

## SECOND DIVISION

[ G.R. No. 214673, November 20, 2017 ]

**RIZALDO L. ORSOS, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated June 21, 2013 and the Resolution<sup>[3]</sup> dated September 3, 2014 rendered by the Court of Appeals (CA) in CA-G.R. CEB-CR No. 01574, which affirmed with modification the Decision<sup>[4]</sup> dated October 5, 2010 of the Regional Trial Court of Mambusao, Capiz, Branch 20 (RTC) finding petitioner Rizaldo L. Orsos (petitioner) guilty beyond reasonable doubt for acts of lasciviousness, defined and penalized under Article 336 of the Revised Penal Code (RPC), as amended, and sentenced him to suffer the indeterminate penalty of imprisonment for a period of three (3) months and one (1) day of *arresto mayor*, as minimum, to two (2) years and five (5) months of *prison correccional*, as maximum, and to pay the amounts of P25,000.00 as moral damages and P25,000.00 as civil indemnity.

#### The Facts

At the time material to this case, the minor victim (AAA<sup>[5]</sup>) was only fourteen (14) years old, having been born on July 6, 1992, as evidenced by her Certificate of Live Birth.<sup>[6]</sup> She was then a third year high school student at Dumalag Central National High School (DCNHS) in Dumalag, Capiz, where petitioner was then working as a teacher and Citizen's Army Training (CAT) Commandant.<sup>[7]</sup> AAA was one of petitioner's students.<sup>[8]</sup>

At around 9:30 in the morning of April 21, 2007, while the CAT trainees, including AAA, were at the Sohot Spring in Dumalag for a clean-up drive, petitioner called AAA and asked her if she had decided on becoming a CAT officer, to which she answered yes.<sup>[9]</sup> Petitioner then instructed her to go to his house at 1:00 in the afternoon of the same day for her supposed initiation. As she did not know where petitioner's house was located, she went back to the school at around 12:30 in the afternoon instead and waited for him to arrive. When petitioner saw AAA, he told her to follow him to his house and keep a little distance between them.<sup>[10]</sup>

Upon arrival thereat, petitioner instructed her to take a seat while he went to the bathroom for a few minutes. AAA noticed that except for the two of them, no one else was in the house. Thereafter, he emerged from the bathroom and asked her if she was really determined to become a CAT officer, to which she replied yes.<sup>[11]</sup> Petitioner then told her that he had a crush on her, that he wanted her to become his mistress, and that he will give her all her needs.<sup>[12]</sup> Then, he pulled her to his lap and asked her to kiss him. Thinking it was part of the initiation rites, AAA kissed his right cheek. Thereafter, petitioner asked her to sit on the sofa and proceeded to kiss her on the lips, leading her to cry. Petitioner then instructed her to lie down on the sofa, lifted her shirt and underwear, and sucked her right breast for about two minutes.<sup>[13]</sup> AAA was frightened and could not complain. Petitioner was about to unzip her pants when she pleaded for him not to do so as she had her menstrual period then.<sup>[14]</sup> At this point, petitioner stood up and went back to the bathroom. When he re-emerged, he told her to stop crying and not to report the incident if she truly wanted to become a CAT officer.<sup>[15]</sup> Although AAA told her friend about the incident, she decided not to tell her family.<sup>[16]</sup> Instead, she told her parents that she wanted to rest, quit school, and spend some time with her sisters in Manila.<sup>[17]</sup> After a year in Manila, she went back to Dumalag, Capiz and enrolled in fourth year high school.<sup>[18]</sup>

Sometime in July 2008, several female CAT officers in DCNHS revealed that petitioner had molested them and filed cases against him in court.<sup>[19]</sup> Prompted by her mother's inquiry if petitioner had also molested her, AAA finally disclosed the details of the incident to her and the reason why she did not do so sooner.<sup>[20]</sup>

Consequently, a complaint<sup>[21]</sup> charging petitioner with acts of lasciviousness, defined and penalized under Article 336 of the RPC, as amended, in relation to Republic Act (RA) No. 7610, was filed on October 6, 2008, the accusatory portion of which reads:

"That on or about 1:00 o'clock in the afternoon of 21 April 2007, in Brgy. Poblacion, Municipality of Dumalag, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with lewd designs, did then and there willfully, unlawfully and feloniously kiss the lips and suck the breasts of one [AAA], a female and minor of 16 years old without her consent and against her will, and which acts of the former likewise constitute other child abuse.

