b), Article III of Republic Act No. (RA) 7610.^[5]

The Information reads:^[6]

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMUEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA],^[7] a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Facts

The facts of the case, as can be gleaned from the Decision of the CA, are as follows:^[8]

AAA, who was seven years old at the time of the incident, is the oldest among the children of XXX and YYY. XXX worked as a household helper in Batangas while YYY

was a *Barangay Tanod* who derived income from selling vegetables. AAA and her siblings, BBB and CCC, were then staying with YYY in Palapas, Ligao City.

On the other hand, Quimvel, at that time, was the caretaker of the ducks of AAA's grandfather. He lived with AAA's grandparents whose house was just a few meters away from YYY's house.

At around 8 o'clock in the evening of [July 18,] 2007, YYY went out of the house to buy kerosene since there was no electricity. While YYY was away, Quimvel arrived bringing a vegetable viand from AAA's grandfather. AAA requested Quimvel to stay with them as she and her siblings were afraid. He agreed and accompanied them. AAA and her siblings then went to sleep. However, she was awakened when she felt Quimvel's right leg on top of her body. She likewise sensed Quimvel inserting his right hand inside her panty. In a trice, she felt Quimvel caressing her private part. She removed his hand.

Quimvel was about to leave when YYY arrived. She asked him what he was doing in his house. Quimvel replied that he was just accompanying the children. After he left, YYY and his children went back to sleep.

On [July 29,] 2007, XXX arrived from Batangas. Later in the evening while XXX was lying down with her children, she asked them what they were doing while she was away. BBB told her that Quimvel touched her *Ate*. When XXX asked AAA what Quimvel did to her, she recounted that Quimvel laid down beside her and touched her vagina.

Upon hearing this, XXX and YYY went to the Office of the *Barangay Tanod* and thereafter to the police station to report the incident. Afterwards, they brought AAA to a doctor for medical examination.

As expected, Quimvel denied the imputation hurled against him. He maintained that he brought the ducks of AAA's grandmother to the river at 7 o'clock in the morning, fetched it and brought it back at AAA's grandmother's place at 4 o'clock in the afternoon of [July 18,] 2007. After that, he rested. He said that he never went to AAA's house that evening. When YYY confronted and accused him of touching AAA, he was totally surprised. Even if he denied committing the crime, he was still detained at the *Barangay* Hall. He was then brought to the police station for interrogation. Eventually, he was allowed to go home. He did not return to the house of AAA's grandmother to avoid any untoward incidents.

Ruling of the Trial Court

Lending credence to AAA's straightforward and categorical testimony, the Regional

Trial Court (RTC), Branch 11 in Ligao City, Albay, on January 23, 2013, rendered its Judgment^[9] finding petitioner guilty beyond reasonable doubt of the crime charged. The dispositive portion of the judgment reads:^[10]

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMUEL Y BRAGA, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of R.A. 7610 and thereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and

2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMUEL Y BRAGA, to pay the victim the amount of P30,000.00 as moral damages and to pay a fine in the amount of P30,000.00.

In the service of his sentence, accused EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

Ruling of the Appellate Court

Thereafter, petitioner lodged an appeal with the CA but to no avail. For on May 29, 2014, the CA rendered its assailed Decision affirming, with modification, the Judgment of the trial court. The dispositive portion of the Decision provides:^[11] WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch II, in Criminal Case No. 5530, is hereby MODIFIED in that accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/EDWARD QUIMUEL y BRAGA is ORDERED to pay the victim, AAA moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.

The Issues

Aggrieved, Quimvel elevated his case to this Court and raised the following issues for resolution:

I.

The CA erred in affirming the decision of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of acts of lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Sec. 5(b) of RA 7610.

The Court's Ruling

We affirm the CA's Decision finding petitioner guilty beyond reasonable doubt of the crime of Acts of Lasciviousness as penalized under Sec. 5(b) of RA 7610.

The Information charged the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610

Petitioner contends that, granting without admitting that he is guilty of Acts of Lasciviousness, he should only be held liable for the crime as penalized under the RPC and not under RA 7610. According to him, to be held liable under the latter law, it is necessary that the victim is involved in or subjected to prostitution or other sexual abuse, and that the failure to allege such element constituted a violation of his constitutional right to be informed of the nature and the cause of accusation against him.^[12]

His argument fails to persuade.

i. The acts constituting the offense must be alleged in the Information

It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to apprise the accused of the nature of the accusation against him, which is part and parcel of the rights accorded to an accused enshrined in Article III, Section 14(2) of the 1987 Constitution.^[13] Sections 6, Rule 110 of the Rules of Court, in turn, pertinently provides:

Section 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. (emphasis added)

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.^[14]

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.^[15] As further explained in *Andaya v. People*:^[16]

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. **The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.** (emphasis added)

Indeed, the Court has consistently put more premium on the facts embodied in the Information as constituting the offense rather than on the designation of the offense in the caption. In fact, an investigating prosecutor is not required to be absolutely accurate in designating the offense by its formal name in the law. What determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the Information or Complaint, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being conclusions of law.^[17] It then behooves this Court to place the text of the Information under scrutiny.

ii. The elements of the offense penalized under Sec. 5(b) of RA 7610 were sufficiently alleged in the Information

In the case at bar, petitioner contends that the Information is deficient for failure to allege all the elements necessary in committing Acts of Lasciviousness under Sec. 5(b) of RA 9160.

His theory is that the Information only charges him of the crime as punished under Art. 336 of the RPC, which pertinently reads:

Art. 336. *Acts of lasciviousness.* - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned on the preceding article, shall be punished by *prision correccional*.

Conviction thereunder requires that the prosecution establish the following elements:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:^[18]
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and
3. That the offended party is another person of either sex.

On the other hand, the prosecution endeavored to prove petitioner's guilt beyond reasonable doubt for child abuse under Sec. 5(b) of RA 7610, which provides: **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 subject to other sexual abuse**; Provided, That when the [victim] 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 added)

Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of RA 7610, the requisites of Acts of Lasciviousness as penalized under Art.

336 of the RPC earlier enumerated must be met in addition to the requisites for sexual abuse under Sec. 5(b) of RA 7610, which are as follows:^[19]

1. The accused commits the act of sexual intercourse or lascivious conduct.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. That child, whether male or female, is below 18 years of age.^[20] (emphasis supplied)

Hypothetically admitting the elements of Art. 336 of the RPC, as well as the first and third elements under RA 7610 - that a lascivious act was committed against AAA who at that time was below twelve (12) years old petitioner nevertheless contends that the second additional element, requiring that the victim is a child "*exploited in prostitution or subjected to other sexual abuse*," is absent in this case.

The fault in petitioner's logic lies in his misapprehension of how the element that the victim is "*exploited in prostitution or subjected to other sexual abuse*" should be alleged in the Information.

Guilty of reiteration, the accusatory portion of the Information reads:

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMUEL y BRAGA of the crime of **Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610**, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, **through force and intimidation**, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA],^[21] a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.^[22] (emphasis added)

To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.^[23]

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.^[24] Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. This is even made clearer by the deliberations of the Senate, as cited in the landmark ruling of *People v. Larin*:^[25]

Senator Angara. I refer to line 9, '**who for money or profit.**' I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, **it is limited only to the child being abused or misused for sexual purposes, only for money or profit.**

I am contending, Mr. President, that **there may be situations where the child may not have been used for profit** or...

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. **Maybe the heading ought to be expanded.** But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President:

MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, 'Child Prostitution,' shall we change that too?

Senator Angara. **Yes, Mr. President, to cover the expanded scope.**

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved.

Clear from the records of the deliberation is that the original wording of Sec. 5 of RA 7610 has been expanded so as to cover abuses that are not characterized by gain, monetary or otherwise. In the case at bar, the abuse suffered by AAA squarely falls under this expanded scope as there was no allegation of consideration or profit in exchange for sexual favor. As stated in the Information, petitioner committed lascivious conduct through the use of "*force*" and "*intimidation*."

iii. "Force and intimidation" is subsumed under "coercion and influence"

The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force and intimidation*" as used in the Information. To be sure, Black's Law Dictionary defines "*coercion*" as "*compulsion; force; duress*"^[26] while "[undue] influence" is defined as "*persuasion carried to the point of overpowering the will*."^[27] On the other hand, "*force*" refers to "*constraining power, compulsion; strength directed to an end*"^[28] while jurisprudence defines "*intimidation*" as "*unlawful coercion; extortion; duress; putting in fear*."^[29] As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different. And to dispel any remaining lingering doubt as to their interchangeability, the Court enunciated in *Caballo v. People*^[30] that:

x x x sexual intercourse or 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. 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:

The 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.

To note, 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.**" Meanwhile, "**coercion**" is the "**improper use of x x x power to compel another to submit to the wishes of one who wields it.**" (emphasis added)

With the foregoing, the Court need not burden itself with nitpicking and splitting hairs by making a distinction between these similar, if not identical, words employed, and make a mountain out of a mole hill.

It is not necessary that the description of the crime, as worded in the penal provision allegedly violated, be reproduced *verbatim* in the accusatory portion of the Information before the accused can be convicted thereunder. Sec. 9, Rule 110 of the Rules of Court is relevant on this point:

Section 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances **must be stated in ordinary and concise language and not necessarily in the language used in the statute** but in **terms sufficient to enable a person of common understanding to know what offense is being charged** as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The Court has held in a catena of cases^[31] that the rule is satisfied when the crime "*is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.*" Furthermore, "**[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.**" Hence, the exact phrase "*exploited in prostitution or subjected to other abuse*" need not be mentioned in the Information. Even the words "*coercion or influence*" need not specifically appear.

Thus, the Court, in *Olivarez v. Court of Appeals*,^[32] has similarly sustained the conviction of therein petitioner Isidro Olivarez (Olivarez) for violating Sec. 5, RA 7610. The Information indicting Olivarez of the offense read:

The undersigned 4th Assistant Provincial Prosecution (*sic*) of Laguna upon a sworn complaint filed by the private complainant, [AAA], hereby accuses ISIDRO OLIVAREZ of the crime of VIOLATION OF RA 7610, committed as follows:

That on or about July 20, 1997, in the Municipality of San Pedro, Province of Laguna, within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously by means of **force and intimidation** commit acts of lasciviousness on the person of one [AAA], by touching her breasts and kissing her lips, against her will, to her damage and prejudice.

CONTRARY TO LAW. (emphasis added)

Conspicuously enough, the Information in *Olivarez* is couched in a similar fashion as the Information in the extant case. The absence of the phrase "*exploited in prostitution or subject to other sexual abuse*" or even the specific mention of "*coercion*" or "*influence*" was never a bar for the Court to uphold the finding of guilt against an accused for violation of RA 7610. Just as the Court held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of "*force and intimidation*," the Court must also rule that the Information in the case at bench does not suffer from the alleged infirmity.

So too did the Court find no impediment in *People v. Abadies*,^[33] *Malto v. People*,^[34] *People v. Ching*,^[35] *People v. Bonaagua*,^[36] and *Caballo v. People*^[37] to convict the accused therein for violation of Sec. 5, RA 7610 notwithstanding the non-mention in the Information of "*coercion*," "*influence*," or "*exploited in prostitution or subject to other abuse*."

The offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged. Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of the opportunity to prepare his defense accordingly.^[38] Its import is underscored in this case where the preamble states that the crime charged is of "*Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610*."

In *Malto v. People*,^[39] therein accused Michael John Z. Malto (Malto) was charged for violation of RA 7610 in the following wise:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of **VIOLATION OF SECTION 5[b], ARTICLE III, REPUBLIC ACT 7610**, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **take advantage and exert influence**, relationship and moral ascendancy and induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, **to indulge in**

sexual intercourse and lascivious conduct for several times with him as in fact said accused has carnal knowledge.

Contrary to law. (emphasis and words in brackets added)

Interestingly, the acts constitutive of the offense, as alleged in the Information, could make out a case for violation of either Sec. 5(b) of RA 7610 or Rape under the RPC.^[40] Nevertheless, the Court affirmed the finding that Malta is criminally liable for violation of RA 7610, and not for Rape.

The Court is not unmindful of its pronouncements in *People v. Abello (Abello)*^[41] and *Cabila v. People (Cabila)*^[42] that the second element must specifically be alleged in the Information and thereafter proved. However, these rulings cannot support petitioner's prayer that he be convicted under Art. 336 of the RPC instead of under Sec. 5(b) of RA 7610.

