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Supreme Court  
Manila

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EN BANC

**JEFFREY GRAMATICA y G.R. No. 260233**  
**LAURISTA,**

Petitioner,

- versus -

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

X-----X

**PEOPLE OF THE PHILIPPINES, G.R. No. 266039**  
Plaintiff-appellee,

Present:

**GESMUNDO, C.J.,**  
**LEONEN,**  
**CAGUIOA,**  
**HERNANDO**  
**LAZARO-JAVIER,**  
**INTING,**  
**ZALAMEDA,**  
**GAERLAN,**  
**ROSARIO,**  
**LOPEZ,**  
**DIMAAMPAO,**  
**MARQUEZ,**  
**KHO, JR.,**  
**SINGH,\* and**  
**VILLANUEVA, JJ.**

- versus -

**XXX266039,\*\***  
Accused-appellant.

**Promulgated:**  
August 12, 2025

X-----X

\* No part and on leave.  
\*\* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 8505, entitled "Rape Victim Assistance and Protection Act of 1998," approved on February 13, 1998; and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

## DECISION

### INTING, J.:

Before the Court are consolidated cases involving the application and interpretation of Section 5(b)<sup>1</sup> of Republic Act No. 7610, or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act:

1. In G.R. No. 260233, the Petition for Review on *Certiorari*<sup>2</sup> assails the Decision<sup>3</sup> dated March 11, 2021, and the Resolution<sup>4</sup> dated March 29, 2022, of the Court of Appeals (CA) in CA-G.R. CR No. 42318. The CA affirmed with modification the Decision<sup>5</sup> dated July 5, 2018, of Branch █, Regional Trial Court (RTC), La Trinidad, Benguet in Criminal Case Nos. 15-CR 10797 and 10798 that found petitioner Jeffrey L. Gramatica (Gramatica) guilty of violating Sections 5(b) and 10(a)<sup>6</sup> of Republic Act No. 7610.
2. In G.R. No. 266039, the notice of appeal<sup>7</sup> filed by accused-appellant XXX266039 questions the Decision<sup>8</sup> dated October 7, 2021, of the

<sup>1</sup> 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:

(b) Those who commit the act of sexual intercourse of 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[.]

<sup>2</sup> *Rollo* (G.R. No. 260233), pp. 11–40.

<sup>3</sup> *Id.* at 42–66. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Danton Q. Bueser and Raymond Reynold R. Lauigan of the Special Twelfth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 68–70. Penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Pedro B. Corales and Raymond Reynold R. Lauigan, of the Former Special Twelfth Division, Court of Appeals Manila.

<sup>5</sup> *Id.* at 101–119. Penned by Presiding Judge Marietta S. Brawner-Cualing.

<sup>6</sup> SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.* –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

<sup>7</sup> *CA rollo* (G.R. No. 266039), pp. 90–92. Notice of Appeal dated November 3, 2021.

<sup>8</sup> *Id.* at 68–86. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Maria Filomena D. Singh and Bonifacio S. Pascua of the Third Division, Court of Appeals, Manila.

CA in CA-G.R. CR No. 44840 which affirmed the Decision<sup>9</sup> dated February 19, 2020, of Branch [REDACTED], RTC, Lucena City in Criminal Case No. 2018-1383. The RTC found Dizon guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.<sup>10</sup>

*The Informations in G.R. No. 260233*

Gramatica was charged with illegal sale of dangerous drugs under Section 5 of Republic Act No. 9165, committed as follows:

**Criminal Case No. 15-CR-10794**

That sometime in the second week of June 2015, up to the last week of June, 2015 at [REDACTED], Municipality of [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and knowingly sell, deliver, or give away methamphetamine hydrochloride, commonly known as “shabu,” a dangerous drug to [AAA]<sup>11</sup> and [BBB], which they thereafter use and consume together inside his room at FE-037L, Mamaga, Balili, La Trinidad, Benguet, in violation of the said law.

The commission of the crime is aggravated by the fact that the victims, [AAA] and [BBB] are minors, they having been born respectively on [REDACTED] and [REDACTED].

CONTRARY TO LAW.<sup>12</sup>

Gramatica was further charged with violation of Sections 5(b) and 10(a) of Republic Act No. 7610, under the following three Informations:

**Criminal Case No. 15-CR-10797**  
**[Violation of Section 5(b) of Republic Act No. 7610]**

That from the second week of June 2015, up to the last week of June 2015, at [REDACTED], Municipality of [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly, commit acts of sexual intercourse with [BBB], a child who was born on [REDACTED], and who is deemed under the law to be a child exploited in prostitution or other sexual abuse as she indulged in sexual intercourse or

<sup>9</sup> *Rollo* (G.R. No. 266039), pp. 30–36. Penned by Presiding Judge Aristotle M. Reyes.

<sup>10</sup> *Id.* at 36. Special Protection of Children Against Abuse, Exploitation and Discrimination Act, approved on June 17, 1992.

<sup>11</sup> Also referred to as “AAA” and “AAA” in some parts of the *rollo*.

<sup>12</sup> *Rollo* (G.R. No. 260233), p. 101.

lascivious conduct for some consideration and due to the influence of the accused who is an adult, thereby demeaning her intrinsic worth and dignity as a child, to her great damage and prejudice.

CONTRARY TO LAW.<sup>13</sup>

**Criminal Case No. 15-CR-10798**  
**[Violation of Section 10(a) of Republic Act No. 7610]**

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED], Municipality of [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly commit child abuse upon the person of [AAA], a minor born on [REDACTED], by placing or causing her to be in a situation or condition prejudicial to her growth and development as a child, that is, by selling, delivering, or giving away methamphetamine hydrochloride also known as "shabu," a dangerous drug, to her and allowing her to use and consume the drug in his place, to her great damage and prejudice.