By reason of the unlawful acts of the accused, the victim is entitled for damages pursuant to the provision of the New Civil Code.

CONTRARY TO LAW."<sup>[22]</sup>

When arraigned with the assistance of counsel, petitioner entered a plea of "*not guilty*."<sup>[23]</sup> During trial, he denied the charges against him and claimed that when he was a teacher and the CAT Commandant in DCNHS, AAA never became his student and that he did not meet her as an applicant to become a CAT officer.<sup>[24]</sup> He averred that CAT initiation rites were conducted during the school year and inside the school premises.<sup>[25]</sup> Moreover, it was the senior CAT officers who recruited the new ones, and that AAA did not apply to become a CAT officer in 2007.<sup>[26]</sup> He asserted that no initiation rites were conducted in April 2007 nor did he invite AAA to his house for any such initiation.<sup>[27]</sup> On the contrary, he claimed to be in his house in Malonoy, Dao, Capiz in April 2007, for a summer vacation.<sup>[28]</sup>

### **The RTC Ruling**

In a Decision<sup>[29]</sup> dated October 5, 2010, the RTC convicted petitioner of *acts of lasciviousness* and sentenced him to suffer the penalty of imprisonment for a period of three (3) months and one (1) day of *arresto mayor* medium, as minimum, to two (2) years and five (5) months of *prision correccional* medium, as maximum, and to pay AAA the amount of P25,000.00 as moral and exemplary damages.<sup>[30]</sup>

In so ruling, the RTC gave more credence to the clear and straightforward testimony of AAA on how petitioner sexually abused her. Citing the well-settled rule that no girl would concoct a story of sexual assault nor subject herself and her family to trauma and embarrassment unless she was speaking the truth, the RTC found no evidence that AAA and her family fabricated the story in order to humiliate petitioner, who was then the CAT Commandant of DCNHS.<sup>[31]</sup> Conversely, the RTC rejected petitioner's defense of denial, finding the same insufficient to absolve him of criminal liability.<sup>[32]</sup>

Aggrieved, petitioner appealed<sup>[33]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[34]</sup> dated June 21, 2013, the CA affirmed petitioner's conviction for *acts of lasciviousness*, with modification as to damages. The CA found that AAA's testimony clearly and categorically established petitioner's identity as the person who molested her.<sup>[35]</sup> As such, there being no showing that AAA was actuated by improper motive, the presumption is that she was not so actuated and her testimony is entitled to full faith and credence.<sup>[36]</sup> Moreover, petitioner failed to show that it was physically impossible for him to be at the *locus criminis* or its immediate vicinity at the time of the commission of the crime. Although he testified that he and his wife were at their residence in Malonoy, Dao, Capiz for a summer vacation, it was not impossible for him to be at Dimalag, Capiz at the time of the incident, the two places being proximate to each other.<sup>[37]</sup>

Further, the CA found that petitioner committed lewd acts against AAA when he kissed her on the lips and sucked her right breast.<sup>[38]</sup> Rejecting petitioner's argument that the elements of force and intimidation were not established by the prosecution, the CA held that petitioner's moral ascendancy or influence, being AAA's teacher, substitutes for the element of force and intimidation.<sup>[39]</sup>

Accordingly, the CA sustained the penalty imposed by the RTC but modified the amount of damages, awarding the sum of P25,000.00 as moral damages and P25,000.00 as civil indemnity.<sup>[40]</sup> However, it deleted the award for exemplary damages in the absence of any aggravating circumstances in this case.<sup>[41]</sup>

Petitioner's motion for reconsideration<sup>[42]</sup> was denied in a Resolution<sup>[43]</sup> dated September 3, 2014; hence, this petition.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for acts of lasciviousness under Article 336 of the RPC, as amended.

### **The Court's Ruling**

The petition is bereft of merit.

At the outset, it bears to emphasize the recognized rule in this jurisdiction that the assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe the deportment and demeanor of a witness on the stand, a vantage point denied appellate courts; and when his findings have been affirmed by the CA, these are generally binding and conclusive upon this Court. While there are recognized exceptions to the rule, the Court found no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.<sup>[44]</sup>

Acts of lasciviousness is defined and penalized under Article 336 of the RPC, which reads:

Article 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 in the preceding article, shall be punished by *prision correccional*.