To begin with, the factual milieu of *Abello* significantly differs with that in the case at bar. Our refusal to convict therein accused Heracleo Abello was premised on the fact that his victim cannot be considered as a "child" within the purview of RA 7610.^[43] The victim in *Abello*, was 21 years of age when the offense was committed. Although she had polio, the prosecution failed to substantiate through evidence that the victim's physical condition rendered her incapable of fully taking care of herself or of protecting herself against sexual abuse.^[44] Hence, Abello was only convicted of Acts of Lasciviousness under Art. 336 of the RPC.

Cabila, on the other hand, is a stray division case that has seemingly been overturned by the Court's recent *en banc* ruling in *Dimakuta v. People (Dimakuta)*.^[45] The latter case attempted to punctuate the discussion on the issue at hand, but fell short as the conviction therein for violation of Art. 336 of the RPC had already attained finality. Instead, what the Court *en banc* was confronted with in , the bone of contention that remained, was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the non-probationable penalty imposed to a probationable one. The Court, therefore, deems it more appropriate *here* to categorically abandon our ruling in *Cabila*.

Neither can petitioner buttress his claim by citing the dissent in the 2005 case of *Olivarez v. CA*^[46] wherein it was expounded thus:

The first element refers to the acts of lasciviousness that the accused performs on the child. The second element refers to the special circumstance that the child (is) exploited in prostitution.or subjected to other sexual abuse. This special circumstance already exists when the accused performs acts of lasciviousness on the child. In short, the acts of lasciviousness that the accused performs on the child

are separate and different from the child's exploitation in prostitution or subjection to "**other sexual abuse.**"

Under Article 336 of the RPC, the accused performs the acts of lasciviousness on a child who is neither exploited in prostitution nor subjected to "**other sexual abuse.**" In contrast, under Section 5 of RA 7610, the accused performs the acts of lasciviousness on a child who is either exploited in prostitution or subjected to "**other sexual abuse.**"

Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse.**" Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance that the child is either exploited in prostitution or subjected to "**other sexual abuse.**" (emphasis supplied)

Contrary to the exposition, the very definition of "*child abuse*" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.

iv. There need not be a third person subjecting the exploited child to other abuse

The intervention by a third person is not necessary to convict an accused under Sec. 5 of RA 7610. As regards paragraph (a), a child may engage in sexual intercourse or lascivious conduct regardless of whether or not a "*bugaw*" is present. Although the presence of an offeror or a pimp is the typical set up in prostitution rings, this does not foreclose the possibility of a child voluntarily submitting himself or herself to another's lewd design for consideration, monetary or otherwise, without third person intervention. Needless to say, the child, would still be under the protection of the law, and the offender, in such a situation, could still be held criminally liable for violation of Sec. 5(a) of RA 7610.

The Senate deliberations made clear, though, that other forms of sexual abuse, not just prostitution, are within the extended coverage of RA 7610. The offense is even penalized under the same provision as prostitution-Sec. 5 of the law. Both offenses must then be dealt with under the same parameters, in spite of the differences in their elements. Thus, concomitant with the earlier postulation, just as the participation of a third person is not necessary to commit the crime of prostitution, so too is the circumstance unessential in charging one for other sexual abuse.

It is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). Sec. 5 of RA 7610 even provides that the offense can be committed by "***any adult, syndicate or group,***" without qualification.^[47] The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence. This is, in fact, the more common scenario of abuse that reaches this Court and it would be an embarrassment for us to rule that such instances are outside the ambit Sec. 5(b) of RA 7610.

It is as my esteemed colleagues Associate Justices Diosdado M. Peralta and Estela M. Perlas-Bernabe reminded the Court. *Ratio legis est anima*. The reason of the law is the soul of the law. In this case, the law would have miserably failed in fulfilling its lofty purpose^[48] of providing special protection to children **from all forms of abuse** if the Court were to interpret its penal provisions so as to require the additional element of a prior or contemporaneous abuse that is different from what is complained of, and if the Court were to require that a third person act in concert with the accused.

The RTC and CA did not err in finding petitioner guilty beyond reasonable doubt

Well-settled is the rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.^[49] This is so because the observance of the deportment and demeanor of witnesses are within the exclusive domain of the trial courts. Thus, considering their unique vantage point, trial courts are in the best position to assess and evaluate the credibility and truthfulness of witnesses and their testimonies.^[50]

In the case at bar, the RTC held that the prosecution duly established petitioner's guilt beyond reasonable doubt through AAA's straightforward testimony. The trial court observed that when AAA testified, she was able to steadily recount Quimvel's immodest acts, as follows:

- Q Okay. On the same date, where was your mother, if you know?
A During that time, my mother was in Batangas, she being a household helper.
Q Alright. How about your father, where was he on July 18, 2007, at more or less 8:00 o'clock in the evening?
A He was on duty at Palapas, Ligao City.
Q Okay. What was your father's job?
A He was on duty, since he was a Barangay Tanod.
Q Okay. Now, on that date and time, where were you, if you recall?

A I was in our house.

Q Who were with you inside your house?

A I was with my two (2) siblings.

Q Okay. Now, what happened while you and your siblings were there inside your house on that date and time?

A Eduardo went to our house with a viand vegetable for us.

Q Okay. Who is this Eduardo that you are referring to?

A He is the helper of my grandfather.

Q Okay. If you know, why was he bringing you then a viand?

A He was sent by our Lolo to bring the viand for us.

Q Alright. When he brought the viand to you, what did you say, if any?

A I told him to accompany us in our house because we are afraid.

Q Okay. What did he say, if any, when you told him that?

A He told me, it's alright.

Q Okay. So, what did you do after he told you that?

A After that, I went to sleep.

Q How about your brother or sister, what did they do also?

A They too went to sleep.

Q And then what happened, if you recall?

A Since his leg was placed over my body. I was awaken[ed] because from that, he was also inserting his hand inside my panty.

Q Alright. Now, could you tell us which leg was it that he placed on top of your body?

A His right leg(,) ma'am.

Q Okay. Now, you've mentioned that he inserted his hand inside your panty, do you recall what you were wearing at that time?

A I was wearing shorts and panty.

Q Alright. How about on the upper portion of your body, what were you wearing then?

A I was wearing a blouse, like what I am wearing now. (Witness pointing to her blouse)

Q Alright. And you mentioned that he inserted his hand on your panty, which hand did he use?

A His right hand.

Q Alright. And after inserting his hand inside your panty, what did he do with it?

A After inserting his hand inside my panty, he rubbed my vagina. (Witness is demonstrating by rubbing her left hand with her right hand.)

Q Now, could you tell us for how long did Eduardo rubbed or caressed your vagina? (sic)

A Maybe it took for about five (5) minutes.

Q Do you know how long is a minute?

A I do not know(,) ma'am.

Q Now, if you are going to count one (1) to ten (10), each count would be equivalent to one (1) second and if you have counted for ten (10), on what number would you reach to approximate the time wherein Eduardo caressed your vagina?

A It could be thirty (30) minutes.

COURT

Maybe she did not understand it.

PROS. CRUZ

Q Alright. Now, he (sic) took a long time for the accused to caress your vagina, is that what you are trying to tell this Honorable Court?

A Yes(,) ma'am.

Q And what did you do when he was caressing your vagina for that long?

A I removed his hand from inside my panty.^[51]

The foregoing testimonial account demonstrates that all the elements of the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610, as earlier enumerated, are present.

Let us not forget the circumstances of this case, not only was the offense committed against a child under twelve (12) years of age, it was committed when the victim was unconscious, fast asleep in the dead of the night. AAA, then a minor of seven (7) years, was awoken by the weight of petitioner's leg on top of her and of his hand sliding inside her undergarment. His hand proceeded to caress her womanhood, which harrowing experience of a traumatic torment only came to a halt when she managed to prevent his hand from further touching her private parts.

As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult.^[52] Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.^[53] The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient.^[54]

The petitioner's proposition-that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under RA 7610-is bereft of merit. When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.

Here, AAA was a child at the tender age of seven (7) when the offense was committed. She was residing with her father in Palagas, Ligao City, Albay while her mother works as a household helper in Batangas. Her father, however, is out of the house most of the time, working two jobs as a vendor and *barangay tanod*.

Petitioner, on the other hand, was known to the victim and her siblings as the caretaker of their grandmother's ducks. Thus, when petitioner brought some vegetable viand to the victim's house at the day the crime was committed, he was requested by the children to stay with them because they were afraid. AAA entrusted to petitioner her safety and that of her siblings, only to be betrayed. In this situation, the Court finds that because of the relative seniority of petitioner and the trust reposed in him, petitioner abused the full reliance of AAA and misused his ascendancy over the victim. These circumstances can be equated with "intimidation" or "influence" exerted by an adult, covered by Sec. S(b) of RA 7610. Ergo, the element of being subjected to sexual abuse is met.

That AAA is a child of tender years does not detract from the weight and credibility of her testimony. On the contrary, even more credence is given to witnesses who were able to candidly relay their testimony before the trial courts under such circumstance. The child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint.^[55]

In stark contrast, Quimvel's defense—that he did not go to AAA's house on the alleged time of the incident as he was busy watching over the ducks of AAA's grandmother at the latter's house^[56]—deserves scant consideration. Jurisprudence is replete of cases holding that denial and alibi are weak defenses, which cannot prevail against positive identification.^[57] A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.^[58]

For his alibi to prosper, it was incumbent upon petitioner to prove that he was somewhere else when the offense was committed, and that he was so far away it would have been impossible for him to be physically present at the place of the crime or at its immediate vicinity at the time of the commission.^[59] But in his version of the events, petitioner failed to prove the element of physical impossibility since the house of AAA's grandmother, where he claimed to be at that time, is only 150 meters, more or less, from AAA's house. His alibi, therefore, cannot be considered exculpatory.

Article 336 of the RPC was never repealed by RA 8353

Associate Justice Marvic M.V.F. Leonen (Justice Leonen) posits that Art. 336 of the RPC has allegedly been rendered incomplete and ineffective by RA 8353, otherwise known as the Anti-Rape law. The good justice brings our attention to Sec. 4^[60] of the special law, which clause expressly repealed Art. 335 of the RPC. And since the

second element of Acts of Lasciviousness under Art. 336 of the RPC is sourced from Art. 335 of the same code,^[61] it is then Justice Leonen's theory that Acts of Lasciviousness ceased to be a crime under the RPC following Art. 335's express repeal.

We respectfully disagree.

Sec. 4 of RA 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. Rather, the phrase in Sec. 4 states: "*deemed amended, modified, or repealed accordingly*" qualifies "*Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353].*"

As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC,^[62] which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A.^[63] Thus, the reference by Art. 336 of the RPC to any of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the circumstances covered by Art. 266-A as introduced by the Anti-Rape Law.

We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.^[64] Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. And as demonstrated, the Anti-Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase "*preceding article*" is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

It is likewise incorrect to claim that Art. 336 had been rendered inoperative by the Anti-Rape Law and argue in the same breath the applicability of Sec. 5(b) of RA 7610. The latter provision reads:

Section 5. Child Prostitution and Other Sexual Abuse. - x x x

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 [victim] 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 added)

If Art. 336 then ceased to be a penal provision in view of its alleged incompleteness, then so too would Sec. 5(b) of RA 7610 be ineffective since it defines and punishes the prohibited act by way of reference to the RPC provision.

The decriminalization of Acts of Lasciviousness under the RPC, as per Justice Leonen's theory, would not sufficiently be supplanted by RA 7610 and RA 9262,^[65] otherwise known as the Anti-Violence Against Women and their Children Law (Anti-VAWC Law). Under RA 7610, only minors can be considered victims of the enumerated forms of abuses therein. Meanwhile, the Anti-VAWC law limits the victims of sexual abuses covered by the RA to a wife, former wife, or any women with whom the offender has had a dating or sexual relationship, or against her child.^[66] Clearly, these laws do not provide ample protection against sexual offenders who do not discriminate in selecting their victims. One does not have to be a child before he or she can be victimized by acts of lasciviousness. Nor does one have to be a woman with an existing or prior relationship with the offender to fall prey. Anyone can be a victim of another's lewd design. And if the Court will subscribe to Justice Leonen's position, it will render a large portion of our demographics (*i.e.* adult females who had no prior relationship to the offender, and adult males) vulnerable to sexual abuses.

The RTC and the CA imposed the proper prison term

Anent the proper penalty to be imposed, Sec. 5 of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, which ranges from 14 years, 8 months and 1 day to 17 years and 4 months.^[67]

Meanwhile, Sec. 1 of Act No. 4103,^[68] otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed.^[69] Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon*^[70] that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the

legal effects under the system of penalties native to the Code would also necessarily apply to the special law.