CONTRARY TO LAW.<sup>14</sup>

**Criminal Case No. 15-CR-10799**  
**[Violation of Section 10(a) of Republic Act No. 7610]**

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED], Municipality of [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly commit child abuse upon the person of [BBB], a minor born on [REDACTED], by placing or causing her to be in a situation or condition prejudicial to her growth and development as a child, that is, by selling, delivering, or giving away methamphetamine hydrochloride also known as "shabu," a dangerous drugs, to her and allowing her to use and consume the drug in his place, to her great damage and prejudice.

CONTRARY TO LAW.<sup>15</sup>

Upon arraignment, Gramatica entered pleas of "Not Guilty" to the charges.<sup>16</sup>

Joint trial on the merits ensued.<sup>17</sup>

<sup>13</sup> *Id.* at 44, 102.

<sup>14</sup> *Id.* at 44, 46, 102.

<sup>15</sup> *Id.* at 102.

<sup>16</sup> *Id.* at 46.

<sup>17</sup> *Id.*

*The Information in G.R. No. 266039*

XXX266039 was charged in an Information<sup>18</sup> dated August 29, 2018, with violation of Section 5(b) of Republic Act No. 7610. The accusatory portion of the Information reads:

That on or about August 24, 2018, at Brgy. ■■■■■ City, Quezon Province, Philippines and within the jurisdiction of this Honorable Court, the accused, did then and there knowingly, willfully, and feloniously caress the breasts and vagina of [CCC],<sup>19</sup> his 17-year old granddaughter, and through his intimidation, coercion, and influence the child indulge in such lascivious conduct, thus subjecting her to sexual abuse.

Contrary to law.<sup>20</sup>

During the arraignment, XXX266039 entered a plea of "Not Guilty" to the charge.

After the pre-trial, trial on the merits ensued.<sup>21</sup>

*The Antecedents*

The two consolidated cases involve the unfortunate experiences of three minors.

On the one hand, G.R. No. 260233 concerns BBB and AAA, who were close friends addicted to *shabu*. They engaged in sex in exchange for the drug with Gramatica and Darwin Santiago (Darwin). When AAA went missing, her mother reported it to the police, who located her at Gramatica's residence, discovered drugs, and arrested him. BBB subsequently assisted the police, leading to Darwin's arrest after he locked her in a room. Medical examinations confirmed that both BBB and AAA had engaged in sexual activity.

On the other hand, G.R. No. 266039 involves CCC, a 17-year-old student who was sexually molested by her grandfather, XXX266039, while she was asleep.

<sup>18</sup> *Rollo* (G.R. No. 266039), p. 10, CA Decision.

<sup>19</sup> *CA rollo* (G.R. No. 266039), pp. 5, 8.

<sup>20</sup> *Id.* at 10, 30, respectively.

<sup>21</sup> *Id.* at 30.

*The Court begins with the unfortunate story of BBB and AAA in G.R. No. 260233.*

BBB and AAA lived in the same locality and were the best of friends. At a young age, both got addicted to *shabu* and dropped out of school. When their drug addiction worsened, they engaged in sex in exchange for *shabu* with Gramatica and Darwin Santiago.<sup>22</sup>

According to AAA, she met Gramatica and Darwin through a pimp, who she called *lolo*. From May to June 2015, she got *shabu* from Darwin in exchange for sex. Also, she would use the money she got from Darwin to buy illegal drugs from Gramatica.

Meanwhile, BBB testified that it was AAA who introduced her to Gramatica and Darwin; that like AAA, she engaged in sexual intercourse with Darwin several times in exchange for *shabu*; that she also had sexual liaisons with Gramatica after they would consume *shabu* in his apartment; and that Gramatica became her boyfriend. However, she clarified that she would not have engaged in sexual intercourse with Gramatica or Darwin had she not been under the influence of drugs.<sup>23</sup>

On July 1, 2015, Police Chief Inspector Radino Belly (PCINSP Belly) received a complaint from AAA's mother that the latter had not gone home for almost a month. After inquiring from BBB, they found out that AAA was living with Gramatica in his boarding house in La Trinidad, Benguet; she was also being used as a drug courier. Immediately, PCINSP Belly coordinated with the Municipal Anti-Illegal Drugs Operatives for the possible arrest of Gramatica and the rescue of AAA. With the help of BBB, the police officers entered Gramatica's boarding house. Gramatica was not home at the time, and it was AAA who opened the door for them. Inside the boarding house, one of the police officers noticed an improvised tooter and a used foil on a blue tray placed just below the portable DVD player. The other police officers also found drug paraphernalia inside the containers on the floor. When Gramatica arrived, the police operatives arrested him.<sup>24</sup>

In the meantime, BBB received a text message from Darwin who asked her to proceed to his boarding house in [REDACTED], La Trinidad, Benguet for a pot session. The police operatives and BBB went to Darwin's boarding house.

<sup>22</sup> *Rollo* (G.R. No. 260233), p. 45. Darwin was separately charged in Criminal Case Nos. 15-CR-10786 for violation of Republic Act No. 9165; and 15-CR-10790, 15-CR-10791, 15-CR-10792, and 15-CR-10793 for violation of Republic Act No. 7610.

<sup>23</sup> *Id.* at 45, 47.

<sup>24</sup> *Id.* at 47.

