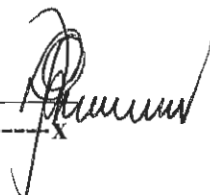


FIRST DIVISION

G.R. No. 232500 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
versus ZZZ,¹ *accused-appellant*.

Promulgated:

JUL 28 2020



X-----X

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the *ponencia* insofar as it affirms the guilt of the accused-appellant ZZZ (accused-appellant) for the crimes he was charged with.

I disagree, however, that the nomenclature of the crimes for Criminal Cases Nos. CR-08-9183, CR-08-9184, and CR-08-9185 should be modified to “lascivious conduct under Section 5(b), Republic Act No. 7610,” and the penalty increased to *reclusion perpetua* as a result of the modification.

I reiterate and maintain my position in *People v. Tulagan*² that Republic Act No. (RA) 7610 and the Revised Penal Code (RPC), as amended by RA 8353, “have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors.”³ Section 5(b) of RA 7610 applies only to the **specific** and **limited instances** where the child-victim is “exploited in prostitution or subjected to other sexual abuse” (EPSOSA).


In other words, for an act to be considered under the purview of Section 5(b), RA 7610, so as to trigger the higher penalty provided therein, “the following essential elements need to be proved: (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.”⁴ Hence, it is not enough that the victim be under 18 years of age. The element of the victim being EPSOSA — *a separate and distinct element* — must first be both

¹ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

² G.R. No. 227363, March 12, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

³ Dissenting Opinion of Justice Caguioa in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

⁴ Dissenting Opinion of Justice Caguioa in *People v. Tulagan*, G.R. No. 227363, March 12, 2019, *id.*, citing *People v. Abello*, 601 Phil 373, 392 (2009).



alleged and proved before a conviction under Section 5(b), RA 7610 may be reached.

Specifically, in order to impose the higher penalty provided in Section 5(b) as compared to Article 266-B of the RPC, as amended by RA 8353, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.⁵

In this case, the Informations only alleged that the victim was his 14-year-old daughter, but it did not allege that she was EPSOSA. Likewise, there was no proof or evidence presented during the trial that she indulged in lascivious conduct either for a consideration, or due to the coercion or influence of any adult.

Thus, while I agree that accused-appellant's guilt was proven beyond reasonable doubt, it is my view that his conviction in the aforementioned cases should only be for Acts of Lasciviousness, defined and punished under Article 266-A(2), in relation to Article 336 of the RPC — not Lascivious Conduct under Section 5(b), RA 7610. Accordingly, the penalty that ought to be imposed on him should be within the range of *arresto mayor* to *prision correccional* instead of the one imposed by the *ponencia* which is *reclusion perpetua*.

Meanwhile, I fully concur with the *ponencia* as regards its affirmance of his conviction in Criminal Cases Nos. CR-08-9135, CR-08-9136, and CR-08-9180 for violations of Section 5(i) in relation to Section 6(f) of RA 9262, Section 5(a) in relation to Section 6(a) of RA 9262, and qualified rape, respectively.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁵ Id.