ALVIN AMPLOYO Y EBALADA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 157718. April 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals which affirmed the Decision[2] of the Regional Trial Court of Olongapo City, Branch 72, and its Resolution[3] denying petitioner's motion for reconsideration.

On 21 July 1997, petitioner was charged with violation of Section 5(b), Article III of Republic Act No. 7610, in an Information worded as follows:

> That on or about the 27th day of June, 1997, and on dates prior thereto, at Brgy. Calapandayan, in the Municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously, commit acts of lascivious conduct with one Kristine Joy Mosquera, a minor of eight (8) years old, by then and there touching, mashing and playing her breast, against her will and consent, to the damage and prejudice of the latter.[4]

Upon arraignment, petitioner pleaded "NOT GUILTY." Trial on the merits ensued thereafter. The prosecution presented as witnesses (1) the complainant herself, Kristine Joy Mosquera; (2) complainant's mother, Gnelida Gallardo Mosquera; and (3) Department of Social Welfare and Development (DSWD) psychologist Lucrecia Cruz. Petitioner, on the other hand, waived his right to present evidence[5] after his demurrer to evidence[6] was denied by the trial court.[7]

The facts, as appreciated by the trial court, are as follows:

Kristine Joy Mosquera was eight years old on 27 June 1997,[8] having celebrated her eighth year the day before. A grade III student, she was walking to school (which was just a short distance from her house) at around seven o'clock in the morning when she was met by petitioner who emerged from hiding from a nearby store. Petitioner and Kristine Joy were neighbors. Petitioner approached Kristine Joy, touched her head, placed his hand on her shoulder where it then moved down to touch her breast several times. Petitioner thereafter told Kristine Joy not to report to anybody what he did to her.

This was not the first time that the incident happened as petitioner had done this several times in the past, even when Kristine Joy was still in Grade II. However, it was only during this last incident that Kristine Joy finally told somebody – her grandmother, who immediately talked to Gnelida Mosquera, Kristine Joy's mother.

Mrs. Mosquera conferred with Kristine Joy who said that petitioner would sometimes even insert his hand under her shirt to caress her breast. Mother and child then reported the matter to the barangay. From the barangay, the case was referred to the DSWD then to the Police Department of Subic, Zambales.

On 07 November 1997, Kristine Joy was seen by a psychologist, witness Lucrecia Cruz, who reported that Kristine Joy was a victim of sexual abuse and was showing unusual behavior as a result thereof. Among other things, Ms. Cruz detected in the eight-year old child feelings of insecurity, anger, anxiety and depression. Guilt feelings were also noted. All in all, Kristine Joy appeared on the surface to be a child with normal behavior despite the experience, but on a deeper level, she developed a fear of going to school as petitioner might again be hiding in the store waiting for her. She was deeply bothered during the interview and even uttered "Nahihiya ako sa mga magulang ko at uncle ko baka tuksuhin akong bobo na hindi ko agad sinabi."

Kristine Joy continued going to school, but this time accompanied always by an adult relative.

On 22 September 1999, the trial court rendered its decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing considerations, the Court finds the accused Alvin Amployo GUILTY beyond reasonable doubt of the crime of Child Abuse defined under Section 5 (b) of Republic Act 7610 and hereby sentences him to Reclusion Temporal in its medium period or FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY TO SEVENTEEN (17) YEARS and to pay the costs.[9]

The Court of Appeals, as adverted to earlier, affirmed the Decision of the trial court by dismissing petitioner's appeal for lack of merit. Upon motion for reconsideration, however, the Court of Appeals modified its ruling relative to the penalty imposed, thus:

> WHEREFORE, the motion for reconsideration is DENIED. However, the penalty is MODIFIED such that accused-appellant is sentenced to imprisonment 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.[10]

Hence, the instant petition, the following issues having been presented for resolution:

> I.
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING HEREIN PETITIONER OF ACTS OF LASCIVIOUSNESS IN RELATION TO SEC. (5) ARTICLE III OF RA NO. 7610 DESPITE THAT THE FACTUAL MILIEU NEGATES THE SAME
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> II.
>
> WHETHER THE ALLEGED ACT OF HEREIN PETITIONER CONSTITUTES ACTS OF LASCIVIOUSNESS AS PENALIZED UNDER SEC (5) ARTICLE III OF RA NO. 7610

The first issue basically questions the sufficiency of the evidence adduced to prove acts of lasciviousness under Article 336 of the Revised Penal Code (RPC). According to petitioner, the prosecution failed to prove beyond reasonable doubt all the elements of said crime, particularly the element of lewd design.

