

NONITO IMBO Y GAMORES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 197712. April 20, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated 17 February 2011 of the Court of Appeals in CA-G.R. CR No. 32804 which affirmed the Judgment of the Regional Trial Court, Branch 94, Quezon City convicting petitioner Nonito Imbo y Gamores of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5, Article III of Republic Act (R.A.) No. 7610, The Special Protection of Children Against Child Abuse, Exploitation and Discrimination.[2]

Petitioner was charged in the following Information:

That on or about the period comprised from October 14, 2003 up to January 25, 2004, in Quezon City Philippines, [petitioner], with force and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon [AAA],[3] his own daughter, 11 years old, a minor, by then and there forcing her to remove her shorts, massaging her breasts and private parts and kissing her, thereby subjecting said complainant to sexual abuse, with lewd design and against her will, which act debases, degrades or demeans the intrinsic worth of dignity of [AAA] as a human being, to the damage and prejudice of the said offended party.[4]

Upon arraignment, petitioner pleaded not guilty. At the pre-trial, the prosecution and the defense, stipulated on the following: (1) private complainant, AAA, is a minor, eleven (11) years of age at the time of the commission of the offense; and (2) petitioner is the father of AAA.

At the trial, AAA testified that sometime between the periods of 14 October 2003 to 25 January 2004, while their entire household was asleep and had retired for the night, she was awakened by petitioner, her own father, licking her vagina and massaging her breasts. At the time, AAA was sleeping at the second level of their residence with her younger sister, BBB. AAA immediately and repeatedly shouted for her mother, CCC, who was sleeping outside the room, but to no avail. AAA continued to shout for her mother prompting petitioner to leave and run out of the room. AAA cried herself to sleep, and on the very next day told her mother of what her father, petitioner, had done to her.

Petitioner denied the charge, claiming that his wife, CCC, AAA's mother, merely fabricated such a story. Petitioner countered that he and his wife, CCC, had fought on the night of 6 August 2003, which impelled CCC to create the convoluted charge of petitioner sexually abusing his own daughter. Ultimately, petitioner claimed that on the night in question, within the period from 14 October 2003 to 25 January 2004, no crime occurred, his days ending as did his workday which were from 8:30 a.m. to 5:00 p.m.

The trial court found AAA's testimony credible and convincing and rendered judgment convicting petitioner of

the crime of Acts of Lasciviousness:

WHEREFORE, accused Nonito Imbo Y Gamores is hereby found to be GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate sentence of FOURTEEN (14) YEARS, EIGHT (8) MONTHS OF RECLUSION TEMPORAL AS MINIMUM TO SEVENTEEN (17) YEARS, FOUR (4) MONTHS OF RECLUSION TEMPORAL AS MAXIMUM in accordance with Section 5 of Republic Act No. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination.

He is further ordered to pay private complainant [AAA] civil indemnity of P50,000.00, moral damages of P50,000.00 and P25,000.00 as exemplary damages.[5]

Adamant on his innocence, petitioner filed a Notice of Appeal to the appellate court maintaining that he did not commit Acts of Lasciviousness against his own daughter, AAA; the charge was only concocted by his wife who, for some reason, wanted to separate from him.

The Court of Appeals affirmed the trial court's conviction of petitioner for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of R.A. No. 7610.

Petitioner thus appeals by certiorari to us raising the following errors:

I

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND IMPLAUSIBLE TESTIMONY OF PRIVATE COMPLAINANT [AAA].

