CHRISTOPHER FIANZA A.K.A. “TOPEL,” PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 218592. August 02, 2017

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for review on certiorari[1] are the Decision[2] dated November 24, 2014 and the Resolution[3] dated May 29, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 35293, which upheld the Decision[4] dated September 6, 2012 of the Regional Trial Court of Tayug, Pangasinan, Branch 52 (RTC) in Criminal Case Nos. T-5144 and T-5145, finding petitioner Christopher Fianza a.k.a. "Topel" (Fianza) guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b),[5] Article III of Republic Act No. (RA) 7610,[6] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

The Facts

Fianza was charged with two (2) counts of violation of Section 5 (b), Article III of RA 7610 under two (2) Informations[7] dated April 6, 2011 filed before the RTC.[8] The prosecution's version of the incidents are as follows:

Sometime in July 2010,[9] AAA,[10] who was then 11 years old, was called by Fianza to his house and thereupon, was asked to wash his clothes. After AAA was finished with the laundry, Fianza asked her to go with him to the kamalig. Thereat, they proceeded to the second floor where Fianza removed his pants and briefs, lied down, and ordered AAA to hold his penis and masturbate him. After ejaculating, Fianza put on his clothes, and gave P20.00 to AAA who, thereafter, went home.[11]

On November 30, 2010, while AAA was home, Fianza called her to his house, and asked her to clean the same. After she was done sweeping the floor, they proceeded to the second floor of the kamalig. Thereat, Fianza again removed his pants and briefs, lied down, and ordered AAA to fondle his penis. After the deed, he gave P20.00 to AAA who, thereafter, went home.[12]

After the second incident, AAA related the matter to her cousin, CCC,[13] who, in turn, told BBB,[14] AAA's mother, who reported the matter to the police.[15]

For his part, Fianza interposed the defense of denial and alibi. He claimed that he lived with his uncle in Andalasi, Pangasinan (Andalasi), while the rest of his family resided in Sapinit, Pangasinan (Sapinit), and were neighbors with AAA. He averred that in July 2010, he went to Sapinit to gamble all night, and went to his parents' house the following morning to sleep before going home to Andalasi.[16] As for the November 30, 2010 incident, he maintained that he was in Andalasi drinking with his friends as he had just sold a carabao. The next day, he went to get the carabao that he sold, and bought more liquor. He proceeded to Sapinit to have another drinking session that lasted until December 4, 2010.[17]

The RTC Ruling

In a Decision[18] dated September 6, 2012, the RTC found Fianza guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (b), Article III of RA 7610, and sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of reclusion temporal minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal medium, as maximum, and ordered him to pay AAA the amount of P30,000.00 as moral damages for each count.

The RTC held that for an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years old, the requisites for acts of lasciviousness under Article 336[19] of the Revised Penal Code (RPC) must be met in addition to the requisites of sexual abuse under Section 5 of RA 7610,[20] which the prosecution was able to establish. It gave full faith and credence to the testimony of AAA who remained steadfast in her claim and who was not shown to have been impelled by any ill-motive to testify falsely against Fianza.[21] On the other hand, it declared that Fianza's actions showed that he took advantage of AAA's naivete and innocence to satisfy his lewd designs.[22]

Aggrieved, Fianza elevated[23] his conviction to the CA, docketed as CA-G.R. CR No. 35293.

The CA Ruling

In a Decision[24] dated November 24, 2014, the CA upheld Fianza's conviction for two (2) counts of violation of Section 5 (b), Article III of RA 7610.

The CA observed that while Fianza was charged with violations of Section 5 (b), Article III of RA 7610 (sexual abuse), the proper appellation of the crimes should be violations of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5 (b), Article III of RA 7610, and found that the prosecution was able to establish all the requisites for both Acts of Lasciviousness and sexual abuse. It declared that Fianza, a 35-year-old adult, had moral ascendancy over 11-year-old AAA; hence, his act of coercing AAA to engage in lascivious conduct falls within the meaning of the term sexual abuse.[25]

However, the CA reduced the award of moral damages to P25,000.00, and further ordered Fianza to pay a fine in the amount of P15,000.00 for each count of sexual abuse, with legal interest at the rate of six percent (6%) per annum on the amounts due from the finality of judgment until full payment.[26]

Dissatisfied, Fianza moved for reconsideration,[27] which was, however, denied in a Resolution[28] dated May 29, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly upheld Fianza's conviction.