Thus, in *People v. Santos (Santos)*,^[71] which similarly involved charges for Acts of Lasciviousness under Sec. 5(b) of RA 7610, the Court applied the ISL and adjusted the prison term meted to the accused-appellant therein. In the absence of mitigating or aggravating circumstances, the Court held that the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

From the foregoing, it becomes clear that the prison term meted to petitioner (*i.e.* fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as minimum to fifteen (15) years, six (6) months and nineteen (19) days of *reclusion temporal* in its medium period) must be modified to be in consonance with the Court's ruling in *Santos*. Accordingly, the minimum prison term shall be reduced to twelve (12) years and one (1) day, while the maximum term shall be adjusted to fifteen (15) years, six (6) months and twenty-one (21) days.

WHEREFORE, the instant petition is hereby **DENIED**. The Court of Appeals Decision in CA-G.R. CR No. 35509 finding petitioner Eduardo Quimvel y Braga also known as Eduardo/Edward Quimuel y Braga guilty beyond reasonable doubt of acts of lasciviousness is hereby **AFFIRMED** with **MODIFICATION** as follows: WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/EDWARD QUIMUEL y BRAGA is SENTENCED to suffer the indeterminate imprisonment 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-one (21) days of *reclusion temporal* in its medium period as maximum. He is further ORDERED to pay the victim, AAA, moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.

Sereno, C. J., Leonardo-De Castro, Bersamin, Mendoza, Reyes, Martires, and Tijam,

JJ., concur.

Carpio, J., See Dissenting Opinion.

Peralta, J., See Separate Opinion.

Del Castillo, J., I join J. Carpio's and J. Caguioa's Dissenting Opinion.

Perlas Bernabe, J., Please see Concurring Opinion.

Leonen, J., See Separate Opinion.

Jardeleza, J., no part.

Caguioa, J., See Dissenting Opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on April 18, 2017 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 26, 2017 at 9:30 a.m.

Very truly yours,
(SGD)
FELIPA G.
BORLONGAN-
ANAMA
Clerk of Court

[1] *Rollo*, pp. 29-40. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Cannelita S. Manahan.

[2] *Id.* at 42-43.

[3] Entitled *People of the Philippines v. Eduardo Quimvel y Braga a.k.a. Eduardo/Edward Quimuel y Braga*.

[4] With modification as to the amount of damages.

[5] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

[6] *Rollo*, p. 65.

[7] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[8] *Rollo*, pp. 30-31.

[9] *Id.* at 65-73. Penned by Judge Amy Ana L. De Villa-Rosero.

[10] *Id.* at 73.

[11] *Id.* at 39-40.

[12] *Id.* at 20-21. *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[13] Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (emphasis added)

[14] *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 522 (2003).

[15] *Andaya v. People*, 526 Phil. 480 (2006).

[16] *Id.* at 497.

[17] *Espino v. People*, 713 Phil. 377 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

[18] The circumstances under which rape can be committed under Art. 335 of the Revised Penal Code have been modified by Republic Act No. 8353, otherwise known

as the Anti-Rape Law.

[19] *Cabila v. People*, G.R. No. 173491, November 23, 2007, 538 SCRA 695.

[20] *Ebalada v. People*, G.R. No. 157718, April 26, 2005, 457 SCRA 282.

[21] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[22] *Rollo*, p. 65.

[23] *People v. Larin*, 357 Phil. 987 (1998).

[24] *Mallo v. People*, 560 Phil. 119 (2007).

[25] *Supra* note 23, at 998-999.

[26] <<http://thelawdictionary.org/coercion/>> last accessed on March 3, 2017.

[27] <<http://thelawdictionary.org/undue-influence/>> last accessed on March 3, 2017.

[28] <<http://thelawdictionary.org/force/>> last accessed on March 4, 2017.

[29] *Sazon v. Sandiganbayan*, 598 Phil. 35 (2009).

[30] 710 Phil. 792, 805-806 (2013).

[31] *Lazarte, Jr. v. Sandiganbayan*, 600 Phil. 475 (2009); *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 522 (2003).

[32] *Supra* note 12.

[33] 433 Phil. 814, 818 (2002); the Information reads:

That on or about July 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously, **with force and intimidation** commit acts of lasciviousness upon the person of his 17-year old daughter [AAA] by kissing, massaging her breast and touching her private parts against her will and consent.

CONTRARY TO LAW.

[34] Supra note 24, at 126; the Information reads:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(b), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **induce and/or seduce** his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse for several times with him as in fact said accused had carnal knowledge.

Contrary to law.

[35] 563 Phil. 433, 436 (2007); the Information reads:

CRIMINAL CASE NO. Q-99-87053

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. 0-99-87054

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-87055

That in or about the year of 1996, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

[36] 665 Phil. 750, 755-756 (2011); the information reads:

That on or about the month of December 1998 in the City of Las Piñas and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of influence and moral ascendancy, **by means of force, threat and intimidation**, did then and there willfully, unlawfully and feloniously insert his tongue and finger into the genital of his daughter, [AAA], a minor then eight (8) years of age, against her will and consent.

CONTRARY TO LAW and with the special aggravating/qualifying circumstance of minority of the private offended party, [AAA], being then only eight (8) years of age and relationship of the said private offended party with the accused, Ireneo Bonaagua y Berce, the latter being the biological father of the former.

[37] Supra note 30, at 796-797; the Information reads:

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, until June 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, a 23-year-old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of worldly experience of AAA who was only 17 years old at that time, having been born on November 3, 1980, did then and there willfully, unlawfully and feloniously commit sexual abuse upon said AAA, **by persuading and inducing** the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy and delivery of a baby on March 8, 1999, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

[38] *Malto v. People*, supra note 24.

[39] Id. at 126.

[40] Rape was still classified as a crime against chastity under the RPC at the time the offense was committed.

[41] 601 Phil 373 (2009).

[42] Supra note 19.

[43] **Section 3. Definition of Terms.** - (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;

[44] Supra note 41.

[45] G.R. No. 206513, October 20, 2015, 773 SCRA 228.

[46] Supra note 12, at 444445.

[47] **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.

[48] **RA 7610, Section 2. Declaration of State Policy and Principles.** - It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

[49] *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688.

[50] *People v. Pareja*, 724 Phil. 759 (2014).

[51] TSN, June 23, 2011, pp. 6-9.

[52] *Garingarao v. People*, 669 Phil. 512 (2011).

[53] *Caballo v. People*, supra note 30.

[54] *Dimakuta v. People*, supra note 45.

[55] *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509.

[56] *Rollo*, p. 67.

[57] *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842.

[58] *People v. Gani*, G.R. No. 195523, June 5, 2013, 697 SCRA 530.

[59] *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587.

[60] **Section 4. Repealing Clause.** - Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

[61] Under Art. 336, the lascivious conduct must be performed under any of the circumstances mentioned on its "*preceding article*," referring to the previous law penalizing rape. Prior to its repeal, Art. 335 of the RPC provides that rape may be committed a) by using force or intimidation; b) when the offended party is deprived of reason or otherwise unconscious; or c) when the offended party is under 12 years of age.

[62] **Article 335.** *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

[63] Article 266-A. Rape: *When And How Committed.* - Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (as amended by RA 8353, Sec. 2)

[64] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461.

[65] AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES.

[66] RA 9262, Sec. 3(a).

[67] REVISED PENAL CODE, Art. 76.

[68] AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

[69] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and **if the offense is punished by any other law. the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.** (emphasis added)

[70] G.R. No. 93028, July 29, 1994, 234 SCRA 555.

[71] G.R. No. 205308, February 11, 2015, 750 SCRA 471.

CARPIO, J.:

Lascivious acts committed against a child under 12 years old may fall under either Section 5(b) of Republic Act No. 7610 (RA 7610)^[1] or Article 336 of the Revised Penal Code (RPC). As both laws remain to be good and effective, I submit this Separate Opinion to clarify and distinguish these two seemingly overlapping provisions.

I agree with the majority opinion when it states that Article 336 of the RPC was never repealed by Republic Act No. 8353 (RA 8353).^[2] While the latter law expressly repealed Article 335, this does not render Article 336 incomplete or ineffective. As the majority opinion explains, it simply means that the "preceding article" referred to in Article 336 would now refer to Article 266-A, which replaced Article 335.

As it now stands, the crime of acts of lasciviousness under Article 336 of the RPC has the following elements:

1. That the offender commits any act of lasciviousness or lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
 - a. By using force or intimidation;
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under 12 years of age or is demented.^[3]

On the other hand, Section 5(b) of RA 7610 has the following elements:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. That child, whether male or female, is below 18 years of age.^[4]

The majority opinion states that for an accused to be held criminally liable for lascivious conduct under Section 5(b) of RA 7610, the requisites under Article 336 of the RPC must be met **in addition** to the requisites under Section 5(b) of RA 7610. Moreover, based on the elements of Article 336 of the RPC and Section 5(b) of RA 7610 enumerated above, it is evident that both provisions share some similar elements. The main difference lies in the second element of Section 5(b) of RA 7610 that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. Thus, to be convicted of lascivious conduct under Section 5(b) of RA 7610 - rather than acts of lasciviousness under Article 336 of the RPC - it is essential to prove that the child against whom the act was committed is a child exploited in prostitution or subjected to other sexual abuse.

Thus, the difference is clear: under Article 336 of the RPC, the accused performs the act of lasciviousness with a child who is neither exploited in prostitution nor subjected to "other sexual abuse" while under Section 5(b) of RA 7610 the act is performed with a child who is either exploited in prostitution or subjected to "other sexual abuse."

In this case, the majority opinion states that the second element of Section 5(b) of RA 7610 was met because the lascivious conduct was done under the "coercion or influence" of an adult. It assumes that if coercion or influence was used to perform a lascivious act with a child, such child is subjected to "other sexual abuse." The majority opinion goes further to state that "force or intimidation" (the terms used in the Information against Quimvel) is subsumed under "coercion or influence," which again, it deems as "other sexual abuse."

The main issue is whether or not the second element of Section 5(b) of RA 7610 was correctly alleged in the Information and whether it was sufficiently proven by the prosecution during the trial. I submit that the second element - that the child is "exploited in prostitution or subjected to other sexual abuse" was **neither correctly alleged nor proven beyond reasonable doubt.**

First, I would like to distinguish the first and second elements of Section 5(b) of RA 7610. The first element - that the accused commits the act of sexual intercourse or lascivious conduct - refers to the very act complained of against the accused. The second element - that the act is performed with a child exploited in prostitution or subjected to other sexual abuse - refers to the circumstance of the child against whom the act was committed. This second element does not necessarily have any relation to the act of the accused as this relates to the child alone. The first and second elements refer to two entirely different and separate matters. One refers to the act committed by the accused while the other refers to the circumstance of the

child victim, which may or may not be related to the act committed by the accused.

Second, being under the "coercion or influence" of an adult does not, by itself, make the child automatically subjected to "other sexual abuse." Section 5 of RA 7610 provides in part:

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.

To understand this provision, I looked into the deliberations of the Senate, which are also quoted in the majority opinion:

Senator Angara. I refer to line 9, "who for money or profit." I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because **we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration**. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or ...

The President Pro Tempore. So it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, "Child Prostitution", shall we change that too? Senator Angara. Yes, Mr. President, to cover the expanded scope.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved x x x.^[5] (Boldfacing and underscoring supplied)

Based on the foregoing, it is clear that this provision was crafted to cover a situation where sexual intercourse or lascivious conduct is performed with **a child who is being abused or misused for sexual purposes**. The phrase "or any other consideration or due to the coercion or influence of any adult, syndicate or group" was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. This was significant because profit or monetary gain is essential in prostitution. Thus, the lawmakers intended that in case all the other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution.

Accordingly, "coercion or influence," on its own, does not make the child subjected to "other sexual abuse." The "coercion or influence" must have been used to abuse or misuse the child for sexual purposes, and again, this must have been the circumstance of the child when the act complained of - the lascivious conduct of the accused - was performed against the child. The "coercion or influence" should refer to the circumstance of the child and not to the lascivious conduct complained of.

Moreover, if as the majority opinion states, "force or intimidation" is subsumed

under "coercion or influence" and being under the "coercion or influence" of an adult is enough to deem a child already subjected to "other sexual abuse," how will Section 5(b) of RA 7610 be any different from Article 336 of the RPC? **It should be noted that "force or intimidation" is also one of the elements of acts of lasciviousness under Article 336 of the RPC.** To equate the two terms would result in disregarding the different crimes and penalties under the two different provisions of law. To appreciate the difference between these provisions, "force or intimidation" under Article 336 of the RPC must be understood in relation to the act complained of, that is, whether the lascivious conduct was done with force or intimidation against the victim. In contrast, "coercion or influence" as used in RA 7610 should be read with reference to the circumstance of the child, that is, whether "coercion or influence" was used to exploit the child in prostitution or to subject the child to "other sexual abuse."