There must be a confluence of the following elements before conviction can be had for such crime: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done 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; and (3) that the offended party is another person of either sex.<sup>[45]</sup>

On the other hand, RA 7610 finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 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."<sup>[46]</sup> Section 5 (b) thereof 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[.] (Emphases supplied)

The requisites for sexual abuse under Section 5 (b) of RA 7610 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; and (3) that the child, whether male or female, is below 18 years of age.<sup>[47]</sup> "Lascivious conduct" is defined in Section 32, Article XIII of the Implementing Rules and Regulations (IRR) of RA 7610, as follows:

**[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.<sup>[48]</sup> (Emphases supplied)

A meticulous perusal of the records reveals that all the elements of both acts of lasciviousness under Article 336 of the RPC and *lascivious conduct* under Section 5 (b) of RA 7610 have been sufficiently established in this case. AAA's minority, as she was only 14 years old at the time of the incident, had been sufficiently established with the presentation of her Certificate of Live Birth,<sup>[49]</sup> showing that she was born on July 6, 1992. It was likewise established that petitioner, who was then a teacher and CAT Commandant in AAA's school, and therefore, a person who exercised moral ascendancy and influence upon her, committed lascivious or lewd conduct against her by kissing her lips and sucking her right breast.

Petitioner insists that force and intimidation as an element of acts of lasciviousness was not established in this case.<sup>[50]</sup> In *Quimvel v. People*,<sup>[51]</sup> however, the Court clarified that "force and intimidation" is subsumed under "coercion and influence," and that "x x x 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. x x x [T]he 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.'"<sup>[52]</sup>

In this case, it has been established that petitioner, who was AAA's teacher and then the CAT Commandant in her school, was able to carry out his lewd acts by asking her twice if she was determined to become a CAT officer. Petitioner's inquiry strongly suggested that if AAA really wanted to become a CAT officer, she should accede to his demands and allow him to commit lascivious conduct upon her person. Therefore, petitioner exercised *influence and coercion* upon AAA in order to commit the crime against her, thereby satisfying the element of force and intimidation in this case. Besides, although petitioner was not armed nor did he threaten AAA, his moral ascendancy over her is a sufficient substitute for the use of force or intimidation,<sup>[53]</sup> as pointed out by the CA.

In view of the foregoing, petitioner's conviction is upheld not for the crime of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610, but for **"lascivious conduct" under Section 5 (b) of RA 7610**, considering that she was 14 years of age at the time of the commission of the crime.<sup>[54]</sup>

To note, petitioner separately argued that the RTC that convicted him is a regular court, not a family court, and therefore, had no jurisdiction over the case.<sup>[55]</sup> Although it is true that Branch 20 of the RTC of Mambusao, Capiz is a regular court,

it has jurisdiction over the instant case considering that there is no family court constituted in the area where the crime was committed; moreover, the only family court designated in Capiz is RTC Branch 14 in Roxas City, Capiz.<sup>[56]</sup> Thus, in accordance with Section 17<sup>[57]</sup> of RA No. 8369,<sup>[58]</sup> which provides that in areas where there are no family courts, the cases falling under the jurisdiction of the said family courts<sup>[59]</sup> shall be adjudicated by the regular courts, the RTC correctly exercised jurisdiction over this case.

Under Section 5 (b) of RA 7610, the prescribed penalty for *lascivious conduct* is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period<sup>[60]</sup> thereof. Applying the Indeterminate Sentence Law, the minimum term shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period.<sup>[61]</sup> Accordingly, petitioner is sentenced to suffer an indeterminate penalty of imprisonment ranging from a period often (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. Likewise, and conformably with prevailing jurisprudence,<sup>[62]</sup> he is directed to pay AAA the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

**WHEREFORE**, the petition is **DENIED**. Petitioner Rizaldo L. Orsos is found **GUILTY** beyond reasonable doubt of the crime of Lascivious Conduct under Section 5 (b) of Republic Act No. 7610 and accordingly, **SENTENCED** to suffer the indeterminate prison term of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months, and one (1) day of *reclusion temporal*, as maximum, and further **ORDERED** to pay private complainant the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

**SO ORDERED.**

*Carpio, (Chairperson) and Peralta, JJ., concur.*

*Caguioa, J.:* I concur consistent with my separate opinion in *People vs. Caoili.*

*Reyes, Jr., J., on official leave.*

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<sup>[1]</sup> *Rollo*, pp. 10-16.