On the second issue, petitioner contends that even assuming that the acts imputed to him amount to lascivious conduct, the resultant crime is only acts of lasciviousness under Article 336 of the RPC and not child abuse under Section 5(b) of Rep. Act No. 7610 as the elements thereof have not been proved.

Rep. Act No. 7610, the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," defines sexual abuse of children and prescribes the penalty therefor in its Article III, Section 5:

> 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.

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> The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following;
>
> (a) . . .
>
> (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; . . .

Thus, pursuant to the foregoing provision, before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of Rep. Act No. 7610.

First Issue:

Article 336 of the RPC on Acts of Lasciviousness has for its elements the following:

(1) That the offender commits any act of lasciviousness or lewdness;

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

- By using force or intimidation; or

- When the offended party is deprived of reason or otherwise unconscious; or

- When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.[11]

The presence of the second element is not in dispute, that is, Kristine Joy was below 12 years old on the material date set in the information. It is the presence of the first element which petitioner challenges, claiming that lewd design has not been proved beyond reasonable doubt.

The term “lewd” is commonly defined as something indecent or obscene;[12] it is characterized by or intended to excite crude sexual desire.[13] That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, i.e., by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.[14] What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as U.S. v. Gomez[15] we had already lamented that –

> It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439[16] of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.

In herein case, petitioner argues that lewd design cannot be inferred from his conduct firstly because the alleged act occurred at around seven o’clock in the morning, in a street very near the school where people abound, thus, he could not have been prompted by lewd design as his hand merely slipped and accidentally touched Kristine Joy’s breast. Furthermore, he could not have been motivated by lewd design as the breast of an eight year old is

still very much undeveloped, which means to say there was nothing to entice him in the first place. Finally, assuming that he indeed intentionally touch Kristine Joy's breast, it was merely to satisfy a silly whim following a Court of Appeals ruling.[17]

Petitioner's arguments crumble under the weight of overwhelming evidence against him. Well-settled is the rule that factual findings of the trial court, particularly when affirmed by the Court of Appeals, are binding on this Court barring arbitrariness and oversight of some fact or circumstance of weight and substance[18] for which there are none in this case. Besides, Kristine Joy's testimony is indeed worthy of full faith and credence as there is no proof that she was motivated to falsely accuse petitioner. Thus, we stress anew that no young and decent girl like Kristine Joy would fabricate a story of sexual abuse, subject herself to medical examination and undergo public trial, with concomitant ridicule and humiliation, if she is not impelled by a sincere desire to put behind bars the person who assaulted her.[19]

Clearly then, petitioner cannot take refuge in his version of the story as he has conveniently left out details which indubitably prove the presence of lewd design. It would have been easy to entertain the possibility that what happened was merely an accident if it only happened once. Such is not the case, however, as the very same petitioner did the very same act to the very same victim in the past.[20] Moreover, the incident could never be labeled as accidental as petitioner's hand did not just slip from Kristine Joy's shoulder to her breast as there were times when he would touch her breast from under her shirt.[21] Finally, the theory that what happened was accidental is belied by petitioner having threatened Kristine Joy to keep silent and not tell on him.[22]

As to petitioner's argument that human experience negates the presence of lewd design as Kristine Joy had no developed breasts with which to entice him, suffice it to say that on the contrary, human experience has taught us painfully well that sexual misconduct defies categorization and what might be an unusual, unlikely or impossible sexual conduct for most might very well be the norm for some.

Finally, we dismiss for being atrocious the proposition that petitioner was not compelled by lewd design as he was merely satisfying a "silly whim." Terrifying an eight-year old school girl, taking advantage of her tender age with his sheer size, invading her privacy and intimidating her into silence, in our book, can never be in satisfaction of a mere silly whim.

Second Issue:

Petitioner contends that assuming he is guilty of lascivious conduct, still he can only be convicted under the RPC since his conduct does not amount to sexual abuse as defined under Section 5(b), Article III of Rep. Act No. 7610.

The elements of sexual abuse under Section 5, Article III of Rep. Act No. 7610 that must be proven in addition to the elements of acts of lasciviousness are the following:

(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.[23]

The first element obtains. Section 32, Article XIII of the Implementing Rules and Regulations of Rep. Act No. 7610 defines lascivious conduct 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.

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(Emphasis supplied)

Undoubtedly, based on the foregoing definition, petitioner's act of purposely touching Kristine Joy's breasts (sometimes under her shirt) amounts to lascivious conduct.

