

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARLON UBALDO Y MORTERA, ACCUSED-APPELLANT.

Ponente: INTING, S.B., J.

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INTING, S.B., J.:

On appeal before us is the Decision[1] of the Regional Trial Court Branch 50, Villasis, Pangasinan, in Criminal Case No. V-1576 dated 31 July 2012 convicting appellant Marlon Ubaldo of the crime of Acts of Lasciviousness in relation to Section (5), Article III of R.A. No. 7610[2].

Accused-appellant was duly charged in an Information[3] which states:

"That on or about May 23, 2010 in the evening at Brgy. Caramutan, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of AAA[4], minor, 6 years old, possessing moral ascendancy over the latter, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously perform lascivious conduct upon said AAA, by bringing her to a barn and while they were there, inserted his hand into the shorts of said AAA and touched her vagina, against her will and without her consent, to her damage and prejudice and which acts degraded and demeaned the intrinsic worth and dignity of said minor as a human being.

CONTRARY to Article 336, Revised Penal Code in relation to Sec. 5, par. b, R.A. 7610."[5]

When arraigned, accused-appellant pleaded "NOT GUILTY" to the charge.

The facts of the case as found by the trial court are as follows:

"The prosecution's version of the incident subject of the case, based principally on the testimony of the 7 year old AAA[6], shows that accused Marlon Ubaldo brought AAA to a "kamarin" (barn) and once inside he put his hand inside her panty then touched her vagina. AAA went out of the barn when she heard her mother calling. She went straight home and told her mother what Marlon did to her. AAA was then brought to the police station where she was interviewed by a policewoman and made to sign a piece of paper.[7]

Accused Marlon Ubaldo proffered denial. He testified that in the evening of May 23, 2010, he was in their house watching television with AAA, Manny Soriano, Bianca Soriano and August Soriano. At about 7:30 o'clock, AAA asked him to bring her home. AAA's house is 12 meters away from their house.[8]

At about 9:00 o'clock, he [accused-appellant] was awakened by his mother because barangay captain Roel Banao was looking for him. The barangay captain told him to go with him to the municipal hall to talk about AAA.[9]

Upon reaching the municipal hall, he was brought to the police station where he was put in jail. He did not know the reason for his incarceration. The following morning, he was told by the barangay captain that he did something disrespectful to AAA ("Binastos mo kano ni AAA").[10]

He did not see AAA or her mother Jocelyn at the police station in the evening of May 23, 2010.[11]

He denied the accusation against him that he put his hand inside the panty of AAA and touched her

vagina.”[12]

TRIAL COURT'S RULING

After due proceedings, the trial court promulgated a Judgment dated 31 July 2012, the decretal portion of which reads as follows:

“WHEREFORE, premises considered, the Court finds accused Marlon M. Ubaldo guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b), Article III of R.A. No. 7610 and is hereby sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum, and to pay the offended party P20,000.00 as moral damages.

SO ORDERED.”[13]

Aggrieved, accused-appellant filed the present appeal.

ASSIGNMENT OF ERRORS

In assailing the trial court’s judgment of conviction, the accused-appellant assigned these errors, viz:

“I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR PATENT INCONSISTENCIES.[14]

Accused-appellant averred that the prosecution was not able to establish his guilt beyond reasonable doubt. He contended that the complainant's demeanor during the alleged incident was contrary to normal human behavior. He argued that it was highly improbable for him to tell AAA what they were going to do inside the barn. Thus, accused-appellant concluded that complainant's testimony is not credible nor worthy of belief.

THIS COURT'S RULING

The appeal is bereft of merit.

Section 5 (b), Article III of R.A. No. 7610[15] defines and penalizes acts of lasciviousness committed against a child:

“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.

x x 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;"

The essential elements of this provision 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.

The allegations stated in the information sufficiently constitute acts punishable under the aforesaid provision and under Article 336 of the RPC whose elements are:

1. That the offender commits any act of lasciviousness;
2. That the offended party is another person of either sex; and
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. When the offended party is under 12 years of age or is demented.[16]

Paragraph (h), Section 2 of the Implementing Rules and Regulations of R.A. 7610[17] (implementing rules) defines lascivious conduct as a crime committed through the intentional touching,

either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. Records show that AAA duly established this element when she positively testified that accused-appellant Marlon touched her vagina on the evening of May 23, 2010 while they were in the barn.

Accused-appellant's act of inserting his hand inside AAA's panty and touching her sexual organ clearly constituted an act of lasciviousness or lewdness intended to arouse or gratify his sexual desire. Said lewd act was directed against a child, who is under twelve (12) years old. All the elements of the crime charged are present in the case. Hence, accused-appellant should be made liable thereto.