It is clear that the lawmakers intended to afford more protection to the sexually misused and abused children rather than those children who were not. There simply would have been no need to include the element that the child is exploited in prostitution or subjected to "other sexual abuse" if this were not the case. If the intention of the law was merely to protect children against sexual abuse, without regard to their circumstance of being exploited in prostitution or subjected to other sexual abuse, the provision could have simply omitted the reference to prostitution or other sexual abuse so that all children would be covered under this provision. However, the lawmakers expressly included prostitution or being subjected to "other sexual abuse" as one of the elements of Section 5(b) of RA 7610 because of the greater need to protect such children. And because of this greater need, a higher penalty is imposed as well.

This is not to say, however, that the accused himself must have exploited the child in prostitution or subjected the child to "other sexual abuse." The exploitation of the child in prostitution or subjection of the child to "other sexual abuse" may be committed by persons other than the accused. I agree with the majority opinion that the offense under Section 5(b) of RA 7610 can be committed even though the abuse complained of occurred only once. The sexual intercourse or lascivious conduct committed by the accused may have been a singular instance and not a habitual occurrence. Indeed, the first element merely requires an act. Thus, one single act of the accused is enough. However, that singular act must have been done against a child who was already exploited in prostitution or subjected to "other sexual abuse." Again, the act of the accused and the circumstance of the child are two separate and distinct elements.

I also agree with the majority opinion that there need not be a third person subjecting the child to "other sexual abuse." It could very well happen that the person who exploited the child in prostitution is the same person accused of

performing the lascivious conduct with the child. If the accused has sexually misused the child on more than one occasion, then that child becomes a child subjected to "other sexual abuse." Thus, the second element would be present - the circumstance of the child would be that of being subjected to "other sexual abuse" and each act of the accused will be considered as the first element of lascivious conduct under Section 5(b) of RA 7610.

In this case, however, it was not alleged or proven that the child victim was exploited in prostitution or subjected to "other sexual abuse." As it is fundamental that every element of the crime must be alleged in the complaint or information against the accused, there is no basis to convict Quimvel for violation of Section 5(b) of RA 7610. This Court has held:

The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. It is fundamental that every element of which the offense is composed must be alleged in the information. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.** Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense. Recently, this Court emphasized that the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.^[6] (Boldfacing and underscoring supplied)

The second element of Section 5(b) of RA 7610 was not clearly and accurately alleged against Quimvel, and there was also no allegation of any , material fact that would establish the element that the child was exploited in prostitution or subjected to "other sexual abuse." The Information reads:

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMVEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA], a minor of 7 years old and mash her vagina, against her will and consent, to

her damage and prejudice.

ACTS CONTRARY TO LAW.

Clearly, there is no allegation in the Information that the victim was exploited in prostitution or subjected to other sexual abuse.

The element that the child was exploited in prostitution or subjected to other sexual abuse increases the penalty from *prision correccional* to *reclusion temporal* in its medium period if the victim is under 12 years old. This element distinguishes whether the crime would be punishable under RA 7610 or under the RPC. Thus, there is a need to strictly construe this element. The Court has been consistent in strictly interpreting elements in criminal cases which would increase the penalty against the accused. In *People v. Orilla*, the Court stated that "when the law or rules specify certain circumstances that can aggravate an offense or qualify an offense to warrant a greater penalty, **the information must allege such circumstances and the prosecution must prove the same to justify the imposition of the increased penalty.**"^[7] In this case, however, the Information was silent on whether the victim was exploited in prostitution or was subjected to other sexual abuse, and it was also not proven by the prosecution during the trial of the case.

However, the Information is sufficient to charge the accused for acts of lasciviousness under Article 336 of the RPC, in accordance with the variance doctrine under the Rules of Court.^[8] While the circumstance of the child as a child exploited in prostitution or subjected to "other sexual abuse" was not alleged or proven, all the elements of Article 336 of the RPC were clearly and accurately alleged in the Information, and thereafter proven during the course of the trial.

Accused Quimvel put his hand inside the undergarment of the child while the latter was sleeping, and rubbed her vagina which is an obvious act of lasciviousness or lewdness. I note that the words "force and intimidation" were used in the Information, which is the same wording as the element in acts of lasciviousness under Article 336 of the RPC. Moreover, the victim was only 7 years old when the incident happened. The victim being a child under 12 years old, all the elements of Article 336 of the RPC were sufficiently alleged in the Information and subsequently proven beyond reasonable doubt during the trial of the case.

ACCORDINGLY, I vote to **GRANT** the petition and to **CONVICT** Eduardo Quimvel y Braga for acts of lasciviousness under Article 336 of the Revised Penal Code and to impose on him the penalty of *prision correccional* in its medium period there being no aggravating or mitigating circumstances.

[1] An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation, and Discrimination and for Other Purposes.

[2] The Anti-Rape Law of 1997.

[3] *PO3 Sombilon, Jr. v. People of the Philippines*, 617 Phil. 187 (2009).

[4] *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[5] Record of the Senate, Vol. 1, No.7, pp. 261-263, cited in *People v. Larin*, 357 Phil. 987 (1998).

[6] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003). Citations omitted.

[7] 467 Phil. 253 (2004), citing *People v. Corral*, 446 Phil. 652 (2003).

[8] Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure, provides:

SEC. 4. *Judgment in case of variance between allegation and proof.* - When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.* - An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

SEPARATE CONCURRING OPINION

PERALTA, J.:

I agree with the *ponencia* in affirming the conviction of petitioner Eduardo Quimvel y Braga for Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to Section 5(b),^[1] Article III of Republic Act (R.A.) No. 7610,^[2] and I have decided to expound more on the applicable laws and imposable

penalties for acts of lasciviousness committed against minors, as reference for future legislation and for guidance and information purposes.

Eduardo Quimvel y Braga was charged with the crime of acts of lasciviousness in an Information, which reads:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Regional Trial Court (RTC) of Ligao City, Albay, Branch 11, found Quimvel guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5(b), Article III of R.A. 7610.^[3] The dispositive portion of the RTC decision reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of R.A. 7610 and hereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) day of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and
2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

On appeal, the Court of Appeals (CA) affirmed the RTC Decision with modification as to the damages, civil indemnity and interest thereon,^[4] to wit:

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that the accused appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/EDWARD QUIMVEL y BRAGA is ORDERED TO PAY THE VICTIM, AAA moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of

six percent (6%) per annum from the date of finality of judgment.

SO ORDERED.

Hence, the present petition for review on *certiorari* under Rule 45, raising the following issues:

I.

The CA erred in affirming the decisions of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of Acts of Lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Section 5 of R.A. 7610.

I concur with the *ponencia* in affirming the CA's decision finding Quimvel guilty beyond reasonable doubt of the crime of violation of Section 5(b), Article III of R.A. 7610.

Acts of lasciviousness under Article 336 of the RPC, together with child prostitution and rape, is dealt with under Section 5(b) of Article III of R.A. 7610 which reads:

ARTICLE III

Child Prostitution and Other Sexual Abuse

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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(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 victim 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; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.^[5]

In a charge for **acts of lasciviousness under Article 336 of the RPC** in relation to R.A. 7610, there is no need to allege that the lascivious conduct was committed with a "child exploited in prostitution or subject to other sexual abuse." Such allegation is pertinent only when the charge is for **child prostitution or violation of the first clause of Section 5(b), Article III of R.A. 7610** against "*those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse,*" *i.e.*, the customer or patron.

Violation of the first clause of Section 5(b), Article III of R.A. 7610 is separate and distinct from acts of lasciviousness under Article 336 of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements. On the one hand, the elements of violation of the first clause of Section 5(b) are: (1) accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. On the other hand, the elements of acts of lasciviousness under Article 336 are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or 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. Thus, the allegation that the child be "*exploited under prostitution or subjected to other sexual abuse,*" need not be alleged in the information for acts of lasciviousness simply because it is not one of the elements

of such crime as defined by Article 336 of the RPC.

Moreover, while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines "children" as those 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. Notably, two provisos succeeding the first clause of Section 5(b) explicitly state a qualification that **when the victims 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.** It is a basic rule in statutory construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains or limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.^[6] Accordingly, this case falls under the qualifying provisos of Section 5(b), Article III of R.A. 7610 because the allegations in the information make out a case for acts of lasciviousness, as defined under Article 336 of the RPC, and the victim is under 12 years of age:

That on or about 8 o'clock in the evening of July 18, 2007 at Palpas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, **the above-named accused, with lewd and unchaste design, through force and intimidation,** did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of AAA, **a minor of 7 years old** and **mash her vagina**, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.^[7]

Quimvel should therefore be prosecuted under Article 336 of the RPC, and the indeterminate sentence should be computed based on the imposable penalty of *reclusion temporal* in its medium period, pursuant to Section 5(b), Article III of R.A. 7610.

To be sure, Quimvel cannot be merely penalized with *prision correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. This legislative intent is expressed under Section 10, Article VI of R.A. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age, to wit:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

X X X X

For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. **The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age.**^[8]

To impose upon Quimvel an indeterminate sentence computed from the penalty of *prision correccional* under Article 336 of the RPC would defeat the purpose of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,^[9] which used to be punishable by *arresto mayor*, and now by *prision correccional* pursuant to Section 10, Article VI of R.A. 7610. **Second**, it would inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prision correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child an offense a probationable offense, pursuant to the Probation Law of 1976,^[10] as amended by R.A. 10707.^[11] Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. 7610 and the Constitution on the special protection to children.

Based on the the legal definitions of "child abuse," it is also my view that there is no need to allege that the lascivious conduct be committed "with a child exploited in other prostitution" or with habituality, before a person may be held liable for acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610.

Section 3, Article I of R.A. 7610 states that "**child abuse**" refers to the maltreatment, **whether habitual or not**, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, **sexual abuse** and emotional maltreatment;

- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical attention to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Section 5, Article III of R.A. 7610 deems to be "children exploited in prostitution and other sexual abuse" those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) due to coercion or influence of any adult, syndicate or group.

Corollarily, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases define the terms "child abuse," "sexual abuse", and "lascivious conduct" as follows:

Section 2. Definition of Terms. - As used in these Rules, unless the context requires otherwise -

x x x x

b) "**Child abuse**" refers to the infliction of physical or psychological injury, cruelty to, or neglect, **sexual abuse** or exploitation of a child;

x x x x

g) "**Sexual abuse**" includes the 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 x

h) "**Lascivious conduct**" means the 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; x x x^[12]

From the foregoing definitions, it can be deduced that a single lascivious conduct is enough to penalize Quimvel for acts of lasciviousness under Article 336 of the RPC, in relation to R.A. 7610. These definitions negate the necessity to allege in the information a separate and distinct act of sexual abuse apart from the lascivious act

complained of. R.A. 7610 does not merely cover a situation wherein a child is being abused for profit as in prostitution, but also one wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. Also, based on the definitions above, prostitution which involves an element of habituality - is just one of the several other forms of sexual abuses. Thus, neither habituality nor the fact that the child is exploited in prostitution, is required to be alleged in the information for acts of lasciviousness because Article 336 of the RPC does not so provide.

In the same vein, the title of Article III of R.A. 7610 itself is clear that the subsequent provisions thereof pertain not only on the subject of "child prostitution" but also on "other sexual abuse." Under Section 5 thereof, those considered to be under child prostitution are "children, whether male or female, who for money, profit, or any other consideration" "indulge in sexual intercourse or lascivious conduct" and those that do not fall under that category are those children, who, "due to the coercion or influence of any adult, syndicate or group" "indulge in sexual intercourse or lascivious conduct." This case falls under the second scenario where no money, profit or any other consideration was involved.

To construe "other sexual abuse" as referring to any other sexual abuse other than the acts of lasciviousness complained of is wrong. The law did not use such phrase in order to cover other forms of sexual abuse that a child might have previously experienced, other than being exploited in prostitution for profit, or for any other consideration. Instead, the law clearly distinguishes those children who indulged in sexual intercourse or lascivious conduct for money, profit, or any other consideration, from those children who, without money, profit, or any other consideration, had sexual intercourse or lascivious conduct due to the coercion or influence of any adult, syndicate or group. This is further bolstered by the use of the disjunctive word "or" in separating the two contexts contemplated in the law. Thus, it is erroneous to interpret that R.A. 7610 contemplates situations wherein a child, who was already subjected to prostitution or other sexual abuse, is again subjected to another abuse or lascivious conduct. Note that in the definition of "child abuse," the phrase "whether habitual or not" is used to describe the frequency upon which a maltreatment can be considered as an abuse. Thus, a single act of abuse is enough for a perpetrator to be considered, as having violated the law. To interpret it otherwise would lead to an absurdity and ambiguity of the law.