II

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN IMPOSING THE PENALTY UNDER SECTION 5 OF REPUBLIC ACT NO. 7610 DESPITE THE FACT THAT THE INFORMATION FAILED TO INDICATE THE APPLICABILITY THEREOF.[6]

Petitioner maintains that AAA's testimony was highly incredible, inconsistent and implausible and without corroborating testimony. Petitioner points to the following circumstances as loopholes in AAA's story, casting doubt on her credibility:

1. AAA herself narrated that their entire family of twelve (12), her parents and nine (9) other siblings, all lived in a cramped two (2)-storey house with at least five people sleeping in one area within earshot of each other such that BBB or CCC could have easily witnessed if petitioner indeed committed Acts of Lasciviousness against AAA;
2. Specifically, on the night in question, other members of their family outside the room on the second floor of their house, would have immediately noticed petitioner enter the room;
3. Strangely, AAA claims having shouted three (3) times for her mother, CCC, but did not awaken CCC or any other member of their household where "the smallest movement, the slightest noise, even the steady and heavy rhythm of a breath would not be left unnoticed;"
4. AAA did not allege or demonstrate either force or intimidation exercised by petitioner on her, inconsistent with the charge of sexual assault or abuse; and
5. AAA was ill-motivated and simply influenced by her mother, CCC, to accuse petitioner of sexual abuse because CCC needed justification to separate from petitioner.

We are not persuaded.

The prosecution established beyond reasonable doubt the guilt of petitioner.

Under Article 336 of the RPC, the elements of the crime of Acts of Lasciviousness 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. By means of fraudulent machination or grave abuse of authority; and
 - d. When the offended party is under 12 years of age.

(3) That the offended party is another person of either sex.[7]

Notably, the parties already stipulated on AAA's minority, that she was, at the time of the assault, under 12 years of age. The only issue in this case then concerns the first element which is whether or not petitioner committed acts of lasciviousness or lewdness against his own daughter, AAA. The details of the testimony on the act establish, even dramatize, the gross incest during the night in question. The offended daughter narrated that her lecherous father licked her vagina and mashed her breasts.

On more than one occasion, we have held that the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[8] The fact that no other member of their household corroborated the testimony of AAA is not definitive of the commission of the crime. By its very nature, sexual abuse, in this case, acts of lasciviousness by the petitioner against his own daughter, is generally done out of sight of people and is only attested to by the victim and the perpetrator. On the other hand, the inconsistencies pointed out by petitioner do not discount at all the possibility of him sexually abusing his own daughter on the night in question. As already pointed out in the past: Lust is no respecter of time and place.[9]

In this case, both the trial court and the Court of Appeals found the testimony of AAA credible over petitioner's defense of denial and alibi. We subscribe to the settled rule that denial is a weak defense as against the positive identification by, and straightforward narration of the victim. Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[10]

Petitioner's defense of denial and alibi that he was at his place of work from 8:00 a.m. to 5:00 p.m. fails over the positive and straightforward testimony of AAA on the incident. Further, as the trial court and the Court of Appeals have, we likewise find implausible petitioner's vaguely drawn defense that the case was ill-motivated, CCC unduly influencing AAA to suddenly accuse her father of Acts of Lasciviousness to justify CCC's plan to separate from petitioner.

We are hard pressed to give credence to petitioner's defense which ultimately translates to AAA's exposure to, and CCC allowing her daughter to suffer through, a public trial if the charges were not true, just to facilitate the de facto separation of petitioner and CCC. To concoct a story of incestuous molestation by one's own father or to agree to the mother's alleged manipulations to accuse the father of sexual abuse, is unnatural and against human nature.[11] If at all, CCC's supposed influence on her daughter, AAA, to falsely accuse her own father, petitioner, of Acts of Lasciviousness, should have also extended to her influence over her other children to corroborate the testimony of AAA and further solidify the charge against petitioner.

We also affirm both lower courts' ruling on the application of Section 5, Article III of R.A. No. 7610 for the imposable penalty on petitioner.

Section 5, Article III of R. A. No. 7610 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:

(a) 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

(c) x x x

The elements of sexual abuse under Section 5, Article III of R.A. No. 7610 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.[12]

Contrary to the contention of petitioner that the penalty in Section 5, Article III of R.A. No. 7610 is inapplicable since there was no allegation relating thereto in the Information, we find that the elements and act of sexual abuse under R.A. No. 7610 were sufficiently alleged in the Information and duly proven during trial.

