

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO QUIMVEL Y BRAGA A.K.A. EDUARDO/EDWARD QUIMUEL Y BRAGA, ACCUSED-APPELLANT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

In Criminal Case No. 5530 filed before the Regional Trial Court (RTC), Fifth Judicial Region, City of Ligao, Branch 11, for the crime of Acts of Lasciviousness in relation to Section 5(b) of Republic Act (RA) No. 7610,[1] the Amended Information[2] charged accused-appellant Eduardo Quimvel y Braga a.k.a. Eduardo/Edward Quimuel y Braga (QUIMVEL), 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,[3] a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.”[4]

Upon re-arraignment, QUIMVEL pled not guilty[5] to the accusation against him. During the pre-trial conference, the defense admitted solely the identity of the accused. Thereafter, trial on the merits ensued.

The prosecution[6] proffered the following version of the facts:

AAA, who was seven years old[7] at the time of the subject 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. QUIMVEL lived with AAA's grandparents whose house was just a few meters away from YYY's house.

At around 8:00 o'clock in the evening of 18 July 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. QUIMVEL agreed and accompanied them. AAA and her siblings then went to sleep. However, AAA 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. Then, she removed QUIMVEL's hand.

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

On 29 July 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.[8] Afterwards, they brought AAA to a doctor for medical examination.

As expected, QUIMVEL denied the imputation hurled against him. He maintained that at around 7:00 o'clock in the morning of 18 July 2007, he brought the ducks of AAA's grandmother to the river. And then at around 4:00 o'clock in the afternoon of even date, he fetched the ducks and brought them back to AAA's grandmother's place. After that, he rested. 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 anymore to the house of AAA's grandmother to avoid any untoward incidents.[9]

On 23 January 2013, the court a quo rendered a Judgment,[10] the decretal portion of which reads:

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

- 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. No. 7610 and thereby sentence 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

- 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 QUIMUEL 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.”[11]

Nonplussed, QUIMVEL (now, appellant) commenced the present Appeal propounding this solitary error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

We affirm the judgment of conviction albeit with modification as to the amounts of damages.

First off, it bears stressing that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges

enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying.[12]

In the case at bench, We find and so rule that the court a quo judiciously applied the doctrinal touchstones for witness' candidness and trustworthiness. The records reflect that AAA guilelessly recounted appellant's prurient acts with steadiness. Her open-and-shut testimonial avowal unfurls 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 awoken[ed] because aside 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 Okay. Do you know that a minute is equivalent to sixty (60) seconds?

A Yes(,) 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.”[13]

The foregoing testimonial account demonstrates that all the elements of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b), Article III of RA No. 7610 are present. This finds a textual hook in the elements of Acts of Lasciviousness, viz—

- “1. That the offender commits any acts of lasciviousness or lewdness;
2. That it is done under any of the following circum-stances:
 - 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; and

3. That the offended party is another person of either sex.”[14]

Upon the other hand, sexual abuse under Section 5, Article III of RA No. 7610 requires the concurrence of 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. The child, whether male or female, is below 18 years of age.”[15]

The prosecution having proven beyond reasonable doubt the foregoing elements, the court quo rightly convicted appellant of the crime of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA No. 7610.

Professing innocence, appellant maintained that the second element of the Acts of Lasciviousness under Article 336 of the Revised Penal Code, i.e., the employment of force or intimidation, has not been established. In actual fact, she did not even ask for help from her father who arrived right after he allegedly removed his hand from inside her panty. Be that as it may, he could only be held liable for Acts of Lasciviousness under Article 336 of the RPC and not in relation to RA No. 7610. Said law is clear and unequivocal in that it considered as an essential element that the victim should already be involved in prostitution or has been subjected to sexual abuse. Since the prosecution failed to allege this indispensable element in the Information, appellant cannot be convicted thereof. Otherwise, he would be deprived of his constitutional right to be informed of the accusation against him.[16]

Appellant's theory fails to impress.

As adumbrated above, there are three ways of committing acts of lasciviousness, viz: (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. Here, AAA, the victim, was below 12 years old at the time of the commission of the crime. Whence, force and intimidation need not be present.

Besides, the fact that AAA did not ask help or inform her father about the incident right after it happened is inconsequential. Human nature suggests that people may react differently when confronted with a given situation.[17] People may act contrary to the accepted norm, react differently and act contrary to the expectation of mankind. There is no standard human behavioral response when one is confronted with an unusual, strange, startling or frightful experience.[18]

Anent appellant's disputation that the prosecution failed to allege in the Information the element that "the said act is performed with a child exploited in prostitution or subjected to other sexual abuse," and as such, he should only be liable for acts of lasciviousness as punished under the RPC, We find the same unpersuasive.