The second element is likewise present. As we observed in People v. Larin,[24] Section 5 of Rep. Act 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. As case law has it, intimidation need not necessarily be irresistible.[25] It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.[26] 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.[27] Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.[28]

In this case, it is not hard to imagine eight-year old Kristine Joy being intimidated by her neighbor, a full grown adult male, who constantly accosted her while she was alone and on her way to school and who consistently ordered her not to report what he had been doing to her. That this child was cowed into silence and submission and was traumatized in the process is reflected in the psychological report[29] made by the DSWD psychologist, Lucrecia Cruz, the latter stating that:

> BEHAVIOR OBSERVATION:
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> Subject appeared kemp, fair complexion, attractive, wearing white T-shirt and maong short pants. She [was] observed to be cooperative, attentive and expressive.
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> In an interview, subject disclosed that since she was in Grade II a certain Alvin Amployo a.k.a. Tikboy who (sic) sexually molested her. She narrated that her private part was fondled for many times. The incident happened every time she went to school in the morning, noontime and in the afternoon. The abuser hide (sic) along the store way to school. Then she was threatened not to reveal to anybody especially to her parents.
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> TEST RESULT AND INTERPRETATION:
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> Test result revealed that subject manifest anger as she quoted "gusto ko makulong si Tikboy ng matagal". Indicate strong fear, anxiety, poor concentration, nightmare, shame and auditory hallucination. Implies low self-esteem as she quoted "madumi na ang sarili ko, nahihiya ako sa magulang ko at Uncle ko baka tuksuhin akong bobo na hindi ko agad sinabi."
>
> Indicate that subject disturbed towards past as she quoted "ang masidhing ala-ala ng aking kamusmusan ay yong panghihipo ni Tikboy." Thus, subject aiming that Tikboy be put to jail.
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> CASE SUMMARY AND RECOMMENDATION:
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> In summary, Kristine Joy Mosquera is a victim of sexual molestation committed by a certain Alvin Amployo or Tikboy. Subject was greatly affected psychologically and emotionally. Thus, subject manifest from (sic) anger, anxiety, poor concentration, nightmare, shame, auditory hallucination and low self-esteem. She is deeply depressed and suffer from traumatic sexualization. From psychotherapeutic point of view subject needs constant counseling to overcome her presented (sic) crisis. To assist the subject to ventilate her ambivalent feeling. To restore moral values, improve her self-esteem and enhance her emotional and social functioning.

As to the third element, there is no dispute that Kristine Joy is a minor, as she was only eight years old at the time of the incident in question.

Finally, we note that no award for moral damages was made by both the trial court and the Court of Appeals

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despite the fact that the mental anguish suffered by Kristine Joy on account of her harrowing experience is spread all over the records of the case and has been well documented by the psychologist who examined her as reflected in her report quoted above. At the risk of being repetitive, proof of Kristine Joy's mental anguish, wounded feelings and social humiliation finds an express outlet in her words: "madumi na ang sarili ko, nahihiya ako sa magulang ko at Uncle ko baka tuksuhin akong bobo na hindi ko agad sinabi" and "ang masidhing ala-ala ng aking kamusmusan ay yong panghihipo ni Tikboy." We therefore modify the ruling of the Court of Appeals by awarding moral damages to Kristine Joy in the amount of Twenty Thousand Pesos (P20,000.00) pursuant to Article 2219 of the Civil Code.[30]

Additionally, we find relevant to discuss here the case of People v. Solmoro[31] wherein we declared that upon a finding of guilt of the accused for acts of lasciviousness, the amount of P30,000.00 as moral damages may be further awarded to the victim in the same way that moral damages are awarded to victims of rape even without need of proof because it is assumed that they suffered moral injury. Considering that the crime of acts of lasciviousness or abusos dishonestos is necessarily included in rape[32] and both cases involve sexual assault albeit in different degrees, the rationale for foregoing with proof of moral damages in rape cases applies with equal force to crimes of acts of lasciviousness, the rationale being:

> One other cognate development in the case law on rape is applicable to the present disposition. The Court has also resolved that in crimes of rape, such as that under consideration, moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. Indeed, the conventional requirement of allegata et probate in civil procedure and for essentially civil cases should be dispensed with in criminal prosecutions for rape with the civil aspect included therein, since no appropriate pleadings are filed wherein such allegations can be made.
>
> Corollarily, the fact that complainant has suffered the trauma of mental, physical and psychological sufferings which constitute the bases for moral damages are too obvious to still require the recital thereof at the trial by the victim, since the Court itself even assumes and acknowledges such agony on her part as a gauge of her credibility. What exists by necessary implication as being ineludibly present in the case need not go through the superfluity of still being proved through a testimonial charade.[33]

It does not end there. In People v. Abadies,[34] and with respect specifically to lascivious conduct amounting to child abuse under Section 5(b) of Rep. Act No. 7610, we imposed a fine of P30,000 for each count of lascivious conduct in addition to the award of moral damages on the justification that –

It will be noted that Section 5, Article II of Republic Act No. 7610 provides for the penalty of imprisonment. Nevertheless, Section 31(f), Article XII (Common Penal Provisions) thereof allows the imposition of a fine subject to the discretion of the court, provided that the same is to be administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense. This provision is in accord with Article 39 of the Convention on the Rights of the Child, to which the Philippines became a party on August 21, 1990, which stresses the duty of states parties to ensure the physical and psychological recovery and social reintegration of abused and exploited children in an environment which fosters their self-respect and human dignity.