BBB went ahead of the police operatives and entered the boarding house. Later, the police operatives received a text message from BBB that stated that Darwin had gone to the comfort room and locked her inside of his room. The police operatives went inside the boarding house and forcibly opened the room where BBB was locked in. The police operatives searched for Darwin, and they found him inside a locked comfort room in front of the boarding house. They then brought Darwin back to the boarding house, where BBB identified him as the one who locked her inside the room. The police officers arrested Darwin.<sup>25</sup>

Based on the medico-legal examination of the victims, the ano-genital area of AAA<sup>26</sup> showed that her hymen had a deep notch at the 9 o'clock position; while that of BBB showed complete hymenal transection at 7 o'clock position and notched at 3 o'clock position.<sup>27</sup>

In defense, on the other hand, Gramatica denied the accusations against him. He alleged that in May 2015, his friend, Denver Estigoy, introduced BBB and AAA to him; that he allowed them to stay in his boarding house because they had no place to go; that during their stay, he saw them use *shabu*; that later on, he courted BBB and had a sexual relationship with her; that he did not force her to have sexual intercourse with him; and that he had no idea that BBB was a minor at the time because her face looked mature.

According to Gramatica, the police officers arrested him in his boarding house and accused him of selling *shabu*.<sup>28</sup>

### *The Ruling of the RTC*

In its Decision<sup>29</sup> dated July 5, 2018, the RTC acquitted Gramatica in Criminal Case No. 15-CR-10794 for the failure of the prosecution to establish the elements of illegal sale of *shabu*.

Still, the RTC convicted Gramatica of violation of Section 5(b) of Republic Act No. 7610 in Criminal Case No. 15-CR-10797. It found that Gramatica had sexual relations with BBB, a minor; and that the age disparity between them placed Gramatica in a stronger position over BBB which

<sup>25</sup> *Id.* at 47-48.

<sup>26</sup> RTC records, p. 13. *See* Medico Legal Certificate.

<sup>27</sup> *Rollo* (G.R. No. 260233), p. 48

<sup>28</sup> *Id.* at 48-49.

<sup>29</sup> *Id.* at 101-119. Penned by Judge Marietta S. Brawner Cualing of Branch 9, Regional Trial Court, La Trinidad, Benguet.

enabled him to force his will upon the latter.<sup>30</sup>

The RTC also convicted Gramatica in Criminal Case No. 15-CR-10798. It found that Gramatica's act of selling, delivering, or giving away *shabu* to AAA was prejudicial to her development.<sup>31</sup>

Lastly, the RTC acquitted Gramatica in Criminal Case No. 15-CR-10799 on the ground of reasonable doubt.

The RTC decreed as follows:

WHEREFORE, premises considered, it is hereby adjudged:

1. In Criminal Case No. 15-CR-10794, there being reasonable doubt that accused committed the crime charged, accused JEFFREY LAURISTA GRAMATICA is hereby ACQUITTED of Violation of [Section 5 of] Republic Act No. 9165.

2. In Criminal Case No. 15-CR-10797, there being proof beyond reasonable doubt that accused committed Lascivious Conduct under Section 5(b) of R.A. No. 7610, JEFFREY LAURISTA GRAMATICA is hereby found GUILTY thereof. There being no mitigating or aggravating circumstance attendant in the commission of the crime, he is hereby imposed (*sic*) the indeterminate penalty of imprisonment of eight (8) years and one (1) day of [*p*]rison [*m*]ayor medium as minimum to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period as maximum.

He is likewise directed to pay the fine of [PHP] 15,000.00 pursuant to Section 31(f) of R.A. No. 7610. He is further directed to indemnify private complainant [BBB] the following amounts as damages: the amount of [PHP] 30,000.00 as moral damages; civil indemnity of [PHP] 20,000.00; and exemplary damages in the amount of [PHP] 15,000.00, all amounts subject to an interest of 6% per annum reckoned from the finality of this Decision until fully paid.

3. In Criminal Case No. 15-CR-10798, there being proof beyond reasonable doubt that accused violated Section 10(a) of R.A. No. 7610, JEFFREY LAURISTA GRAMATICA is hereby found GUILTY thereof. He is hereby sentenced to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prison correccional*, as minimum to six (6) years, eight (8) months and one (1) day of *prison mayor*, as maximum.

He is also directed to pay moral damages to [AAA] in the amount of [PHP] 20,000.00.

<sup>30</sup> *Id.* at 113-114.

<sup>31</sup> *Id.* at 118.

4. In Criminal Case No. 15-CR-10799, there being reasonable doubt that accused committed the crime charged, accused JEFFREY LAURISTA GRAMATICA is hereby ACQUITTED of Violation of Section 10(a) of Republic Act No. 7610.

The period of preventive imprisonment of the accused is credited to his period of imprisonment.

SO ORDERED.<sup>32</sup>

Aggrieved, Gramatica appealed to the CA.

*The Ruling of the CA*

In its Decision,<sup>33</sup> the CA affirmed with modification the RTC Decision. The *fallo* thereof reads:

WHEREFORE, the Appeal is DISMISSED. The Decision of the Regional Trial Court of La Trinidad, Benguet, Branch 9 dated 5 July 2018, is hereby AFFIRMED with MODIFICATION:

WHEREFORE, premises considered, it is hereby adjudged:

.....

3. In Criminal Case No. 15-CR-10797, there being proof beyond reasonable doubt that accused committed Lascivious Conduct under Section 5(b) of R.A. No. 7610, JEFFREY LAURISTA GRAMATICA is hereby found GUILTY thereof. There being no mitigating or aggravating circumstance attendant in the commission of the crime, he is hereby imposed (*sic*) the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor* medium as minimum to seventeen (17) years and four (4) months of *reclusion temporal* in its medium period as maximum.

He is likewise directed to pay the fine of [PHP]15,000.00 pursuant to Section 31(f) of R.A. No. 7610. He is further directed to indemnify private complainant YYY the following amounts as damages: *the amount of [PHP] 50,000.00 as moral damages; civil indemnity of [PHP] 50,000.00; and exemplary damages in the amount of [PHP] 50,000.00, all amounts subject to an interest of 6% per annum reckoned from the finality of this Decision until fully paid.*

<sup>32</sup> *Id.* at 118-119.