The Information that was filed against appellant alleged that he committed lascivious acts towards AAA, i.e., he inserted his hand inside the panty of the latter and mashed her vagina, which damaged and prejudiced her. It likewise alleged that at the time AAA was subjected to sexual abuse, she was only seven years old. Plain as day, all the elements of sexual abuse under Section 5(b), Article III of RA No. 7610 are laid down in the Information that was filed against appellant.[19]

Ergo, the lascivious acts of appellant fall within the ambit of RA No. 7610 specifically under Section 5, Article III thereof 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 x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution

or subjected to other sexual abuse; Provided, That when the victims 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; xxx” (Emphasis Ours)

From the foregoing, it is evident that children who indulge in sexual intercourse or lascivious conduct due to the coercion or influence of any adult, are deemed to be children exploited in other sexual abuse. Obviously, Section 5 of RA No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation. Case law teaches Us that 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. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[20] In this case, AAA, showing immaturity, asked appellant to stay with them as she and her siblings were afraid. Appellant, taking advantage of this trust, carried out his lascivious acts while AAA was sleeping. Without a doubt, appellant is guilty of acts of lasciviousness in relation to RA No. 7610.

Appellant's defenses of denial and alibi deserve scant consideration. Well-settled is the rule that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. Moreover, for the defense of alibi to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[21]

AAA categorically declared that appellant touched her private part. For Us, her testimony was worthy of belief since she was young and had no ill-motive to falsely testify against him. In fact, it is clear that her sole motive was to put appellant to prison for what he did to her.[22]

Appellant's claim that at the time of the alleged incident, he never left the house of AAA's grandparents since he was resting, is self-serving and unsubstantiated. While he presented as a witness his mother, the latter's testimony failed to give any corroboration to appellant's thesis. Thus, his contention that at the time of the alleged incident he was in AAA's grandparents' house falls through considering that it was merely 150 meters[23] away from the scene of the crime. Manifestly, no physical impossibility obtains in this case.

In sooth, the court a quo unerringly adjudged that appellant was guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA No. 7610 and imposing upon him the aforesaid penalty. However, in line with recent jurisprudence, We deem it proper to reduce the awards of moral damages and fine to P15,000.00 each.[24] In addition, We likewise award the amounts of P20,000.00 as civil indemnity[25] and P15,000.00 as exemplary damages in view of the minority of AAA.[26]

Moreover, in congruence with settled doctrinal policy, We impose interest on all monetary awards for damages at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.[27]

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 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.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Ybañez and Manaham, JJ., concur.

[1] Otherwise known as “An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination.”

[2] Original Record, p. 81.

[3] In accordance with the ruling of the Supreme Court in *People v. Cabalquinto*, 502 SCRA 419, 425-426 (19 September 2006).

[41] Original Record, p. 81.

[5] Original Record, p. 88.

[6] TSN, 25 May 2011, pp. 5-9; 23 June 2011, pp. 5-12; 25 August 2011, pp. 3-8.

[7] Original Record, p. 8.

[8] Original Record, p. 12.

[9] TSN, 18 July 2012, pp. 3-11.

[10] Original Record, pp. 124-132.

[11] Original Record, p. 132.

[12] See *People v. Gahi*, G.R. No. 202976 (19 February 2014), citing *People v. Amistoso*, 688 SCRA 376, 387-388 (9 January 2013).

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

[14] *People v. Lomaque*, 697 SCRA 383, 405-406 (5 June 2013).

[15] See *People v. Lomaque*, 697 SCRA 383, 406 (5 June 2013).

[16] Rollo, pp. 62-67.

[17] See *Kummer v. People*, 705 SCRA 490, 504 (11 September 2013).

[18] See *Ibid.*

[19] See *Roallos v. People*, G.R. No. 198389 (11 December 2013).

[20] See *People v. Rellota*, 626 SCRA 422, 447 (3 August 2010).

[21] See *People v. Piosang*, 697 SCRA 587, 596-597 (5 June 2013).

[22] See TSN, 23 June 2011, p. 11.

[23] See *Id.*, 18 July 2012, pp. 4-5.

[24] See *Roallos v. People*, G.R. No. 198389 (11 December 2013).

[25] See *Id.*

[26] See *People v. Baraoil*, 676 SCRA 24, 30 (9 July 2012).

[27] *Id.*

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