[2] Id. at 51-63. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla concurring.

[3] Id. at 21-23.

[4] Id. at 31-40. Penned by Judge Ignacio I. Alajar.

[5] The real name of the private complainant is withheld per Republic Act No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*); Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and A.M. No. 04-10-11-SC effective 15 November 2004 (*Rule on Violence Against Women and Their Children*). See also *People v. Cabalquinto*, 533 Phil. 703, 705-706 (2006).

[6] Records, p. 11.

[7] Id. at 83.

[8] Id.

[9] *Rollo*, p. 54.

[10] Id.

[11] Id.

[12] Id. See also records, pp. 5-6.

[13] See records, pp. 5-6.

[14] See id.

[15] See id. at 274-275.

[16] See id. at 6-7.

[17] See *rollo*, p. 95.

[18] See records, p. 15.

[19] *Rollo*, p. 95.

[20] See records, pp. 8-9.



[21] Records, pp. 1-2.

[22] *Id.* at 1.

[23] *Id.* at 73.

[24] *Rollo*, p. 56. See also TSNs dated September 29, 2009 (records, pp. 233-239) and January 19, 2010 (records, pp. 244-246).

[25] *Id.*

[26] TSN dated September 29, 2009, records, pp. 235-236.

[27] *Id.* at 237-238.

[28] *Rollo*, p. 56. See also records, p. 238.

[29] *Id.* at. 31-40.

[30] *Id.* at 39.

[31] *Id.* at 38.

[32] *Id.* at 38-39.

[33] See Apellant's Brief dated July 18, 2011; CA *rollo*, pp. 21-29.

[34] *Rollo*, pp. 51-63.

[35] *Id.* at 60.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 62.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 63.

[42] Dated July 29, 2013. CA *rollo*, pp. 145-149.

[43] *Rollo*, pp. 21-23.

[44] *People v. Pareja*, 724 Phil. 759, 773 (2014).

[45] See *Quimvel v. People*, G.R. No. 214497, April 18, 2017.

[46] *People v. Chingh*, 661 Phil. 208, 222-223 (2011).

[47] See *Quimvel v. People*, supra note 45, citing *Cabila v. People*, 563 Phil. 1020, 1027 (2007) and *Ebalada v. People*, 496 Phil. 747, 758 (2005).

[48] See *id.*

[49] Records, p. 11.

[50] *Rollo*, p. 14.

[51] Supra note 45.

[52] *Id.*, citing *Caballo v. People*, 710 Phil. 792, 805-806 (2013).

[53] *People v. Abadies*, 433 Phil. 814, 822 (2002).

[54] See *People v. Caoili*, G.R. No. 196342 & 196848, August 8, 2017.

[55] *Rollo*, p. 13.

[56] See A.M. No. 99-11-07-SC February 1, 2000 [Re: Designation of Certain Branches of the RTC as Family Courts].

[57] Section 17. Transitory Provisions. - x x x

In areas where there are no Family Courts, the cases referred to in Sec. 5 of this Act shall be adjudicated by the Regional Trial Court.

[58] Otherwise known as "Family Courts Act of 1997," dated October 28, 1997.

[59] Section 5. *Jurisdiction of family courts*. - The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age but not less than nine (9) years of age or where one or more of the victims is a minor at the time of the commission of the offense: Provided, That if the minor is found guilty, the court shall promulgate

sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the "Child and Youth Welfare Code";

- b) Petitions for guardianship, custody of children, habeas corpus in relation to the latter;
- c) Petitions for adoption of children and the revocation thereof;
- d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
- e) Petitions for support and/or acknowledgment;
- f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "*Family Code of the Philippines*";
- g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognizable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws;
- h) Petitions for the constitution of the family home;
- i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
- j) Violations of Republic Act No. 7610, otherwise known as the "*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*," as amended by Republic Act No. 7658; and
- k) Cases of domestic violence against:

- 1) Women- which are acts of gender based violence that results, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's personhood, integrity and freedom movement; and
- 2) Children - which include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

If an act constitutes a criminal offense, the accused or batterer shall be subject to criminal proceedings and the corresponding penalties.

If any question involving any of the above matters should arise as an incident in any case pending in the regular courts, said incident shall be determined in that court.

[60] 17 years, 4 months and 1 day to 20 years.

[61] 8 years and 1 day to 14 years and 8 months.

[62] See *Quimvel v. People*, supra note 45.

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