In ***Olivarez vs. Court of Appeals***,^[13] the Court held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. The Court found that the 16-year old victim in that case was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. According to the Court, **it is**

inconsequential that the sexual abuse occurred only once because, as expressly provided in Section 3 (b) of R.A. 7610, the abuse may be habitual or not. It also observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse. In support of its ruling in **Olivarez**, the Court cited **People v. Larin**^[14] which was restated in **Amplayo v. People**,^[15] thus: **A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct** (a) for money, profit, or any other consideration; or (b) **under the coercion or influence of any adult, syndicate or group.** x x x.

It must be noted that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in lascivious conduct.^[16]

Associate Justice Antonio T. Carpio dissented in **Olivarez** where he pointed out that the second element of acts of lasciviousness, Section 5, Article III of R.A. 7610 requires that the accused performs on the child a lascivious conduct separate and different from the child's exploitation in prostitution or subject to other sexual abuse.

However, in **Garingarao v. People**,^[17] the Court, in a Decision^[18] penned by Justice Carpio, affirmed the conviction of petitioner for acts of lasciviousness in relation to R.A. 7610 in an Information which reads:

That on or about the 29th day of October 2003, at Virgen Milagrosa University Hospital, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously touched the breast of AAA, 16 years of age, touched her genitalia, and inserted his finger into her vagina, to the damage and prejudice of said AAA who suffered psychological and emotional disturbance, anxiety, sleeplessness and humiliation.

Contrary to Article 336 of the Revised Penal Code in relation to RA 7610.

Citing **Olivarez**, the Court held in **Garingarao** that petitioner is liable for acts of lasciviousness in relation to R.A. 7610 even if the crime occurred only once:

The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.

Garingarao insists that, assuming that the testimonies of the prosecution witnesses were true, he should not be convicted of violation of RA 7610 because the incident happened only once. Garingarao alleges that the single incident would not suffice to hold him liable under RA 7610.

Garingarao's argument has no legal basis.

The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once. Section 3 (b) of RA 7610 provides that the abuse may be habitual or not. Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.^[19]

To be sure, if and when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles under Section 2 of the R.A. 7610, as well as Section 3(2), Article XV of the 1987 Constitution:

[R.A. 7610] Sec. 2. Declaration of State Policy and Principles. - It is hereby declared to be the policy of the State **to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development** including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. [Emphasis added]

[Article XV 1987 Constitution] Section 3. The State shall defend:

x x x

(2) The **right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.**^[20]

Clearly, the objective of the law, more so the Constitution, is to provide a special type of protection for children from all types of abuse. Hence, it can be rightly inferred that the title used in Article III, Section 5, "Child Prostitution and Other Sexual Abuse" does not mean that it is only applicable to children used as prostitutes as the main offense and the other sexual abuses as additional offenses, the absence of the former rendering inapplicable the imposition of the penalty provided under R.A. 7610 on the other sexual abuses committed by the offenders on the children concerned.

Even if the remaining issue in the *en banc* decision in ***Dimakuta v. People***^[21] was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the nonprobationable penalty imposed to a probationable one, the majority has nonetheless discussed at length the matters of sexual abuse under R.A. 7610 and acts of lasciviousness under the RPC, thus: Petitioner was charged and convicted by the trial court with violation of Section 5 (b), Article III of R.A. No. 7610 based on the complaint of a sixteen (16)-year-old girl for allegedly molesting her by touching her breast and vagina while she was sleeping.

x x x x

The elements of sexual abuse are as follows:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to sexual abuse.
3. The child, whether male or female, is below 18 years of age.

Under Section 5, Article III of R.A. No. 7610, **a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.** This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements: (1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

- a. By using force or 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.

Article 339 of the RPC likewise punishes acts of lasciviousness committed with the consent of the offended party if done by the same persons and under the same circumstances mentioned in Articles 337 and 338 of the RPC, to wit:

1. if committed against a virgin over twelve years and under eighteen years of age by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman; or

2. if committed by means of deceit against a woman who is single or a widow of good reputation, over twelve but under eighteen years of age.

Therefore, if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a virgin and consents to the lascivious acts through abuse of confidence or when the victim is single or a widow of good reputation and consents to the lascivious acts through deceit, or;

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness is covered by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable

3. Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of

authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under RA. No. 7610.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the **declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development;** provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, **if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.**

As correctly found by the trial court, all the elements of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 are present in the case at bar.

First, petitioner's lewd advances of touching the breasts and vagina of his hapless victim constitute **lascivious conduct** as defined in Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of R.A. No. 7610:
[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.

Second, petitioner clearly has moral ascendancy over the minor victim not just because of his relative seniority but more importantly due to the presumed presence of mutual trust and confidence between them by virtue of an existing employment relationship, AAA being a domestic helper in petitioner's household. Notably, a child is considered as sexually abused under Section 5 (b) of R.A. No. 7610 when he or she is subjected to lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient. On this point, *Caballo v. People* explicated:

As it is presently worded, Section 5, Article III of RA 7610 provides that when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult, the child is deemed to be a "child exploited in prostitution and other sexual abuse." In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or 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. 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:

The 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.

To note, 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." Meanwhile, "coercion" is the "improper use of ... power to compel another to submit to the wishes of one who wields it."

Finally, the victim is 16 years of age at the time of the commission of the offense. Under Section 3 (a) of R.A. No. 7610, "children" refers to "persons below eighteen (18) years of age or those over but 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."^[22]

In view of the above discussion in *Dimakuta v. People*,^[23] to which the *ponencia* appears to subscribe, and considering that all the elements of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. 7610,^[24] have been proven beyond reasonable doubt, the CA correctly upheld the RTC in convicting Quimvel of the said crime.

Moreover, the application of the provisions of R.A. 7610, although not specifically stated in the Information, does not violate the accused's right to be informed of the nature and cause of the accusation against him. This is because all the elements of the crime of "sexual abuse"^[25] as contemplated in Section 5, Article III of R.A. 7610, as well as the age of minority of the victim, are all sufficiently alleged in the same Information in this wise: "the above-named accused [Quimvel], **with lewd and unchaste design, through force and intimidation**, did then and there, willfully, unlawfully, and feloniously, **insert his hand inside the panty of [AAA]**, a minor of **7 years old and mash her vagina**, against her will and consent, to her damage and prejudice."^[26]

It bears emphasis that since Section 5, Article III of R.A. 7610 already **deems** to be "children exploited in prostitution and other sexual abuse" those children, whether male or female, who indulge in sexual intercourse or lascivious conduct either (1) for money, profit or any other consideration; or (2) **due to coercion or influence** of any adult, syndicate or group, the aforementioned allegation that the lascivious conduct was done "through force and intimidation," suffices to inform the accused of the second element of sexual abuse.

Having in mind the State policies and principles behind R.A. 7610 (*Special Protection of Children Against Abuse, Exploitation, and Discrimination Act*) and R.A. 8353^[27] (*Anti-Rape Law of 1997*), as well as the statutory construction rules that penal laws should be strictly construed against the state and liberally in favor of the accused, and that every law should be construed in such a way that it will harmonize with existing laws on the same subject matter, I submit that the following are the applicable laws and imposable penalties for **acts of lasciviousness** committed against a child^[28] under Article 336 of the RPC, in relation to R.A. 7610:

1. **Under 12 years old** - Section 5(b), Article III of R.A. 7610, in relation to Article 336 of the RPC, as amended by R.A. 8353, applies and the imposable penalty is **reclusion temporal in its medium period**, instead of *prision correccional*. In *People v. Fragante*,^[29] *Imbo v. People of the Philippines*,^[30] and *People of the Philippines v. Santos*,^[31] the accused were convicted of acts of lasciviousness committed against victims under 12 years old, and were penalized under Section 5(b), Article III of R.A. 7610, and not under Article 336 of the RPC, as amended.

2. **12 years old and below 18, or 18 or older under special circumstances under Section 3(a) of R.A. 7610**^[32] - Section 5(b), Article III of R.A. 7610 in relation to Article 336 of the RPC, as amended, applies and the penalty is **reclusion temporal in its medium period to reclusion perpetua**. This is because the proviso under Section 5(b) apply only if the victim is under 12 years old, but silent

as to those 12 years old and below 18; hence, the main clause thereof still applies in the absence of showing that the legislature intended a wider scope to include those belonging to the latter age bracket. The said penalty was applied in *People of the Philippines v. Bacus*^[33] and *People of the Philippines v. Baraga*^[34] where the accused were convicted of acts of lasciviousness committed against victims 12 years old and below 18, and were penalized under Section 5(b), Article III of R.A. 7610. But, if the acts of lasciviousness is not covered by lascivious conduct as defined in R.A. 7610, such as when the victim is 18 years old and above, acts of lasciviousness under Article 336 of the RPC applies and the penalty is *prision correccional*.^[35]

Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [***reclusion temporal medium***] when the victim is under 12 years old is lower compared to the penalty [***reclusion temporal medium to reclusion perpetua***] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,^[36] Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum,^[37] whereas as the minimum term in the case of the older victims shall be taken from *prision mayor medium to reclusion temporal* minimum.^[38] It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,^[39] but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.^[40] To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

Too, it bears emphasis that R.A. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. 8353, except in sexual assault as a form of rape. Hence, when the lascivious act is not covered by R.A. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. 7610.

In fact, R.A. 8353 only modified Article. 336 of the RPC, as follows: (1) by carrying

over to acts of lasciviousness the additional circumstances^[41] applicable to rape, viz.: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. In fine, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. 8353 for there is no irreconcilable inconsistency between their provisions.

Meanwhile, the Court is also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. In ***People v. Ching***,^[42] the Court noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. 8353 to have disallowed the applicability of R.A. 7610 to sexual abuses committed to children. The Court held that **despite the passage of R.A. 8353, R.A. 7610 is still good law**, which must be applied when the victims are children or those "persons 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."^[43]

Finally, as the Court stressed in ***Dimakuta v. People***,^[44] where the lascivious conduct is covered by the definition under R.A. 7610 where the penalty is *reclusion temporal* medium and the said act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, par. 2 of the RPC and not R.A. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect from herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. 7610. The reason for the foregoing is that, aside from the affording special protection and stronger deterrence against child abuse, R.A. 7610 is a special law which should clearly prevail over R.A. 8353, which is a mere general law amending the RPC.

[1] 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 subject to other sexual abuse; Provided, That when the victim 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; and

x x x

[2] *An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and For Other Purposes*.

[3] Decision dated January 23, 2013; penned by Judge Amy Ana L. De Villa-Rosero.

[4] Decision dated May 29, 2014; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Carmelita S. Manahan, concurring.

[5] Emphasis added.

[6] *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439, 451 (1951); *Arenas v. City of San Carlos (Pangasinan)*, 172 Phil. 306, 311 (1978).

[7] Emphasis added.

[8] Emphasis added.

[9] ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party*. - The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in articles 337 and 338.

ARTICLE 337. *Qualified Seduction*. - The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. *Simple Seduction*. - The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

[10] Presidential Decree No. 968.

[11] *An Act Amending Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", as amended*. Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prision correccional* is 6 months and 1 day to 6 years.

[12] Emphasis added.

[13] 503 Phil. 421, 432 (2005). Penned by Associate Justice Consuelo Yñares-Santiago, with Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna, concurring; and Chief Justice Hilario G. Davide, Jr. joining the dissent of Associate Justice Antonio T. Carpio.

[14] 357 Phil. 987, 998 (1998).

[15] 496 Phil. 747, 758 (2005).

[16] Emphasis added.

[17] 669 Phil. 512, 516 (2011).

[18] Concurred in by Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, Diosdado M. Peralta and Jose Portugal Perez.

[19] Emphasis added.

[20] Emphasis added.

[21] G.R. No. 206513, October 20, 2015, 773 SCRA 228.

[22] Emphasis added and citations omitted.

[23] *Supra*.

[24] 1. The accused commits the act of sexual intercourse or lascivious conduct.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. That child, whether male or female, is below 18 years of age.

[25] *Id.*

[26] Emphasis added.

[27] *An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and For Other Purposes.*

[28] Section. 3. *Definition of Terms.*

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

[29] 657 Phil. 577, 601 (2011)

[30] G.R. No. 197712, April 20, 2015, 756 SCRA 196, 210.

[31] G.R. No. 205308, February 11, 2015, 750 SCRA 471, 488.

[32] Section. 3. Definition of Terms. -

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

[33] G.R. No. 208354, August 26, 2015, 768 SCRA 318, 341.