The Information specifically stated that:

- (1) At the time of the incident, AAA was a minor;
- (2) Petitioner committed a lascivious act against AAA by kissing her private parts and massaging her breasts; and
- (3) Corollary to paragraph 2, petitioner subjected AAA to sexual abuse, debasing, degrading or demeaning the offended party's intrinsic worth and dignity as a human being.

That petitioner committed Acts of Lasciviousness against AAA is bolstered by Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610 which 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.

It needs to be restated, too, that the mere act of committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense. It is a *malum prohibitum*, an evil that is proscribed[13] and was duly alleged in the Information against petitioner.

Above all, it is quite clear by specific provision of Section 5 Article III of R.A. No. 7610 that when the victim is under 12 years of age, the perpetrators shall be prosecuted under the RPC, but the penalty is that which is provided in R.A. No. 7610. Petitioner's submission that he cannot be penalized under R.A. No. 7610 because the Information failed to indicate its applicability, is, therefore, without merit.

As regards the imposable penalty, the lower courts imposed the penalty on petitioner of fourteen (14) years, eight (8) months of reclusion temporal as minimum to seventeen (17) years, four (4) months of reclusion temporal as maximum.

We find need to modify the penalty imposed by the lower court as it failed to properly apply Republic Act No. 4103, the Indeterminate Sentence Law. We need also to discuss how the correct penalty is reached given that the trial court, except for the dispositive portion of the decision, which was simply affirmed by the appellate court, did not specifically mention the applicability of R.A. No. 7610 in the determination of the imposable penalty on petitioner.

Section 5(b), Article III of R.A. No. 7610 provides the imposable penalty for Acts of Lasciviousness when the victim is under twelve (12) years of age, albeit the offense is prosecuted under Article 336 of the RPC, is reclusion temporal in its medium period.

The range of the imposable penalty on petitioner of reclusion temporal in its medium period is fourteen (14) years, four (4) months and one (1) day to seventeen (17) years and four (4) months.

The Indeterminate Sentence Law is applicable to prison sentence both for an offense punished by the RPC and an offense punished "by any other law." Thus:

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 supplied)

For an offense punished by the Code, the minimum shall be within the range of the penalty next lower to that prescribed by the Code for the offense. If the offense is punished by any other law, the minimum shall not be less than the minimum specified by said law. It is clear however that for the two kinds of offenses, separately punished by the Code and by "any other law," the application of the Indeterminate Sentence Law differ in the minimum terms of the sentence.

The correct application of the Indeterminate Sentence Law has long been clarified in *People v. Simon*[14] which ruled that the underscored portion of Section 1 of the Indeterminate Sentence Law, i.e. the "offense is punished by any other law," indubitably refers to an offense under a special law where the penalty imposed was not taken from and is without reference to the RPC.

In *People v. Fragante*,[15] citing *People v. Velasquez*,[16] we imposed the indeterminate sentence of twelve (12) years and one (1) day of reclusion temporal as minimum to seventeen (17) years of reclusion temporal as maximum:

In Criminal Case Nos. 98-651, 98-653, 98-654, 98-655, and 98-656, where AAA was still below 12 years old at the time of the commission of the acts of lasciviousness, the imposable penalty is reclusion temporal in its medium period in accordance with Section 5(b), Article III of Republic Act No. 7610. This provision specifically states "[t]hat the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period." Considering the presence of the aggravating circumstance of relationship, as explained, the penalty shall be imposed in its maximum period. In *People v. Velasquez*, which involved a two year old child sexually abused by her grandfather, the Court imposed the indeterminate sentence of 12 years and 1 day of reclusion temporal as minimum to 17 years of reclusion temporal as

maximum. Accordingly, appellant herein is sentenced to suffer the indeterminate penalty of 12 years and 1 day of reclusion temporal as minimum to 17 years of reclusion temporal as maximum.