<sup>33</sup> *Id.* at 42-66. The March 11, 2021 Decision in CA-G.R. CR No. 42318 was penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Danton Q. Bueser and Raymond Reynold R. Lauigan of the Special Twelfth Division, Court of Appeals, Manila.

4. In Criminal Case No. 15-CR-10798, there being proof beyond reasonable doubt that accused violated Section 10(a) of R.A. No. 7610, JEFFREY LAURISTA GRAMATICA is hereby found GUILTY thereof. He is hereby sentenced to suffer the indeterminate penalty of four (4) years two (2) months and one (1) day of *prision correccional*, as minimum to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum.

He is also directed to pay moral damages to BBB in the amount of [PHP] 20,000.00[.]

SO ORDERED.<sup>34</sup> (Emphasis supplied)

The CA found that the prosecution established beyond reasonable doubt all the elements for violation of Section 5(b) of Republic Act No. 7610. It ruled that Gramatica, who was then 23 years old, courted and had a sexual relationship with the 14-year old BBB, who was then staying with him in his boarding house; that he took advantage of BBB's minority and unfortunate situation; and that he caused her to believe and trust him so that he could wield influence upon her to submit to his sexual desires.<sup>35</sup>

In the case of AAA, the CA ruled that the prosecution established all the elements of violation of Section 10(a) of Republic Act No. 7610. AAA testified that Gramatica sold *shabu* to her on several occasions which showed his utter disregard for the law and intent to demean AAA's intrinsic worth and dignity as a child.<sup>36</sup>

Aggrieved, Gramatica moved to reconsider the Decision, but the CA denied it in the assailed Resolution.

Hence, he filed a Petition<sup>37</sup> before the Court docketed as G.R. No. 260233 and advanced his arguments as follows:

The CA gravely erred in affirming the RTC Decision despite the prosecution's failure to establish the elements of the offenses charged against him. He insists that the consensual sexual intercourse between him and BBB should have been considered in determining his guilt.<sup>38</sup> He adds that there was no evidence that he persuaded, enticed, or influenced BBB to take *shabu* for him to have sexual intercourse with her. While it might be true that BBB was

<sup>34</sup> *Id.* at 64-65.

<sup>35</sup> *Id.* at 53, 55-56.

<sup>36</sup> *Id.* at 58, 60-61.

<sup>37</sup> *Id.* at 11-40.

<sup>38</sup> *Rollo* (G.R. No. 260233), p. 24.

under the influence of prohibited drugs during the three occasions that they had sex, there was no evidence to prove that it was of his own doing.<sup>39</sup>

As for AAA, Gramatica alleges that the prosecution failed to prove that his actions debased or demeaned her dignity as a human being. The purchase of *shabu*, in itself, is not prejudicial to AAA. Neither does it automatically debase her dignity and intrinsic worth as a human being. Even granting that he sold *shabu* to AAA, there was no proof that she consumed the very same *shabu* purchased from him.<sup>40</sup>

In its Manifestation In Lieu of Comment,<sup>41</sup> the People, through the Office of the Solicitor General (OSG), maintains that the arguments raised in the present Petition were the same arguments already considered and passed upon by the CA in the assailed Decision.<sup>42</sup> To avoid being redundant, it is adopting the Brief for the Plaintiff-Appellee<sup>43</sup> dated September 30, 2019, as its comment to the Petition.<sup>44</sup>

Thus, the core issue in **G.R. No. 260233** is whether the CA erred in finding Gramatica guilty of violation of Section 5(b) and Section 10(a) of Republic Act No. 7610.

*In a different and equally troubling instance, G.R. No. 266039 describes the abuse of CCC by her own grandfather, XXX266039.*

The prosecution established that CCC was a student and 17 years old at the time of the incident. On August 24, 2018, at around 1:00 a.m., while she was sleeping, she was suddenly awakened by someone inserting his hand inside her panties. Upon opening her eyes, she saw that it was his grandfather, XXX266039. Terrified, she could not move or shout. XXX266039 then placed his hands inside her bra and fondled her breasts. Then, he stood up and left the room as if nothing had happened.<sup>45</sup>

However, XXX266039 denied the charge. He maintained that he merely woke CCC up to ask her to assist him in applying medicine in his eyes as he was suffering from glaucoma.<sup>46</sup>

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<sup>39</sup> *Id.* at 32.

<sup>40</sup> *Id.* at 34.

<sup>41</sup> *Id.* at 149–156.

<sup>42</sup> *Id.* at 150.

<sup>43</sup> *Id.* at 120–137.

<sup>44</sup> *Id.* at 154.

<sup>45</sup> *Rollo* (G.R. No. 266039), p. 31.

<sup>46</sup> *Id.*

*The Ruling of the RTC*

In its Decision<sup>47</sup> dated February 19, 2020, the RTC found XXX266039 guilty beyond reasonable doubt of lascivious conduct under Section 5(b) of Republic Act No. 7610. The RTC disposed of the case as follows:

**WHEREFORE**, premises considered, accused [XXX266039] is found **GUILTY BEYOND REASONABLE DOUBT** of “Lascivious Conduct under Section 5(b) of R.A. No. 7610” and he is hereby sentenced the indeterminate imprisonment of **twelve (12) years, five (5) months, and eleven (11) days of, as minimum to seventeen (17) years, four (4) months and one (1) day, as maximum.**

He is further ordered to pay the victim, CCC, moral damages, exemplary damages, and civil indemnity in the amount of [PHP] 50,000.00 each. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this decision.