[34] G.R. No. 208761, June 4, 2014, 725 SCRA 293, 303.

[35] *Dimakuta v. People*, *supra* note 18.

[36] Section 31. *Common Penal Provisions*. -

x x

x x

(b) The penalty provided herein shall be imposed in its **maximum period** when the perpetrator is an **ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. [Emphasis added]

[37] Ranging from 12 years and 1 day to 14 years and 8 months.

[38] Ranging from 8 years and 1 day to 14 years and 8 months.

[39] *Lamb v. Phipps*, 22 Phil. 456 (1912).

[40] *People v. De Guzman, et al.*, 90 Phil. 132 (1951).

[41] Aside from use force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

[42] 661 Phil. 208, 224 (2011).

[43] Section 3 (a), Article I of R.A. 7610

[44] *Supra* note 18, at 264-265.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

Petitioner Eduardo Quimvel y Braga (Quimvel) should be convicted under Section 5 (b), Article III of Republic Act No. (RA) 7610,^[1] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," in relation to Article 336 of the Revised Penal Code. As now subscribed to by the *ponencia*, the said provision covers a situation wherein a child engages in any lascivious conduct through coercion or intimidation, even if such sexual abuse occurred only once, as in Quimvel's case. To my mind, the law does not contemplate a situation where the acts of lasciviousness are committed on a child priorly exploited in prostitution or subjected to other sexual abuse. This latter position effectively requires allegation and proof of a first act of abuse committed against the same child victim for a sex offender to be convicted.

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

ARTICLE III

Child Prostitution and Other Sexual Abuse

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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(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; and

x x x x (Emphases supplied)

For the brief reasons that follow, I deem it enough that a singular act of sexual abuse be committed against a minor in order to qualify under the law's protection:

First, the prevailing Congressional intent behind RA 7610 was to establish "[a] national program for protection of children" which needs "not only the institutional protective mechanisms, but also a mechanism for strong deterrence against commission of abuse and exploitation."^[2] In his sponsorship speech for Senate Bill No. 1209, from which RA 7610 originated, Senator Jose D. Lina, Jr. (Senator Lina, Jr.) mentioned that the law was "intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. It is intended to complement the provisions of the Revised Penal Code [at that time] where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities."^[3] Senator Lina, Jr. also presented cases of reported abuse, none of which imply that the child victims have been previously exploited. Instead, they are straight-up cases of sexual abuse of minors.^[4] Hence, if RA 7610 was directly meant to reinforce the legal framework against the sexual abuse of minors, it would not make any sense to first require a preliminary act of sexual abuse against a child before a sex offender could be punished under the same. Indeed, a person's chastity - much more a child's - is undoubtedly sacred and once ravaged, is forever lost and leaves a scar on his or her well-being. As such, our lawmakers, in crafting a special legislation precisely to deter child abuse, would not have thought of such absurdity.

Second, it is difficult - if not, insensible - to operationalize the application of RA 7610 under the theory that the commission of a prior act of sexual abuse is required before a lascivious conduct may be penalized under Section 5 (b) of the same law. For one, no operational parameter was provided by law to determine the existence of a prior sexual abuse so as to satisfy the preliminary element of the aforementioned theory. It is unclear whether a prior sexual abuse on the same child victim should be pronounced in an official court declaration, or whether a mere finding on that matter in the same case would suffice. The Congressional

deliberations also express nothing on the necessity to determine a prior sexual abuse to qualify the lascivious conduct. If a prior sexual abuse was an integral element for prosecution, then it stands to reason that the language of the law or the deliberations should have addressed the same.

And third, while the grammatical structure of Section 5 (b) of RA 7610 may, if construed literally, be taken to mean that the victim should be one who is first "exploited in prostitution or subjected to other sexual abuse" as previously intimated during the deliberations on this case, this interpretation would surely depart from the law's purpose based on its policy considerations as afore-discussed. On the other hand, it is my view that Section 5 (b) can be construed in another way, in order to give full life and meaning to its avowed purpose, which is to "provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse."

Particularly, it is observed that the phrase "**a child exploited in prostitution or subject to other sexual abuse**" in Section 5 (b) has been priorly defined in the first paragraph of the same provision as "**[a child], 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[s] in sexual intercourse or lascivious conduct.**" Hence, just by switching this phrase with its equivalent technical definition in the first paragraph, Section 5 (b) may then be construed as follows: "**Those who commit the act of sexual intercourse or lascivious conduct against [a child], whether male or female, x x x for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group.**"

To my mind, this reading equally passes grammatical logic, and most importantly, renders Section 5 (b) consistent with the fundamental intent of the law. Besides, nowhere from the entirety of the law's other provisions nor the deliberations on the same could one discern that the requirement of a prior sexual affront on a child exists. Ultimately, despite Section 5 (b)'s ambiguous wording, it should be remembered that in the final analysis:

The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.^[5]

ACCORDINGLY, I vote to **DENY** the petition. The conviction of petitioner Eduardo Quimvel y Braga for the crime of Acts of Lasciviousness in relation to Section 5 (b),

Article III of Republic Act No. 7610 should be **AFFIRMED** with **MODIFICATION** anent the proper penalty as held in the *ponencia*.^[6]

[1] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[2] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 191.

[3] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, pp. 191-192.

[4] See deliberations on Senate Bill No. 1209 dated April 29, 1991, Records of the Senate, Vol. IV, No. 111, p. 192.

[5] *League of Cities of the Philippines v. COMELEC*, 623 Phil. 531, 564-565 (2009).

[6] See *ponencia*, pp. 22-23.

SEPARATE OPINION

LEONEN, J.:

I concur with the majority. The accused has been properly charged and convicted for violation of Article III, Section 5 of Republic Act No. 7610. I add however, that I entertain serious doubts as to whether he could have been convicted of violation of Article 336 of the Revised Penal Code (Acts of Lasciviousness) due to a lacuna in Republic Act No. 8353 or the Anti-Rape Law. That law properly reclassified rape as a crime against persons, thereby leaving Article 336 in a different title without the provisions it used to refer to.

However, in view of the resolution of this case, this issue need not be considered. It should however, be the subject of a more serious deliberation in the proper case, where it becomes salient and is fully argued by the parties.

ACCORDINGLY, I vote to AFFIRM petitioner's conviction.

DISSENTING OPINION

CAGUIOA, J.:

The People's evidence show that: 7-year-old AAA lived with her father and siblings in a house close to her grandfather's; accused Quimvel worked for AAA's grandfather as caretaker of ducks and lived in the grandfather's house; one evening, AAA was left alone with her siblings when her father left the house to buy kerosene; on that night, Quimvel brought a vegetable viand to AAA's house; whereupon, AAA asked Quimvel to stay with her and her siblings because they were afraid; Quimvel acceded; AAA ***fell asleep and awakened to Quimvel's leg over her body and his hand being inserted into her shorts, then caressing her vagina***; she removed Quimvel's hand from inside her shorts; Quimvel left just as AAA's father arrived.

Quimvel was indicted for the crime of acts of lasciviousness in relation to Section 5(b) of Republic Act No. 7610 (RA 7610).^[1] He was convicted by the Regional Trial Court (RTC) and sentenced to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as minimum to fifteen (15) years, six (6) months and nineteen (19) days of *reclusion temporal* in its medium period as maximum.^[2] The Court of Appeals (CA) affirmed the conviction.^[3]

On petition for review on *certiorari* before this Court, Quimvel asserts that the prosecution failed to prove his guilt beyond reasonable doubt, and that assuming that he is guilty, he could only be convicted of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) and not in relation to Section 5(b) of RA 7610.^[4]

The *ponencia* affirms his conviction for acts of lasciviousness in relation to Section 5(b).

I dissent. The majority opinion's interpretation of Section 5(b) of RA 7610 effectively repeals Articles 226-A and 336 with respect to offended parties who are under twelve (12) years old. Moreover, its cavalier treatment of the concepts of "force or intimidation" and "coercion or influence" muddles the essential elements of what are otherwise separate and distinct offenses punished under Article 336 and Section 5(b).

The evidence establishes that no money, profit or other consideration and no coercion or influence attended AAA's sexual abuse.

The definition of a child exploited in prostitution or subjected to other sexual abuse is provided by Section 5 of RA 7610, namely: as a child, who (a) for money, profit

or other consideration, or (b) due to coercion or influence by an adult, group, or syndicate, indulges in sexual intercourse or lascivious conduct.

There is no question that the sexual abuse of AAA was not for money, profit or other consideration. There is also no dispute that there was no coercion or influence exerted on AAA by Quimvel or any other person for the simple reason that the act of lasciviousness (*i.e.*, caressing her vagina) was done while she was asleep. On this score alone, it is easy to see that AAA does not fall in the definition of a child exploited in prostitution or subjected to other sexual abuse. Accordingly, the evidence negates the application of Section 5(b).^[5]

Thus, as far as Quimvel is concerned, he can only be convicted of acts of lasciviousness under Article 336 in relation to Article 266-A(d) of the RPC and meted the penalty only of *prision correccional*. Hence, in disposing of this case, there really is no need to further discuss the nuances of the proper application of Section 5(b) of RA 7610. Nevertheless, I submit this dissent on the different issues that have been made a part of the majority decision.

RA 7610 was not intended to cover all sexual abuses against children.

At the outset, I join Justice Carpio's observation that if the intention of RA 7610 is to penalize all sexual abuses against children under its provisions to the exclusion of the RPC, it would have expressly stated so and would have done away with the qualification that the child be "exploited in prostitution or subjected to other sexual abuse."^[6] It did not.

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it. Section 5(b) is a provision of specific and limited application, and must be applied as worded—a separate and distinct offense from the "common" or "ordinary" acts of lasciviousness under Article 336 of the RPC.

Upon the premise that the language of Section 5(b) is ambiguous and is susceptible to interpretation, I have conscientiously studied the deliberations of RA 7610 to ascertain the intent of the law with respect to how it would interplay with the provisions of the RPC and other laws that penalize the same or similar acts.

While the Senate, in its deliberations, would appear to equivocate in the protection of children against all or specific types of abuse, it cannot be escaped that the overriding impetus for the passage of the law is based on a certain recurring theme. Senator Rasul, one of RA 1610's sponsors, in her speech, stated:

Senator Rasul. x x x

x x x x

But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested for purely material gains. Children with ages ranging from three to 18 years are used and abused. We hear and read stories of rape, manhandling and sexual molestation in the hands of cruel sexual perverts, local and foreigners alike. As of October 1990, records show that 50 cases of physical abuse were reported, with the ratio of six females to four males. x x x

x x x x

x x x No less than the Supreme Court, in the recent case of *People vs. Ritter*, held that **we lack criminal laws which will adequately protect streetchildren from exploitation by pedophiles.** x x x^[7]

The case referred to by Senator Rasul, *People v. Ritter*,^[8] is a 1991 case which involved an Austrian national who was charged with rape with homicide for having ultimately caused the death of Rosario, a street child, by inserting a foreign object into her vagina during the course of performing sexual acts with her. Ritter was acquitted based on reasonable doubt on account of, among others, the failure of the prosecution to (1) establish the age of Rosario to be within the range of statutory rape, and (2) show force or intimidation as an essential element of rape in the face of the finding that Rosario was a child prostitute who willingly engaged in sexual acts with Ritter.

Constrained to acquit Ritter, the Court made the following pronouncements: It is with distressing reluctance that we have to seemingly set back the efforts of Government to dramatize the death of Rosario Baluyot as a means of galvanizing the nation to care for its street children. It would have meant a lot to social workers and prosecutors alike if one pedophile killer could be brought to justice so that his example would arouse public concern, sufficient for the formulation and implementation of meaningful remedies. However, we cannot convict on anything less than proof beyond reasonable doubt. The protections of the Bill of Rights and our criminal justice system are as much, if not more so, for the perverts and outcasts of society as they are for normal, decent, and law-abiding people.

x x x x

And finally, **the Court deplores the lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or guardians who profit from the sale of young bodies.** The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society. Newspaper and

magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children unless the Government acts and acts soon. We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. Something must be done about it.^[9]

That the protection of street children from exploitation is the thrust of RA 7610 is further confirmed by Senator Lina's elucidation on the application of Section 6 following questions from Senator Enrile:

Senator Enrile. Pareho silang hubad na hubad at naliligo. Walang ginagawa. Walang touching po, basta naliligo lamang. Walang akapan, walang touching, naliligo lamang sila. Ano po ang ibig sabihin noon? Hindi po ba puwedeng sabihin, kagaya ng standard na ginamit natin, na UNDER CIRCUMSTANCES WHICH WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE CHILD IS ABOUT TO BE SEXUALLY EXPLOITED, OR ABUSED.