The Court's Ruling

At the outset, the Court deems it appropriate to correct the appellation of the crime with which Fianza was charged to Acts of Lasciviousness under Article 336 of the RPC considering that the victim, AAA, was only 11 years old at the time of the incidents. In instances where the child subjected to sexual abuse through lascivious conduct is below twelve (12) years of age, the offender should be prosecuted under Article 336 of the RPC, but suffer the higher penalty of reclusion temporal in its medium period in accordance with Section 5 (b), Article III of RA 7610, which pertinently reads:

> 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:
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> 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 [sic] 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. (Emphasis and underscoring supplied)

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 thereunder.[29]

The elements of Acts of Lasciviousness under Article 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness; (b) the lascivious act is done under any of the following circumstances: (i) by using force or intimidation; (ii) when the offended party is deprived of reason or otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age; and (c) the offended party is another person of either sex.[30] On the other hand, sexual abuse, as defined under Section 5 (b), Article III of RA 7610 has three (3) elements: (a) the accused commits an act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child is below eighteen (18) years old.[31]

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. 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. Hence, whether or not a particular conduct is lewd, by its very nature, cannot be pigeonholed into a precise definition.[32]

Lascivious conduct, on the other hand, is defined under Section 2 (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Rules on Child Abuse Cases) as:

> [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;

In the present case, the existence of all the elements of Acts of Lasciviousness under Article 336 of the RPC, as well as the first and third elements of sexual abuse under Section 5 (b), Article III of RA 7610, remains undisputed. Records disclose that on two (2) occasions in July 2010 and on November 30, 2010, Fianza induced AAA, an 11-year-old minor, to hold his penis and masturbate him. The only point of dispute is with regard to the existence of the second element of sexual abuse, i.e., whether or not the lascivious conduct was performed on a child subjected to other sexual abuse.

A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. Case law further clarifies that lascivious conduct under the coercion or

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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.[33] Corollory thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

> [T]he employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children x x x

The 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." On the other hand, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."[34]

With the foregoing parameters considered, the Court finds that Fianza's acts were attended by coercion or influence within the contemplation of Section 5 (b), Article III of RA 7610.

It is undisputed that AAA was only 11 years old at the time of the incidents, hence, considered a child under the law. Section 3 (a), Article I of RA 7610 defines children in this wise:

> (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[.]

Case law states that a child, such as AAA in this case, is presumed to be incapable of giving rational consent to any lascivious act. In Malto v. People,[35] the Court explained:

> A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as parens patriae, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.
>
> The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.[36]

Records likewise indicate that Fianza was about 35 years old at the time of the commission of the offense,[37] or 24 years older than AAA, more or less. The age disparity between them clearly placed Fianza in a stronger position over AAA which enabled him to wield his will on the latter.[38]

However, Fianza assails his conviction for the prosecution's failure: (a) to specify in the Information in Criminal Case No. T-5144 the date of the commission of the offense;[39] and (b) to indicate in the information in both cases that the complained acts were performed with a child exploited in prostitution or subjected to other sexual abuse[40] in violation of his right to be informed of the nature and cause of the accusations against him.

In this relation, Section 6, Rule 110 of the Rules of Court (Rules), which lays down the guidelines in determining the sufficiency of a complaint or information, provides:

> SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name

> of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> x x x x

As to the sufficiency of the allegation on the date of the commission of the offense, Section 11, Rule 110 of the Rules adds:

> SEC. 11. Date of commission of the offense. - It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (Emphasis and underscoring supplied)

Conformably with these provisions, when the date given in the complaint is not of the essence of the offense, it need not be proven as alleged; thus, the complaint will be sustained if the proof shows that the offense was committed at any date within the period of the statute of limitations and before the commencement of the action.[41]

In this case, Fianza had been fully apprised of the charges against him since the Informations stated the approximate date of the commission of the offense to be "sometime during the month of July 2010." Indeed, the precise date and time of the incidents are not among the elements of sexual abuse under Section 5 (b), Article III of RA 7610.[42]

It is likewise well-settled that it is sufficient that the acts or omissions constituting the offense be stated in the information in ordinary and concise language and not necessarily in the language used in the statute, albeit in terms sufficient to enable a person of common understanding to know what offense is being charged and for the court to pronounce judgment.[43]

In the instant case, the Informations not only referred to the specific section of RA 7610 that was violated, but also stated that: (a) AAA was an 11-year-old minor at the time of the offense; and (b) Fianza committed lascivious conduct by forcing AAA to masturbate his penis.[44]