**SO ORDERED.**<sup>48</sup> (Emphasis in the original)

The RTC determined that all the elements of the crime charged were present. *First*, XXX266039 committed lascivious conduct; CCC testified that he touched her breasts and vagina.<sup>49</sup> *Second*, CCC experienced sexual abuse. A child is considered to have been subjected to other sexual abuse when they are a victim of lascivious conduct under the coercion or influence of an adult. In the case, CCC was 17 years old at the time of the incident, while XXX266039 was 62. The age disparity of more than 20 years gave XXX266039 a greater ability to impose his will on her. *Further*, his relationship as the grandfather created a level of trust in him, which he evidently exploited.<sup>50</sup>

*Finally*, CCC's Certificate of Live Birth demonstrated her minority status, indicating that she was born on [REDACTED]. Thus, she was only 17 years old when the incident occurred on August 24, 2018.<sup>51</sup>

In XXX266039's defense, he simply requested CCC's assistance with his eye medication; this assertion cannot outweigh CCC's clear identification and affirmation that XXX266039 was the one who perpetrated the sexual abuse against her.<sup>52</sup>

<sup>47</sup> *Id.* at 30–36.

<sup>48</sup> *Id.* at 36.

<sup>49</sup> *Id.* at 32.

<sup>50</sup> *Id.* at 33.

<sup>51</sup> *Id.* at 34.

<sup>52</sup> *Id.* at 35.

Aggrieved, XXX266039 appealed to the CA.<sup>53</sup>

In his Brief,<sup>54</sup> XXX266039 asserted that there are serious doubts as to the credibility of CCC's testimony. He noted that other people were at the house, including her cousins and relatives.<sup>55</sup> He also stressed that there was no evidence that he used any weapon, or that he threatened her or exerted any force upon her. Thus, she had ample opportunity to shout or call for help.<sup>56</sup> He further alleged that if he really sexually abused CCC, then her relatives would have at least supported her statements and testified in her favor.<sup>57</sup>

On the other hand, the People, through the OSG, countered in its Brief<sup>58</sup> that CCC's failure to shout for help does not discredit her testimony, as it would not be unusual for her to be immobilized at the time due to shock and helplessness. Moreover, jurisprudence provides that there is no standard behavior for a victim of a crime against chastity, especially when the victim is a child.<sup>59</sup> Anent the nonpresentation of other witnesses, it maintained that such is not fatal to the prosecution's case because no law or rule requires the corroboration of the testimony of a single witness in actions for rape or acts of lasciviousness.<sup>60</sup>

#### *The Ruling of the CA*

The CA sustained the RTC's conviction of XXX266039 in the assailed Decision.<sup>61</sup> The *fallo* of the CA Decision states:

**WHEREFORE**, in view of the foregoing, the instant appeal is **DISMISSED**. The Decision dated February 19, 2020 rendered by the Regional Trial Court of Lucena City, Branch 15 in Criminal Case No. 2018-1383 is **AFFIRMED WITH MODIFICATION** to the extent that accused-appellant [XXX266039] is sentenced to suffer the penalty of **RECLUSION PERPETUA** and to pay private complainant [CCC] the following amounts: (a) a fine in the amount of [PHP] 15,000.00, (b) moral damages in the amount of [PHP] 75,000.00; (c) exemplary damages in the amount of [PHP] 75,000.00; and (c) civil indemnity in the amount of

<sup>53</sup> CA *rollo* (G.R. No. 266039), p. 10. *See* Notice of Appeal dated February 24, 2020.

<sup>54</sup> *Id.* at 19–30. Brief for the Accused-Appellant dated October 30, 2020.

<sup>55</sup> *Id.* at 25.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 47–56. Brief for the Plaintiff-Appellee dated February 24, 2021.

<sup>59</sup> *Id.* at 52.

<sup>60</sup> *Id.* at 53.

<sup>61</sup> *Id.* at 68–86. The October 7, 2021 Decision in CA-G.R. No. 44840 was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Maria Filomena Singh and Bonifacio S. Pascua of the Third Division, Court of Appeals, Manila.

[PHP] 75,000.00. All monetary awards are subject to six percent (6%) interest from finality of this decision until fully paid.

**SO ORDERED.**<sup>62</sup> (Emphasis in the original)

The CA affirmed the RTC in finding that the prosecution proved all the elements of lascivious conduct under Section 5(b) of Republic Act No. 7610.<sup>63</sup> Anent XXX266039's contention that CCC's relatives did not testify in her favor, the CA held that CCC's testimony is an eloquent statement to the truth of her complaint.<sup>64</sup> Moreover, XXX266039 failed to impute any ill motive on the part of CCC to falsely testify against him.<sup>65</sup> As such, XXX266039's bare denial fails in the face of CCC's positive identification of him as the perpetrator.<sup>66</sup>

Hence, XXX266039 filed an appeal to the Court.<sup>67</sup>

Both the prosecution and the defense filed their Manifestations In Lieu of Supplemental Briefs.<sup>68</sup> The OSG manifested that it is adopting the facts and arguments in its Brief to expedite the disposition of the case and to avoid the rehash of arguments.<sup>69</sup> On the other hand, XXX266039 repleaded and adopted the arguments raised in the Appellant's Brief which his counsel opined as squarely and sufficiently refuting the arguments raised by the plaintiff-appellee.<sup>70</sup>

The issue in **G.R. No. 266039** is whether the CA correctly affirmed the conviction of XXX266039 for lascivious conduct under Section 5(b) of Republic Act No. 7610.

#### *The Ruling of the Court*

*First*, in G.R. No. 260233, Gramatica is found guilty of child prostitution as defined by Section 5(b) of Republic Act No. 7610. The law considers any sexual intercourse with a minor for consideration as prostitution, *regardless* of consent. Gramatica is liable because BBB, the minor, engaged in prostitution at the time of their sexual encounter. Moreover,

<sup>62</sup> *Id.* at 85.