Senator Lina. Kung mayroon pong balangkas or amendment to cover that situation, tatanggapin ng Representation na ito. Baka ang sitwasyong iyon ay hindi na ma-cover nito sapagkat, at the back of our minds, Mr. President, **ang sitwasyong talagang gusto nating ma-address ay maparusahan iyong tinatawag na "pedoph[i]lia" or prey on our children.** Hindi sila makakasuhan sapagkat their activities are undertaken or are committed in the privacy of homes, inns, hotels, motels and similar establishments.^[10]

And when he explained his vote, Senator Lina stated the following: With this legislation, child traffickers could be easily prosecuted and penalized. Incestuous abuse and those where victims are under twelve years of age are penalized gravely, ranging from *reclusion temporal* to *reclusion perpetua*, in its maximum period. **It also imposes the penalty of reclusion temporal in its medium period to reclusion perpetua**, equivalent to a 14-30 year prison term **for those:** (a) who promote or facilitate child prostitution; (b) **commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution**; (c) derive profit or advantage whether as manager or owner of an establishment where the prostitution takes place or of the sauna, disco, bar resort, place of entertainment or establishment serving as a cover or which engages in a prostitution in addition to the activity for which the license has been issued to said establishment.^[11]

The Senate deliberations on RA 7610 is replete with similar disquisitions tending to show the intendment to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses; the passage of the law was the Senate's act of heeding the

call of the Supreme Court to afford protection to a special class of children and not to cover any and all crimes against children that are already covered by other penal laws such as the RPC and the Child and Youth Welfare Code.

The structure of RA 7610 confirms the foregoing intendment.

In this regard, even the structure of RA 7610 demonstrates its intended application.

Article I lays the preliminaries including state policy and defines the terms used in the statute. Article II mandates the creation of a comprehensive program to protect children from sexual abuse, exploitation, and discrimination - and thereafter enumerated the headings of subsequent articles that grouped prohibited acts according to the classes of abuse that RA 7610 penalizes. Article III penalizes child prostitution and other sexual abuse; Article IV, child trafficking; Article V, obscene publications and indecent shows; Article VI, other acts of abuse; and Article VII for sanctions for establishments wherein these prohibited acts are promoted, facilitated or conducted. The remaining articles cover circumstances which gravely threaten or endanger the survival and normal development of children.

By both literal and purposive tests, I find nothing in the language of the law or in the Senate deliberations that necessarily leads to the conclusion that RA 7610 subsumes all instances of sexual abuse against children.

The language of Section 5(b) cannot be read in isolation and should be read in the context of the intendment of RA 7610.

Section 5(b) 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:

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 victim 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.^[12]

Its essential elements are: (1) The accused commits the act of sexual intercourse or *lascivious conduct*; (2) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) The child whether male or female, is below 18 years of age.^[13]

The unique circumstances of the children exploited in prostitution or subjected to other sexual abuse for which the provisions of RA 7610 are intended are highlighted in this exchange:

The Presiding Officer [Senator Mercado]. Senator Pimentel.

Senator Pimentel. Just this question, Mr. President, if the Gentleman will allow.

Will this amendment^[14] also affect the Revised Penal Code provisions on seduction?

Senator Lina. No, Mr. President. Article 336 of Act No. 3815 will remain unaffected by this amendment we are introducing here. **As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim.**

And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially a foreigner, is seen with a child with whom he has no relation blood or otherwise- and they are just seen in a room and there is no way to enter the room and to see them in *flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles.

So, we are introducing into this bill, Mr. President, an act that is considered already an attempt to commit child prostitution. **This, in no way, affects the Revised Penal Code provision on acts of lasciviousness or qualified seduction.**^[15]

As to the proviso of Section 5(b), some guidance may be had as to its import during the period of committee amendments:

Senator Lina. On page 3, between lines 12 and 13, insert the following:
PROVIDED THAT WHEN THE VICTIM IS TWELVE (12) YEARS OR LESS, THE PERPETRATORS SHALL BE PROSECUTED UNDER ARTICLE 335, PARAGRAPH 3, AND ARTICLE 336 OF REPUBLIC ACT 3815, AS AMENDED, THE REVISED PENAL CODE, FOR RAPE OR LASCIVIOUS CONDUCT AS THE CASE MAY BE.

The Presiding Officer [Senator Mercado]. Is there any objection? [*Silence*]
Hearing none, the amendment is approved.

x x x x

Senator Lina. No, Mr. President, as stated in the Committee amendment which has just been approved but which, of course, can still stand some individual amendments during the period of individual amendment, it is stated that, "PROVIDED, THAT WHEN THE VICTIM IS TWELVE (12) YEARS OR LESS, THE PERPETRATOR SHALL BE PROSECUTED UNDER ARTICLE 335, PAR. 3, AND ARTICLE 336 OF R.A. 3815, AS AMENDED."

Article 335 of the Revised Penal Code, Mr. President, is, precisely, entitled: "When And How Rape Is Committed." So, prosecution will still be under Article 335, when the victim is 12 years old or below.

Senator Pimentel. Despite the presence of monetary considerations?

Senator Lina. Yes, Mr. President. It will still be rape. We will follow the concept as it has been observed under the Revised Penal Code. Regardless of monetary consideration, regardless of consent, the perpetrator will still be charged with statutory rape.

Senator Pimentel. So, it is only when the victim or the child who was abused is a male that the offender would probably be prosecuted under the distinguished Gentleman's amendment because, obviously, the crime of rape does not cover child abuse of males.

Senator Lina. Yes, that will be the effect, Mr. President.

Senator Pimentel. Thank you, Mr. President.^[16]

Bearing these in mind, there is no disagreement as to the first and third elements of Section 5(b). The core of the discussion relates to the meaning of the second element that the said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

To my mind, a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof of the unique circumstances of the child - that he or she is exploited in prostitution or subject to other sexual abuse. In this light, I quote in agreement Justice Carpio's dissenting opinion in *Olivarez v. Court of Appeals*^[17]:

Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse.**" Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance - that the child is either exploited in prostitution or subjected to "**other sexual abuse.**"

x x x x

Section 5 of RA 7610 penalizes those "who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse." The act of sexual intercourse or lascivious conduct may be committed on a child **already exploited in prostitution**, whether the child engages in prostitution for profit or someone coerces her into prostitution against her will. The element of profit or coercion refers to the practice of prostitution, not to the sexual intercourse or lascivious conduct committed by the accused. A person may commit acts of lasciviousness even on a prostitute, as when a person mashes the private parts of a prostitute against her will.

The sexual intercourse or act of lasciviousness may be committed on a child **already subjected to other sexual abuse**. The child may be subjected to such other sexual abuse for profit or through coercion, as when the child is employed or coerced into pornography. A complete stranger, through force or intimidation, may commit acts of lasciviousness on such child in violation of Section 5 of RA 7610.

The phrase "**other sexual abuse**" plainly means that the child is already subjected to sexual abuse **other** than the crime for which the accused is charged under Section 5 of RA 7610. The "**other sexual abuse**" is an element separate and distinct from the acts of lasciviousness that the accused performs on the child. The majority opinion admits this when it enumerates the second element of the crime under Section 5 of RA 7610 - that the lascivious "act is performed with a child x x x subjected to other sexual abuse."^[18]

In its bare essentials, the second element can be met by allegation and proof of either circumstance;

a) the child is exploited in prostitution; OR

b) the child is subjected to other sexual abuse.

which should already be existing at the time of sexual intercourse or lascivious conduct complained of.

Otherwise stated, in order to impose the higher penalty provided in Section 5(b) as compared to Article 336, it must be alleged and proved that the child (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group - indulges in sexual intercourse or lascivious conduct.

In *People v. Fragante*,^[19] the accused was convicted of seven (7) counts of acts of lasciviousness and one (1) count of rape committed against his own minor daughter. The Court found that the elements of Section 5(b) were present.

Remarkably, the Court meticulously explained the interplay of the elements of rape and acts of lasciviousness and Section 5(b).

It held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission.^[20] The appreciation of how the sexual intercourse and lascivious conduct in this case fell within the ambit of Section 5(b) is cogently explained thus; appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse.^[21]

In *People v. Abello*,^[22] one of the reasons the accused was convicted of rape by sexual assault and acts of lasciviousness and penalized under the RPC and not under Section 5(b) was because there was no showing of coercion or influence required by the second element. The Court ratiocinated:

In *Olivarez v. Court of Appeals*, we explained that the phrase, "other sexual abuse" in the above provision covers not only a child who is abused for profit, but also one who engages in lascivious conduct **through the coercion or intimidation** by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.

In the present case, **the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep** at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.^[23]

Prior sexual affront is not always required for Section 5(b) to apply.

That is not to say that in every instance, prior sexual affront upon the child must be shown to characterize the child as one "subjected to other sexual abuse". What is only necessary is to show that the child is already a child exploited in prostitution or subjected to other sexual abuse at the time the sexual intercourse or lascivious conduct complained of was committed or that circumstances obtain prior or during the first instance of abuse that constitutes such first instance of sexual intercourse or lascivious conduct as having converted the child into a child "exploited in prostitution or subjected to other sexual abuse."

I am, therefore, in full agreement with Justice Bernabe that alleging and proving

the second element do not require a prior sexual affront;^[24] precisely, because a prior sexual affront is not the only way to satisfy the second element.

It is in this light that I had, during the deliberations of this case, discussed the need to contextualize the operation of Section 5(b) in reference to Section 5(a) and the other parts of Section 5. I understand the structure of Section 5 as following the more common model or progression of child prostitution or other forms of sexual exploitation:

A child is procured, induced, or threatened to become a prostitute by any person, in violation of Section 5(a). In this instance, the person who has sexual intercourse or performs lascivious acts upon the child, even if this were the very first act by the child, already makes the person liable under Section 5(b), because the very fact that someone had procured the child to be used for another person's sexual gratification in exchange for money, profit or other consideration already qualifies the child as a child exploited in prostitution. In this instance, no requirement of a prior sexual affront is required.

In cases where any person, under the circumstances of Section 5(a), procures, induces, or threatens a child to engage in any sexual activity with another person, even without an allegation or showing that the impetus is money, profit or other consideration, the first sexual affront by the person to whom the child is offered already triggers Section 5(b) because the circumstance of the child being offered to another already qualifies the child as one subjected to other sexual abuse. Similar to these situations, the first sexual affront upon a child shown to be performing in obscene publications and indecent shows, or under circumstances falling under Section 6 is already a violation of Section 5(b) because these circumstances are sufficient to qualify the child as one subjected to other sexual abuse.

In certain cases, however, it appears that a first sexual affront, on its own, cannot be considered a violation of Section 5(b). For example, a person who has moral ascendancy or influence over a child cannot be automatically considered to have coerced or influenced the child into indulging in sexual intercourse or lascivious conduct with him on account only of his or her ascendancy over the child, unless there are circumstances that would allow the inference that the relationship between the perpetrator and the victim amounts to coercion or influence (*e.g.*, as when a person who has ascendancy over a child is later found with the child under the circumstances of Section 6, any subsequent sexual activity squarely violates Section 5(b), because the circumstances of Section 6 may be the basis to infer that the accused conducted his relationship with the child with the view of inducing him or her to indulge in sexual intercourse or lascivious conduct, thus furnishing the element of coercion or influence). Otherwise, it appears that without the circumstances of Section 5(a) or independent evidence of coercion or influence, a

single instance of sexual intercourse or lascivious conduct may not be sufficient to meet the second element of Section 5(b). However, as with the "discrepancy" in the penalties,^[25] this state of law should be addressed by remedial legislation, and not adjusted by the Court based on its own value judgment.

***Larin* does not support the extension of Section 5(b) to all cases of lascivious conduct against a child.**

People v. Larin^[26] has been used as jurisprudential support for the proposition that Section 5(b) applies to all instances of lascivious conduct against children because of the phrase "other consideration". *Larin's* use of this passage in the deliberations is oft-cited:

Senator Angara. I refer to line 9, 'who for money or profit'. I would like to amend this, Mr. President, *to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit*, so that we can cover those situations and not leave loophole in this section.

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR *DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.*

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that *there may be situations where the child may not have been used for profit or ...*

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, *et cetera*.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

How about the title, 'Child Prostitution,' shall we change that too?

Senator Angara. Yes, Mr. President, to cover the expanded scope.

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [*Silence*] Hearing none, the amendment is approved. x x x^[27]

While this amendment undoubtedly expanded the scope of Section 5(b) to include non-monetary consideration, this does not furnish support for the interpretation that all cases of sexual intercourse or lascivious conduct against a child should be prosecuted in relation to Section 5(b). Worthy of note are the following statements of Senator Angara who proposed the amendment:

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily. Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

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The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

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Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.^[28]

That *Larin's* crime is subsumed in Section 5(b) is not doubted. However, the reliance on this passage in the Senate deliberations cannot be used to extend the application of Section 5(b) beyond what is expressly stated by its provisions.