To reiterate, a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or intimidation,[45] or influence of any adult.[46]

Force or intimidation in cases involving prosecutions for Rape and Acts of Lasciviousness is defined as "power, violence or constraint exerted upon or against a person."[47] In People v. Maceda,[48] the Court explained the standards for evaluating the force or intimidation employed in rape, which equally applies to Acts of Lasciviousness[49] as well as violation of Section 5 (b), Article III of RA 7610:[50]

> [I]t is not necessary that the force and intimidation employed in accomplishing it be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. The intimidation must be judged in the light of the victim's perception and judgment at the time of the commission of the crime, and not by any hard and fast rule.[51] (Emphasis and underscoring supplied)

The allegation that Fianza committed lascivious conduct by forcing AAA to masturbate his penis was sufficient to apprise him of the nature of the criminal act with which he was charged to enable him to prepare his defense. Contrary to his protestations, the Informations sufficiently alleged the second element of sexual abuse, albeit not employing the exact language of the law, i.e., that the lewd acts being complained of were performed with a child exploited in prostitution or subjected to other sexual abuse.

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Notably, Fianza failed to refute AAA's claim that she was compelled to do as he instructed because he threatened to humiliate her and her family.[52] In Amployo v. People,[53] a case involving a similar prosecution for lascivious conduct committed on an eight-year-old minor, the Court held that intimidation need not necessarily be irresistible, especially in the case of young girls, thus:

> [I]ntimidation 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.[54] (Emphasis supplied)

It is not hard to imagine 11-year-old AAA being intimidated and cowed into silence and submission by her neighbor, a full grown adult male old enough to be her parent,[55] with threat of humiliation, should she not give in to his dastardly desires. She is still a child not capable of fully understanding or knowing the import of her actions. Verily, in almost all cases of sexual abuse, the credibility of the victim's testimony is crucial in view of the intrinsic nature of the crime where only the persons involved can testify as to its occurrence. Hence, the Court accords a high degree of respect to the assessment of the trial court which is in the best position to observe the declarations and demeanor of the witnesses, and evaluate their credibility, even more so when the same is affirmed by the CA,[56] as in this case.

Accordingly, the Court finds the prosecution to have sufficiently established Fianza's guilt beyond reasonable doubt for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610. Applying the Indeterminate Sentence Law, and absent any mitigating or aggravating circumstances, he is hereby sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day of reclusion temporal in its minimum period, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal in its medium period, as maximum.[57] However, in line with recent jurisprudence, the Court modifies the awards of civil indemnity and moral damages, and hereby orders Fianza to pay the amounts of P15,000.00 as fine, P20,000.00 as civil indemnity, and P15,000.00 as moral damages, for each count, plus legal interest thereon at the rate of six percent (6%) per annum from the finality of this judgment until full payment.[58]

WHEREFORE, the petition is DENIED. The Decision dated November 24, 2014 and the Resolution dated May 29, 2015 of the Court of Appeals in CA-G.R. CR No. 35293 are hereby SET ASIDE and a new one is entered finding petitioner Christopher Fianza a.k.a. "Topel" (Fianza) GUILTY beyond reasonable doubt of two (2) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b), Article III of Republic Act No. 7610. Fianza is sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day of reclusion temporal in its minimum period, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of reclusion temporal in its medium period, as maximum, and is ordered to pay AAA the amounts of P15,000.00 as fine, P20,000.00 as civil indemnity, and P15,000.00 as moral damages, for each count, plus legal interest at the rate of six percent (6%) per annum from the finality of this judgment until full payment.

SO ORDERED.

Sereno, C. J., (Chairperson), Leonardo-De Castro, and Del Castillo, JJ., concur.
Caguioa, J., See dissenting opinion.

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[1] Rollo, pp. 12-31.

[2] Id. at 35-44. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Vicente S.E.

Veloso and Jane Aurora C. Lantion concurring.

[3] Id. at 46-47. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Jane Aurora C. Lantion and Ramon Paul L. Hernando concurring.

[4] Id. at 64-72. Penned by Presiding Judge Emma S. Ines-Parajas.

[5] 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 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 Articlem 336 of Act No. 3815, as amended, the Revised Penal Code [RPC], 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[.]

[6] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES" (approved on June 17, 1992).

[7] Not attached to the rollo. See rollo, p. 36.

[8] Id. at 64-65.

[9] Id. at 77.

[10] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, and Section 40 of A.M. No. 04-10-11-SC, known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 5, 2004). (See footnote 5 in People v. Balcueva, G.R. No. 214466, July 1, 2015.)