<sup>63</sup> *Id.* at 76-80.

<sup>64</sup> *Id.* at 80-81.

<sup>65</sup> *Id.* at 81.

<sup>66</sup> *Id.* at 93.

<sup>67</sup> *Id.* at 90-92. See Notice of Appeal dated November 3, 2021.

<sup>68</sup> *Rollo* (G.R. No. 266039), pp. 40-41, 45-47, respectively.

<sup>69</sup> *Id.* at 40.

<sup>70</sup> *Id.* at 45.

in Criminal Case No. 15-CR-10798, Gramatica is guilty of child abuse under Section 10(a) of Republic Act No. 7610. Accordingly, selling drugs to minors exploits their vulnerability and has harmful developmental effects, degrading their worth and potentially damaging society.

*Second*, in G.R. No. 266039, the Court determines that the necessary elements for violating Republic Act No. 7610 are not present. CCC was asleep when XXX266039 touched her, which indicates that she did not partake in any lascivious conduct. Furthermore, XXX266039 did not use any form of coercion or influence to induce or persuade CCC. Consequently, the legal requirements concerning coercion or influence and the minor's participation in lascivious conduct under Republic Act No. 7610 are not met in the case.

The Court explains.

Central in the issues to be resolved in the case is Section 5(b) of Republic Act No. 7610, which 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:

.....

(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 victims 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[.]

On the other hand, Article 336 of the Revised Penal Code states:

ARTICLE 336. *Acts of lasciviousness.* – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

At this point, the Court shall revisit the legal principles regarding lascivious conduct directed at minors over 12 but under 18 years of age.

*Re-examination of the legal principles and jurisprudence concerning lascivious conduct directed towards minors aged over 12 but under 18*

The Court established guidelines concerning the proper nomenclature of acts of lasciviousness and lascivious conduct directed at minors, especially those aged over 12 but under 18, in the case of *Dimakuta v. People*,<sup>71</sup> as follows:

Under Section 5, Article III of R.A. No. 7610, *a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult. This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements:*

- (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. When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.

....

Therefore, *if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:*

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a virgin and consents to the lascivious acts through abuse of confidence or when the victim is single or a widow of good reputation and consents to the lascivious acts through deceit, or;
2. *Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness is covered by lascivious conduct*

<sup>71</sup> 771 Phil. 641 (2015) [Per J. Peralta, *En Banc*].

under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable

3. Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.<sup>72</sup> (Emphasis supplied, citations omitted)

*Dimakuta*'s enumeration of the elements of the crimes clearly distinguished between the violation of Republic Act No. 7610 and a charge of acts of lasciviousness under the Revised Penal Code in this wise: the former involves a child engaging or indulging in lascivious conduct under the coercion and influence of the accused, while the latter concerns the accused committing any act of lasciviousness or lewdness towards the victim through the use of force or intimidation. Thus, if the victim is between 12 and 18 years old, liability may arise: (1) under Article 339 of the Revised Penal Code if certain conditions—virginity, deceit, abuse of confidence—are met; (2) under Article 336 if the act does not fall under lascivious conduct as defined in Republic Act No. 7610; and (3) under Section 5(b) of Republic Act No. 7610 if the lascivious conduct was committed through coercion or influence.

While *Dimakuta* recognized force or intimidation as an element of the crime of acts of lasciviousness, the Court maintained that acts of lasciviousness carried out through coercion and influence should warrant the application of Republic Act No. 7610. Without specific definitions and clear distinctions between force and intimidation on the one hand, and coercion and influence on the other, the law presents a considerable gap, leaving unresolved the issue of when a minor victim is subjected to either *force or intimidation* or to *coercion and influence*.

Three years later, the seeming difference hinted in *Dimakuta* was further blurred in *Quimvel v. People*,<sup>73</sup> where the Court held that "*coercion and influence*" is synonymous with "*force and intimidation*"; thus:

The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force and intimidation*" as used in the Information. To be sure, Black's Law Dictionary defines "coercion" as "compulsion; force;

<sup>72</sup> *Id.* at 668–669.

<sup>73</sup> 808 Phil. 889 (2017) [Per J. Velasco, Jr., *En Banc*].

duress” while “[undue influence]” is defined as “persuasion carried to the point of overpowering the will.” On the other hand, “force” refers to “constraining power, compulsion; strength directed to an end” while jurisprudence defines “intimidation” as “unlawful coercion; extortion; duress; putting in fear.” As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different[.]<sup>74</sup> (Emphasis supplied, citations omitted)

The Court must note, however, that the pronouncements in *Quimvel* should be considered in light of the context in which they were made. In *Quimvel*, the Information charged the accused therein of violating Section 5(b) of Republic Act No. 7610, specifically alleging that he forcibly and intimidatingly mashed the vagina of a seven-year-old minor. In an attempt to exculpate himself from criminal liability, the accused argued that the Information was deficient, as it only alleged the elements of acts of lasciviousness, particularly *force and intimidation*, and *not coercion and influence* under Republic Act No. 7610.

It is clear that the Court’s statement in *Quimvel* was intended specifically to address the inadequacy of the Information as pointed out by the accused. It should not be construed as a categorical ruling that eliminates the distinctions between acts of lasciviousness under the Revised Penal Code and violations under Republic Act No. 7610.