In *Larin*, the Court held that the elements of Section 5(b) are present. *Larin*, being an adult and the swimming trainer of his 14-year-old victim, had the influence and ascendancy to cow her into submission. Evidence was introduced to show that *Larin* employed psychological coercion upon his child victim by attacking her self-esteem and then pretending to be attentive to her needs and making himself out to be the only one who could accept her inadequacies.

The independent proof given of psychological coercion, prior to the first lascivious conduct against the child victim, coupled with the fact that the lascivious conduct happened on two separate occasions indubitably proved the second element - that the child victim was coerced or influenced by *Larin* to engage in lascivious conduct at the first instance of lascivious conduct, or, to be sure, on the second instance of lascivious conduct (as the first was already sufficient to convert the child victim into a child exploited in prostitution or subjected to other sexual abuse).

Verily, this factual milieu sufficiently places *Larin* within the ambit of Section 5(b) because of coercion and influence and not because of "other consideration." The relationship and the manner of committing the lascivious conduct in *Larin* distinguish it from the facts of *Quimvel*.

Understanding the last proviso of Section 5(b).

It has been submitted that the interpretation of the final proviso of Section 5(b) imposing *reclusion temporal* in its medium period if the child is under twelve (12) years old should be made to depend only on the proviso preceding it.^[29] The practical effect of this submission is that whenever the victim of lascivious conduct is any child under twelve (12) years of age, the prosecution shall be under Article 336 of the RPC and the penalty automatically becomes *reclusion temporal*.

I disagree. True, the office of the proviso is to qualify or modify only the phrase immediately preceding it or restrains or limits the generality of the clause that immediately follows. As applied to Section 5(b), the understanding of the last proviso should not lose sight of the fact that what it qualifies is another proviso, which also operates only within the meaning of the phrase preceding the latter: (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 victim 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[.]

Therefore, I submit that the proper understanding of Section 5(b) with both provisos in operation would be: in prosecutions for lascivious conduct under Article 336 when the victim is (1) a child exploited in prostitution or subjected to other sexual abuse, **AND** (2) under twelve (12) years old, the penalty would be *reclusion temporal* in its medium period.

In this context, it cannot be said that the penalty for all prosecutions for lascivious conduct under Article 336 is *reclusion temporal* in its medium period. As it should be, prosecution for acts of lasciviousness that do not involve a child exploited in prostitution or subjected to other sexual abuse even if she were under twelve (12) years old, the penalty should - as it should be meted on Quimvel - be the penalty provided in the RPC, which is *prision correccional*.

Section 5(b), as worded and as intended, is a small subset of the universe of lascivious conduct covered by Article 336, thereby requiring allegation and proof of the specific circumstances required for it to operate - which, put simply, are composed of its essential elements.

RA 7610 did not repeal Article 336.

In this light, I concur with the majority that Article 336 remains an operative provision, and the crime of acts of lasciviousness under the RPC remains a distinct

and subsisting crime from RA 7610. While rape was relocated to the title on crimes against persons, Article 336 can fairly be read to refer to the provision that replaced Article 335 (Article 266) to save it from becoming non-operational.

The legislative intent to have the provisions of RA 7610 to operate *side by side* with the provisions of the RPC - and a recognition that the latter remain effective - can be gleaned from Section 10 of the law:

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 to 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.

This is confirmed by Senator Lina in his sponsorship speech of RA 7610, thus:
Senator Lina. x x x

x x x x

Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. **It is intended to complement provisions of the Revised Penal Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities.**

These are the three areas of concern which are specifically included in the United Nations Convention on the Rights of the Child. As a signatory to this Convention, to which the Senate concurred in 1990, our country is required to pass measures which protect the child against these forms of abuse.

x x x x

Mr. President, this bill on providing higher penalties for abusers and exploiters, setting up legal presumptions to facilitate prosecution of perpetrators of abuse, and **complementing the existing penal provisions** of crimes which involve children below 18 years of age is a part of a national program for protection of children.

x x x x

Mr. President, subject to perfecting amendments, I am hopeful that the Senate will

approve this bill and thereby add to the growing program for special protection of children and youth. We need this measure to deter abuse. We need a law to prevent exploitation. We need a framework for the effective and swift administration of justice for the violation of the rights of children.^[30]

This same deference to the discreteness and subsistence of the felonies in the RPC is apparent in this interpellation with respect to seduction:

Senator Lina. This is qualified seduction. Simple seduction is seduction of a woman who is single or a widow of good reputation over 12, but under 18 years of age, committed by means of deceit. Here the subject is a woman.

In our proposal, it will be both male and female. But that is not the only difference, Mr. President. The situation that we would like to cover that will lead to easier prosecution and to overcome this present problem of government enforcement agencies in booking or charging an alleged so called "pedophile" is that we want the fact of being present, say, inside a hotel, sauna, or an inn, between the presence of a person without any relationship with a child under 18 years of age and there is no sexual contact. It is not proved that there is sexual contact. There is no need for proof of lewd design. The fact that they are there will be considered an attempt to commit child prostitution.

We are, in effect, advancing a new concept or theory, Mr. President, to cover this gap in our present statutes, making it easier or making it difficult for the prosecution to hale to court this so-called "pedophile." **So, this is different from consented abduction, qualified seduction or simple deduction.**^[31]

Force or intimidation does not equate to coercion or influence.

Since Section 5(b) penalizes a specific class of lascivious conduct, I cannot concur with the *ponencia* when it states that the element of coercion or influence under Section 5(b) was met by the allegation in the Information of force and intimidation—an element of Article 336.

"Common" or "ordinary" acts of lasciviousness under Article 336 and lascivious conduct under Article 336 in relation to Section 5(b) are separate offenses, with distinct essential elements. To hold that the allegation and proof of the existence of an element of one can take the place of what has been jurisprudentially defined as an element of another muddles the understanding of these two offenses, and effectively constitutes judicial legislation as it results in a partial repeal of Article 336 through a change of its essential elements.

The essential elements of acts of lasciviousness under Article 336 of the RPC are as follows:

1. That the offender commits any act of lasciviousness or lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
 - a. *By using force or intimidation*; or
 - b. When the offended party is deprived of reason or otherwise unconscious; [or]
 - c. By means of fraudulent machination or grave abuse of authority; or
 - d. When the offended party is under 12 years of age or is demented. (Italics supplied)^[32]

On the other hand, Section 5(b)'s essential elements are as follows:

1. The accused commits the act of sexual intercourse or *lascivious conduct*.
2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
3. The child, whether male or female, is below 18 years of age.^[33]

The muddling is made even more inopportune by the fact that the people's evidence shows neither force or intimidation, nor coercion or influence employed by Quimvel upon AAA. Quimvel took advantage of the fact that AAA was asleep, committed lascivious conduct upon her, and forthwith ceased when she awoke and removed his hand from within her shorts - her being asleep a circumstance properly belonging to being unconscious.

However, even as the Information alleged the use of force or intimidation, the evidence established only that AAA was unconscious or asleep; meaning that Quimvel could not be convicted of Section 5(b) but could be convicted only of Article 336.

It has been argued that neither force or intimidation nor coercion or influence need

be shown if the offended party is a child under twelve (12) years old. This proposition is correct IF the prosecution is for Articles 266-A or 336, as the age of the offended party is a circumstance that, on its own, already satisfies the conditions of Articles 266-A and 336. However, I maintain that in a prosecution under Section 5(b), coercion or influence (or otherwise, that the child indulged in sexual intercourse or lascivious conduct for money, profit or other consideration) is a textually-provided circumstance that must be separately shown apart from the age of the child victim.

Issues of operationalization.

A challenge to this interpretation has been articulated that the requirement of showing what Justice Carpio calls as the "circumstances of the child" is difficult to operationalize.^[34] I disagree. The circumstances of the child can be proved in any manner allowed by the Rules of Court, as by testimony of the child himself or herself, or any other person who has personal knowledge of the child's circumstances. Ultimately, if difficulty is encountered in operationalizing a provision in terms of evidence required it is within the province of the Court to lay down guidelines in appreciating a fact as an element of the crime or as a qualifying circumstance, as it had done in *People v. Pruna*^[35] as to the question of proving a victim's age.

In view of the foregoing discussion, Section 5(b), to my mind, is, as earlier intimated, correctly understood to be a subset of the universe of acts of lasciviousness covered by Article 336, thereby requiring allegation and proof of the specific circumstances required for it to operate which, again, are simply composed of its essential elements.

The Court's role is to punish the guilty with the penalty provided by law for the offense proved by the People's evidence. While I share the sentiment that the highest degree of protection must be afforded to children, I am mindful of the fact that, as far as this protection is equated to the proper penalty upon persons that offend against children, the extent of this protection only goes as far as the law can be reasonably and equitably interpreted to allow.

It is in this light that I cannot join the majority in imposing the higher penalty of *reclusion temporal* as provided in RA 7610, despite the fact that I stand with the rest of the members of the Court in absolute condemnation of the abuse committed against the child victim.

Recapitulation.

A dispassionate evaluation of the evidence shows that what the prosecution only

proved were the essential elements of Article 336: that (1) Quimvel committed an act of lasciviousness or lewdness by caressing AAA's vagina; (2) he committed the said act against AAA; and (3) the said act was done while AAA, a 7-year-old, was asleep.

I vote to convict Quimvel only of acts of lasciviousness and impose upon him the penalty of *prision correccional* under Article 336 of the RPC.

[1] Decision, p. 2.

[2] Decision, p. 3.

[3] With modification as to the amount of damages; Decision, p. 4.

[4] Decision, p. 4.

[5] See *People v. Abello*, 601 Phil. 373, 393 (2009); an extended discussion of *Abello* is found in pages 9-10.

[6] J. Carpio Separate Opinion, p. 5.

[7] Record of the Senate, Vol. III, No. 104, March 19, 1991, p. 1204; emphasis and underscoring supplied.

[8] 272 Phil. 532 (1991).

[9] *Id.* at 563-564, 569-570; emphasis and underscoring supplied.

[10] Record of the Senate, Vol. I, No. 7, August 1, 1991, pp. 264-265; emphasis and underscoring supplied.

[11] Record of the Senate, Vol. II, No. 58, December 2, 1991, pp. 793-794; emphasis and underscoring supplied.

[12] Underscoring supplied.

[13] *People v. Abello*, *supra* note 5, at 392.

[14] N.B. On the provisions relating to attempt to commit child prostitution.

[15] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 334-335; emphasis and underscoring supplied.

[16] Id. at 333-334.

[17] 503 Phil. 421 (2005).

[18] Id. at 445-447; italics omitted, emphasis supplied.

[19] 657 Phil. 577 (2011).

[20] Id. at 592.

[21] Id. at 597.

[22] Supra note 5.

[23] Id. at 393; additional emphasis and underscoring supplied.

[24] J. Bernabe Concurring Opinion, p. 3.

[25] The President Pro Tempore noted this discrepancy in penalties during the deliberations, thus: "The penalty in the case of those who commit acts of lasciviousness is that they are punished under the Penal Code with merely *prision correccional*. That seems to be rather odd, because this is if the child, in the Penal Code, is less than 15, the penalty is higher or heavier. That is *reclusion temporal*, whereas, if the child is less than 12, it is only *prision correccional*." (Record of the Senate, Vol. II, No. 52, August 21, 1991, p. 605.)

[26] 357 Phil. 987 (1998).

[27] Id. at 998-999.

[28] Record of the Senate, Vol. I, No.7, August 1, 1991, p. 262; emphasis and underscoring supplied.

[29] J. Peralta Separate Opinion.

[30] Record of the Senate, Vol. IV, No. 111, April 29, 1991, pp. 191-193; emphasis and underscoring supplied.

[31] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 335-336; emphasis and underscoring supplied.

[32] Dissenting Opinion of J. Carpio in *Olivarez v. Court of Appeals*, supra note 17, at

442-443.

[33] *People v. Fragante*, supra note 19, at 596, citing *People v. Abello*, supra note 5, at 392, further citing *People v. Larin*, supra note 26, at 997; *Amployo v. People*, 496 Phil. 747, 758 (2005); *Olivarez v. Court of Appeals*, supra note 17, at 431 and 444; and *Mallo v. People*, 560 Phil. 119, 134 (2007).

[34] J. Bernabe Concurring Opinion.

[35] *People v. Pruna*, 439 Phil. 440 (2002).



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