[11] Rollo, pp. 77-78.

[12] Id. at 78.

[13] See footnote 10.

[14] Id.

[15] Rollo, p. 66.

[16] Id. at 37.

[17] Id. at 37-38.

[18] Id. at 64-72.

[19] Art. 336. Acts of lasciviousness. - Any person who shall commit any act oflasciviousness upon other persons

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of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

[20] Rollo, p. 70, citing Cabila v. People, 563 Phil. 1020, 1027 (2007), further citing Amployo v. People, 496 Phil. 747 (2005).

[21] Id. at 68.

[22] Id. at 71.

[23] See Brief for the Accused-Appellant dated June 3, 2013; id. at 48-63.

[24] Id. at 35-44.

[25] Id. at 40-42.

[26] Id. at 43.

[27] See motion for reconsideration dated December 15, 2014; id. at 96-99.

[28] Id. at 46-47.

[29] Amployo v. People, supra note 20, at 755. See also People v. Lomaque, 710 Phil. 338, 357-358 (2013).

[30] People v. Lomaque, id.

[31] People v. Baraga, 735 Phil. 466, 473 (2014).

[32] PO3 Sombilon, Jr. v. People, 617 Phil. 187, 196 (2009), citing Amployo v. People, supra note 20, at 756.

[33] Caballo v. People, 710 Phil. 792, 803 and 805 (2013).

[34] Id. at 243.

[35] 560 Phil. 119 (2007).

[36] Id. at 139-141.

[37] He was 37 years old when he testified on February 21, 2012; see Transcript of Stenographic Notes (TSN), February 21, 2012, p. 38.

[38] See Caballo v. People, supra note 33, at 245.

[39] Rollo, p. 19.

[40] Id. at 24.

[41] Zapanta v. People, 707 Phil. 23, 30 (2013).

[42] See People v. Fragante, 657 Phil. 577, 597 (2011).

[43] Malto v. People, supra note 35, at 132-133.

[44] Rollo, p. 36.

[45] Amployo v. People, supra note 20, at 759, citing People v. Larin, 357 Phil. 987, 998 (1998).

[46] Caballo v. People, supra note 33, at 242-243.

[47] See People v. Balquedra, 693 Phil. 125, 134 (2012).

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[48] 405 Phil. 698 (2001).

[49] Under Article 336 of the RPC, the acts of lasciviousness must be committed under any of the circumstances mentioned in the definition of the crime of rape. See also LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW, BOOK TWO 919 (2012 edition).

[50] See People v. Abello, 601 Phil. 373, 393 (2009).

[51] People v. Maceda, supra note 48, at 721, citing People v. Moreno, 356 Phil. 231 (1998).

[52] See AAA's Sworn Statement dated February 9, 2011 taken during the investigation before the San Nicolas Police Station, San Nicolas, Pangasinan (Records, Vol. I, pp. 4-5), the truth and veracity of which she confirmed before the RTC (see TSN, November 8, 2011, p. 22).

[53] Supra note 20, at 759.

[54] Id.

[55] There is a 24 year age gap between Fianza and AAA, more or less (see footnote 37). Fianza was 37 years old when he testified on February 21, 2012 (see TSN, February 21, 2012, p. 38), while AAA's mother was 38 when she testified on August 16, 2011 (see TSN, August 16, 2011, p. 4).

[56] See People v. Subesa, 676 Phil. 403, 414 (2011).

[57] The penalty for violation of Section 5 (b), Article III of RA 7610 is reclusion temporal in its medium period which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the minimum of the penalty should be taken from reclusion temporal in its minimum period, or anywhere from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, and the maximum should be reclusion temporal in its medium period. In relation thereto, Article 64 of the RPC provides that when the penalty prescribed by law contains three periods (such as reclusion temporal) and in the absence of aggravating or mitigating circumstances, the penalty shall be imposed in its medium period. See Quimvel v. People, G.R. No. 214497, April 18, 2017, citing People v. Santos, 753 Phil. 637 (2015).

[58] See Imbo v. People, G.R. No. 197712, April 20, 2015, citing People v. Baraga, supra note 31, at 302; Roallos v. People, 723 Phil. 655, 672-673 (2013); Garingarao v. People, 669 Phil. 512, 524-525 (2011); People v. Fragante, supra note 42, at 602.