Regrettably, the ruling in *Quimvel* sowed confusion in subsequent cases, resulting in the Court consistently treating “*force and intimidation*” and “*coercion and influence*” as interchangeable, thereby allowing changes under Republic Act No. 7610 even in cases where traditionally the Revised Penal Code should apply. It has inevitably created a void or gap in the law, obscuring the fine distinction between acts of lasciviousness under the Revised Penal Code and lascivious conduct under Republic Act No. 7610. As a result, regardless of whether the sexual abuse upon the minor victim was done through *coercion and influence* or through *force and intimidation*, the charge against the accused may be classified under Republic Act No. 7610.

Subsequently, in *People v. Tulagan*,<sup>75</sup> the Court recognized the problematic situation caused by this doctrinal confusion. It laid down new guidelines to harmonize the application of the Revised Penal Code *vis-à-vis* Republic Act No. 7610, viz.: (1) where the victim is *under* 12 years old, the prosecution should be under Article 335 or Article 336 of the Revised Penal Code; (2) where the victim is 12 to 18 years old, and sexual abuse is

<sup>74</sup> *Id.* at 919.

<sup>75</sup> 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

committed, it should be called "Lascivious Conduct" under Section 5(b) of Republic Act No. 7610 with no reference to the Revised Penal Code; and (3) coercion or influence qualifies the child as a victim of sexual abuse under Republic Act No. 7610, whereas force and intimidation pertain to cases under the Revised Penal Code. It laid down the guidelines as follows:

At this point, it is not amiss to state that the rulings in *People v. Tubillo*, *People v. Abay* and *People v. Pangilinan* should be clarified, because *there is no need to examine whether the focus of the prosecution's evidence is "coercion and influence" or "force and intimidation"* for the purpose of determining which between R.A. No. 7610 or the RPC *should the accused be prosecuted under in cases of acts of lasciviousness or rape where the offended party is 12 years of age or below 18.*<sup>76</sup>

Whereas *if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610"* with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*.<sup>77</sup>

In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulge in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a) for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.<sup>78</sup>

<sup>76</sup> *Id.* at 239.

<sup>77</sup> *Id.* at 229.

<sup>78</sup> *Id.* at 243-244.

The term “*other sexual abuse*,” on the other hand, should be construed in relation to the definitions of “*child abuse*” under Section 3, Article I of R.A. No. 7610 and “*sexual abuse*” under Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases. In the former provision, “*child abuse*” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “*sexual abuse*” includes the 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. Thus, the term “*other sexual abuse*” is broad enough to include all other acts of sexual abuse other than prostitution. Accordingly, a single act of lascivious conduct is punished under Section 5(b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances. In contrast, when the victim is under 12 years old, the proviso of Section 5(b) states that the perpetrator should be prosecuted under Article 336 of the RPC for acts of lasciviousness, whereby the lascivious conduct itself is the sole element of the said crime. This is because in statutory acts of lasciviousness, as in statutory rape, the minor is presumed incapable of giving consent; hence, the other circumstances pertaining to rape—force, threat, intimidation, etc.—are immaterial.<sup>79</sup> (Emphasis supplied, citations omitted)

It is evident from *Tulagan* that the definition of “*other sexual abuse*” encompasses all forms of sexual abuse aside from prostitution, *even a single* act of lascivious conduct. This definition is based solely on the provision of Section 3(b) of Republic Act No. 7610 which defines child abuse as the “*maltreatment, whether habitual or not, of the child[.]*”

*Tulagan* further blurred the line or distinction between charges under Republic Act No. 7610 and those under the Revised Penal Code by ruling that it is *not* required to determine whether the prosecution’s evidence focuses on “*coercion and influence*” or “*force and intimidation*” when deciding which law applies.

Even with the guidelines established in *Tulagan*, there continues to be uncertainty and confusion in the Court’s efforts to align, harmonize, and reconcile the existing laws involving minors, particularly those aged 12 or older but under 18.

In the recent case of *People v. Hernandez*,<sup>80</sup> notwithstanding the pronouncement in *Tulagan*, the Court concluded that although the Information did not explicitly state the element of force, it still unequivocally ruled that the act was carried out with “*threat and intimidation*,” which is also

<sup>79</sup> *Id.* at 256–257.

<sup>80</sup> 951 Phil. 48 (2024) [Per J. Lopez, J., Second Division].

a fundamental means of committing Rape according to Article 266-A(1) of the Revised Penal Code. In that case, the victim stated that she was threatened with a gun. This, in turn, instilled in her a profound sense of fear that compelled her to remain silent and submit to the heinous act. Thus:

It is settled that “intimidation must be viewed in light of the victim’s perception and judgment at the time of the commission of the crime.” Intimidation need not necessarily be irresistible. It suffices that some compulsion equivalent to intimidation annuls or subdues the exercise of the free will of the private offended party into yielding to the lustful desires of the accused. Corollary to that, this Court held that:

*Intimidation includes the moral kind such as the fear caused when threatened with a knife or pistol, or when words employed are of such nature as would incite anxiety or distress leaving the victim without any choice but to surrender. As this Court held in *Nacario v. People*, “[i]ntimidation is a state of mind, which cannot, with [absolute] certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto.” It involves largely an appreciation of the state of mind of the victim at the time of the commission of the crime. Hence, rather than the appellate courts which relies only on the cold and mute pages of the records which do not graphically convey emotion, the assessment of the trial court must be given binding finality in this respect.<sup>81</sup> (Emphasis supplied, citations omitted)*

In light of the decision in *Hernandez* and the difference outlined in *Tulagan*, as applied to the present case, the Court deems it essential to re-evaluate and, ultimately, clarify *Tulagan*.

*A review of the provisions of Republic Act No. 7610 indicates that it addresses scenarios in which a child gives consent, even if flawed; it does not apply to cases where the minor is entirely unaware, coerced, or unconscious*

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<sup>81</sup> *Id.* at 73–74, citing *People v. XXX*, 944 Phil. 517, 529–530 (2023) [Per CJ. Gesmundo, First Division]; *People v. Sernadilla*, 930 Phil. 1, 9 (2022) [Per J. Gaerlan, Third Division].