Clearly, in this case, the minimum term should be within the range of the penalty next lower to that prescribed by the RPC, i.e. reclusion temporal in its minimum period of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

As for the maximum term of the impossible penalty on petitioner, the lower courts while correct, should have mentioned Section 31(c), Article XII of R.A. No. 7610. The provision takes into consideration the relationship between the parties, petitioner being AAA's father, thus:

SEC. 31. Common Penal provisions.—

(a) xxx

(b) xxx

(c) 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 xxx; (Emphasis supplied)

With the aggravating circumstance of relationship and applying the Indeterminate Sentence Law, the penalty imposed by the lower courts of seventeen (17) years, four (4) months of reclusion temporal correctly does not exceed the maximum of the penalty range of reclusion temporal in its medium period (14 years, 4 months and 1 day to 17 years and 4 months).

Lastly, we modify the awards of civil indemnity and both moral and exemplary damages, albeit the lower courts correctly appreciated the aggravating circumstance of relationship in awarding exemplary damages. Consistent with recent jurisprudence on the crime of Acts of Lasciviousness under Article 336 of the RPC penalized in relation to Section 5(b), Article III of R.A. No. 7610, we award the following amounts of: (1) P15,000.00 as fine, (2) P20,000.00 as civil indemnity, (3) P15,000.00 as moral damages, and (4) P15,000.00 as exemplary damages.[17]

WHEREFORE, the appeal is DENIED. The Decision dated February 17, 2011 of the Court of Appeals in CA-G.R. CRNo. 32804 and the Judgment of the Regional Trial Court, Branch 94, Quezon City in Criminal Case No. 04-124565 are AFFIRMED WITH MODIFICATION. Petitioner Nonito Imbo Y Gamores is sentenced to an indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal as minimum and seventeen (17) years and four (4) months of reclusion temporal as maximum. Petitioner Nonito Imbo Y Gamores is ordered to pay:

(1) Fine in the amount of P15,000.00;

(2) Civil Indemnity in the amount of P20,000.00;

(3) Moral damages in the amount of P15,000.00;

(4) Exemplary damages in the amount of P15,000.00; and

(5) 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 full satisfaction thereof.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 67-78; Penned by Associate Justice Ruben C. Ayson with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro concurring.

[2] Id. at 47-52; Penned by Presiding Judge Roslyn M. Rabara-Tria.

[3] See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Rollo, p. 47.

[5] Id. at 52.

[6] Id. at 16-17.

[7] *People v. Padigos*, G.R. No. 181202, 5 December 2012, 687 SCRA 245, 258.

[8] *Garingarao v. People*, G.R. No. 192760, 20 July 2011, 654 SCRA 243, 252.

[9] *People v. Gaduyon*, G.R. No. 181473, 11 November 2013, 709 SCRA 129, 157; *People v. Lomaque*, G.R. No. 189297, 5 June 2013, 697 SCRA 383, 401.

[10] *Garingarao v. People*, supra note 8; *People v. Fetalino*, 552 Phil. 254, 275 (2007).

[11] Id. at 252-253.

[12] *People v. Fragante*, 657 Phil. 577, 596 (2011); *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 394; *Amployo v. People*, 496 Phil. 747, 758 (2005).

[13] *Malto v. People of the Philippines*, 560 Phil. 119, 139 (2007).

[14] G.R. No. 93028, 29 July 1994, 234 SCRA 555, 580.

[15] Supra note 12 at 601 -602.

[16] 405 Phil. 75, 107 (2001).

[17] *People v. Baraga*, G.R. No. 208761, 4 June 2014; *Roallos v. People*, G.R. No. 198389, 11 December 2013, 712 SCRA 593, 608; *Garingarao v. People*, supra note 8 at 255; *People v. Fragante*, supra note 12 at 602.

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