DISSENTING OPINION

CAGUIOA, J.:

The People's evidence shows that one morning in July 2010, Petitioner called 11-year-old AAA and asked the latter to wash his clothes in the bathroom of his house. After AAA had done so, Petitioner invited her to go with him to the kamalig, and at the second floor of the kamalig, Petitioner removed his pants, lay down, and asked AAA to hold his penis and "salsalen" (masturbate him). AAA did as instructed. After Petitioner ejaculated, he put on his pants and gave AAA P20.00. The same incident occurred on November 30, 2010, when Petitioner asked AAA to clean his house. After AAA cleaned Petitioner's house, the latter again asked AAA to go with him to the kamalig, where he again asked AAA to fondle his penis. After ejaculating, Petitioner again gave AAA P20.00. After the second incident, AAA reported the matter to her cousin CCC, who then told BBB, AAA's mother, of the

incident.

Acting on two (2) Informations, each charging Petitioner with one violation of Section 5(b), Article III of Republic Act No. (R.A.) 7610, the RTC convicted Petitioner for two (2) counts of violation of Section 5(b), Article III of R.A. 7610, and sentenced him to suffer the penalty of imprisonment for an indeterminate period of 12 years and 1 day of reclusion temporal minimum, as minimum, to 14 years, 8 months and 1 day of reclusion temporal medium, as maximum, as well as to pay AAA the amount of P30,000.00 in damages for each count. On appeal, the CA affirmed the conviction, albeit correcting the appellation of the crime to "violations of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610," reduced the award of moral damages to P25,000.00 and ordered Petitioner to pay a fine in the amount of P15,000.00 for each count of sexual abuse.

With due respect, I maintain my position as elucidated in my Dissenting Opinion in Quimvel v. People,[1] that a person may only be convicted of a violation of Article 336 in relation to Section 5(b), Article III of R.A. 7610 upon allegation and proof of the unique circumstances of the child-that is, that the child is "exploited in prostitution or subject to other sexual abuse". Conversely, the higher penalty of reclusion temporal, in the range that the ponencia holds to be applicable in this case, is not automatically applicable and may only be justified if it is alleged and proved that the child indulges in sexual intercourse or lascivious conduct, for money, profit, or any other consideration.

Applying the foregoing standards, it is my position that insofar as the first Information (pertaining to the July 2010 incident against AAA) is concerned, Petitioner cannot be convicted for violation of Article 336 of the RPC in relation to Section 5(b), Article III of R.A. 7610 and consequently suffer a penalty of reclusion temporal as provided for in Section 5(b), Article III of R.A. 7610, precisely because, as illustrated in my Dissenting Opinion in Quimvel,[2] a first sexual affront, on its own, cannot be automatically considered a violation of Section 5(b), absent a showing that the child is already a child "exploited in prostitution or subjected to other sexual abuse" at the time the sexual intercourse or lascivious conduct was committed, or that the circumstances prior to or during the act of complained of already constitutes the first instance of sexual intercourse or lascivious conduct so as to convert the child into a child "exploited in prostitution or subjected to other sexual abuse."

Here, the record is bereft of any allegation or proof that when the July 2010 incident took place, AAA was already a child "exploited in prostitution or subjected to other sexual abuse"; neither is there any fact from which inference can be made that the relationship between the Petitioner and the victim amounts to coercion or influence. Thus, I submit that the accused, in the first instance, should only be held liable for acts of lasciviousness under Article 336 of the RPC.

Prescinding from the above considerations, Petitioner, for the second instance, was correctly charged and convicted for a violation of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610, because, this time, the child, at the time the act complained of was committed, already qualifies as one subjected to "other sexual abuse"- thereby furnishing the essential element for a conviction under Article 336 of the RPC (Acts of Lasciviousness), in relation to Section 5(b), Article III of R.A. 7610.

Considering that the specific class of lascivious conduct in Section 5(b) of R.A. 7610 requires allegation that the acts were performed with a child exploited in prostitution or subjected to other sexual abuse, I respectfully submit that insofar as the first incident of July 2010 is concerned, the facts of the case warrant Petitioner's conviction only for acts of lasciviousness under Article 336 of the RPC. Inasmuch as the child was already subjected to "other sexual abuse" at the time the second sexual affront occurred on November 30, 2010, I raise no objection to Petitioner's conviction for violation of Article 336 of the RPC (Acts of Lasciviousness), in relation to Section

5(b), Article III of R.A. 7610, insofar as the second incident is concerned.

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[1] G.R. No. 214497, April 18, 2017.

[2] Id.

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