With the case of Abadies as guidepost, we impose a fine of Fifteen Thousand Pesos (P15,000.00) on petitioner.

WHEREFORE, premises considered, the Resolution of the Court of Appeals modifying the Decision of the Regional Trial Court of Olongapo City, Branch 72, finding accused-petitioner ALVIN AMPLOYO y EBALADA alias "TIKBOY" guilty beyond reasonable doubt of violation of Republic Act No. 7610, and sentencing him to

suffer the 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 is AFFIRMED with the MODIFICATION that petitioner is hereby ordered to pay a fine of Fifteen Thousand Pesos (P15,000.00) and moral damages in the amount of Twenty Thousand Pesos (P20,000.00). No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Edgardo P. Cruz and Amelita G. Tolentino concurring; Rollo, pp. 78-84.

[2] Decided by Judge Eliodoro G. Ubiadas; Rollo, pp. 59-44.

[3] Penned by Associate Justice Oswaldo D. Agcaoili with Associate Justices Edgardo P. Cruz and Amelita G. Tolentino concurring; Rollo, pp. 91-92.

[4] Rollo, p. 27.

[5] RTC Records, p. 145.

[6] Id., pp. 120-128.

[7] Id., pp. 137-138.

[8] As evidenced by her Birth Certificate (Exh. B for the Prosecution), Records, p. 104.

[9] Rollo, pp. 53-54.

[10] Rollo, p. 92.

[11] People v. Abadies, G.R. Nos. 139346-50, 11 July 2002, 384 SCRA 442, 447.

[12] Webster’s Third New International Dictionary.

[13] Collin’s English Dictionary, 1990 ed.

[14] People v. Victor, G.R. No. 127904, 05 December 2002, 393 SCRA 472, 485, citing People v. Balbar, G.R. Nos. L-20216 and L-20217, 29 November 1967, 21 SCRA 1119, 1124.

[15] G.R. No. 10341, 03 March 1915, 30 Phil. 22, 25.

[16] Now Article 336.

[17] People v. Bernaldo, CA-G.R. No. 26102-R, 31 October 1959, cited in Reyes, The Revised Penal Code, p. 859 (14th Ed.).

[18] People v. Dagami, G.R. No. 136397, 11 November 2003, 415 SCRA 482, 505.

[19] People v. Larin, G.R. No. 128777, 07 October 1998, 297 SCRA 309, 325-326.

[20] RTC Decision, Records, p. 50; TSN, 24 November 1997, p. 10; TSN, 23 February 1998, pp. 9-12.

[21] CA Decision, Rollo, p. 79; TSN, 23 February 1998, pp. 12-25.

[22] RTC Decision, Records, p. 50; TSN, 24 November 1997, p. 10.

[23] Id., p. 318.

[24] Supra, note 19.

[25] People v. Victor, supra, note 14, p. 485.

[26] Ibid., citing Padilla, Criminal Law, Revised Penal Code, Vol. 4, p. 610 (1990 ed.).

[27] People v. Adora, G.R. Nos. 116528-31, 14 July 1997, 275 SCRA 441, 468.

[28] Ibid.

[29] Which she affirmed on the witness stand (TSN, 24 Nov. 1998, p. 18); Exh. "I" for the prosecution, RTC Records, p. 115.

[30] Art. 2210. Moral damages may be recovered in the following and analogous cases:

. . .

3) Seduction, abduction, rape or other lascivious acts.

[31] G.R. Nos. 139187-94 (140427-34), 27 November 2002, 393 SCRA 100, 111-112. See also People v. Bon, G.R. No. 149199, 28 January 2003, 396 SCRA 507, 517.

[32] People v. Mariño G.R. No. 132550, 19 February 2001, 352 SCRA 127, 147; People v. Castillo, G.R. No. 131200, 15 February 2002, 377 SCRA 99, 114; People v. Esperanza, G.R. Nos. 139217-24, 27 June 2003, 405 SCRA 175, 189.

[33] People v. Prades, G.R. No. 127569, 30 July 1998, 293 SCRA 411, 430-431.

[34] Supra, note 11, p. 451.

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