The accused-appellant asserted that there is nothing in AAA's narration which indicated that he forced the offended party. However, this assertion is a futile attempt to evade liability amidst positive testimony of AAA.

It must be remembered that AAA is only six (6) years old at the time of the commission of the crime. She is considered a child under Section 3 (a) of R.A. No. 7610 which reads:

- (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; [Emphasis supplied]

The implementing rules elaborated on this definition when it defined a "child" as one who is below 18 years of age or over said age who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of herself fully because of a physical or mental disability or condition or of protecting herself from abuse.

It is well settled that a child of tender years, like AAA, is incapable of giving a valid consent to a lewd or lascivious act. When the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame

and embarrassment to which they would be exposed if the matter about which they testified is not true.[18] Accused-appellant cannot escape liability on his lame assertions that he did not employ force to AAA and that AAA could have easily left when he allegedly relayed to her that he was planning to do something bad with her.

Again, we say AAA is only six (6) years old. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[19]

The prosecution has proven beyond reasonable doubt that accused-appellant committed lewd or lascivious act against AAA. The trial court found AAA's testimony to be candid, and straightforward.[20] Her testimony, given in a categorical, straightforward, spontaneous and candid manner, is worthy of faith and belief.[21] In the face of the accusations against him, accused-appellant could only interpose uncorroborated alibi and denial. Denial, like alibi, is an inherently weak defense and cannot prevail over the positive and categorical identification provided by eyewitnesses.[22] Not only did AAA identify the accused-appellant as her offender but no ill-motive was adduced why she would impute against him so grave a charge. This Court will not interfere with the trial court's assessment of the credibility of witnesses, absent any indication that some material fact was overlooked or a grave abuse of discretion committed. None of the exceptions obtains in the instant case.[23] Hence, the Court finds that the trial court did not err in giving credence to the testimony of the complainant.

The accused-appellant was duly charged and made liable for violation of Article 336, Revised Penal Code in relation to Sec. 5, paragraph b of R.A. 7610. Thus, the penalty provided under R.A. 7610 applies.

The penalty for acts of lasciviousness under Art. III, Section 5(b) of R.A. No. 7610 is reclusion temporal in its medium period, the range of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances, the maximum term of the sentence to be imposed shall be taken from the medium period of the imposable penalty, which is reclusion temporal medium, the range of which is from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days, while the minimum term shall be taken from the penalty next lower in degree, which is reclusion temporal minimum, the range of which is from 12 years and 1 day to 14 years and 8 months. Thus, the trial court's imposition of the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum upon accused-appellant is in order.

In view of the above considerations, we uphold the decision of the trial court.

WHEREFORE, foregoing premises considered, the appeal of accused-appellant Marlon Ubaldo is DENIED and the Decision of the Regional Trial Court, Branch 50, Villasis, Pangasinan dated 31 July 2012 is hereby AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Reyes, Jr., (Chairperson) and Galapate-Laguilles[**], JJ., concur.

[*] Acting Senior Member vice Justice Mario V. Lopez who is in Baguio for the summer session, from May 5-9, 2014; Per Office Order No. 177-14-RDC.

[**] Acting Junior Member vice Justice Socorro B. Inting who is designated as Acting Senior Member from May 5-9, 2014; Per Office Order No. 177-14-RDC.

[1] Rollo, pp. 35-43.

[2] Also known as, "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

[3] Rollo, p. 35; RTC Decision, p. 1.

[4] The real name of the minor victim is withheld and fictitious initials are used to represent her, consistent with the case of *People v. Cabalquinto*, 502 SCRA 419 [2006].

[5] *Supra*, note 3.

[6] *Supra*, note 4.

[7] Rollo. p. 36.

[8] *Ibid*.

[9] *Ibid*.

[10] *Ibid*.

[11] *Ibid*.

[12] *Ibid*.

[13] Rollo, p. 43.

[14] Rollo, p. 24.

[15] *Supra*, note 2.

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

[17] On the Reporting and Investigation of Child Abuse Cases adopted on October 11, 1993.

[18] *People v. Mendez*, 390 Phil. 449 [2000].

[19] *People v. Adora*, G.R. Nos. 116528-31, 14 July 1997, 275 SCRA 441.

[20] Rollo, p. 40.

[21] *People v. Gecomio*, 324 Phil. 297 [1996].

[22] *People v. Zamora*, 343 Phil. 574 [1997].

[23] *People v. Dadles*, 343 Phil. 916 [1997].

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