Simply put, the Court is tasked to resolve, once and for all, whether all cases of sexual abuse committed against minors must be prosecuted under Republic Act No. 7610.

Section 5 of Republic Act No. 7610 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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(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; and*

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Various cases on child abuse have belabored the definition of “children subjected to sexual abuse” and explored the similarities and differences

between the elements of the crimes outlined in the Revised Penal Code and Republic Act No. 7610, and attempted to harmonize the provisions of the two laws while recognizing the legislature's intended purpose.

Now, the Court is tasked anew to conduct a study of the provisions of Republic Act No. 7610.

It is a hornbook jurisprudential<sup>82</sup> doctrine that the primary rule in a problem in the interpretation of a law is to examine the law itself. When the words of a statute are clear, there is no need to interpret them in a manner different from what the word implies.

In *Globe-Mackay v. National Labor Relations Commission*,<sup>83</sup> the Court, in the interpretation of a statute, gave great deference to the words chosen by the legislature in drafting the statute. It elucidated as follows:

[U]nder the principles of statutory construction, *if a statute is clear, plain and free from ambiguity, it must be given its literal meaning* and applied without attempted interpretation. This plain-meaning rule or *verba legis* derived from the maxim *index animi sermo est* (*speech is the index of intention*) rests on the valid presumption that the *words employed by the legislature in a statute correctly express its intent or will* and preclude the court from construing it differently. The *legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words* as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure[.]<sup>84</sup> (Emphasis supplied, citations omitted)

Here, a plain and straightforward interpretation of Section 5 of Republic Act No. 7610 provides a clear definition of children subjected to other sexual abuse as those who *indulge* in sexual intercourse or lascivious conduct due to the coercion or influence of an adult. Yet, despite extensive jurisprudence on child abuse cases, the word “indulges” in Section 5 of Republic Act No. 7610 has never been specifically examined or analyzed. The word “indulges” is of significant importance in resolving the issue in the case at bar.

The table below provides a comprehensive list of dictionary definitions to help the Court determine the meaning of “indulge” as used in Republic Act No. 7610.

<sup>82</sup> *Securities and Exchange Commission v. Commission on Audit*, 900 Phil. 575, 586 (2021) [Per J. Lazaro-Javier, *En Banc*].

<sup>83</sup> 283 Phil. 649 (1992) [Per J. Romero, *En Banc*].

<sup>84</sup> *Id.* at 660.

Black's Law Dictionary	<ul style="list-style-type: none"> <li>- a yielding to inclination, passion, or the propensity for gratifying one's desires, especially to excess self-gratification</li> <li>- the habit of allowing oneself to do whatever one wants, or of allowing someone else to do whatever he or she wants<sup>85</sup></li> </ul>
Britannica Dictionary	<ul style="list-style-type: none"> <li>- to allow (someone) to have or do something even though it may not be proper, healthy, appropriate, etc.<sup>86</sup></li> </ul>
Merriam-Webster Dictionary	<ul style="list-style-type: none"> <li>- to yield to the desire of</li> <li>- to give free rein to<sup>87</sup></li> </ul>
Cambridge Dictionary	<ul style="list-style-type: none"> <li>- to allow yourself or another person to have something enjoyable, especially more than is good for you</li> <li>- to give someone anything they want and not to mind if they behave badly<sup>88</sup></li> </ul>
Collins Dictionary	<ul style="list-style-type: none"> <li>- to yield to or gratify</li> <li>- to yield to the wishes of<sup>89</sup></li> <li>-</li> </ul>

The different meanings of the word "*indulges*" in various dictionaries suggest a notion of "consent" or "permission," albeit with some reservations.

The Court finds that the term "*sexual abuse*," as defined under Republic Act No. 7610, encompasses situations wherein a minor *indulges*—or, put differently, *consents*, albeit defectively—to engage in sexual intercourse or lascivious conduct as a result of coercion or undue influence exerted by an adult.

<sup>85</sup> Black's Law Dictionary, 11<sup>th</sup> Edition (2019).

<sup>86</sup> Britannica Dictionary. Available at <https://www.britannica.com/dictionary/indulge> [Last accessed on September 19, 2025.]

<sup>87</sup> Merriam-Webster Dictionary. Available at <https://www.merriam-webster.com/dictionary/indulge> [Last accessed on September 19, 2025.]

<sup>88</sup> Cambridge Dictionary. Available at <https://dictionary.cambridge.org/dictionary/english/indulge> [Last accessed on September 19, 2025.]

<sup>89</sup> Collins Dictionary. Available at <https://www.collinsdictionary.com/dictionary/english/indulge> [Last accessed on September 19, 2025.]

The presence—or, at the very least, the semblance—of consent on the part of the minor, which justifies the application of Republic Act No. 7610, is further reinforced by Section 2(g) of the law’s Implementing Rules and Regulations<sup>90</sup> (IRR). The IRR defines sexual abuse as including the *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.

A review of Section 2(g) leads to the conclusion that the word “*engage*” suggests active participation by the child, who is not merely a passive victim of sexual abuse but *engages* in it precisely due to the “*employment, use, persuasion, inducement, enticement, or coercion*” exerted by the adult.

For better understanding, the following are dictionary definitions of the term “*engages*” viz.:

Black’s Law Dictionary	- to employ or involve oneself; to take part in to embark on. <sup>91</sup>
Britannica Dictionary	- to cause (someone) to take part in (something) <sup>92</sup>
Merriam-Webster Dictionary	- to bind (someone, such as oneself) to do something - to induce to participate: <sup>93</sup>
Cambridge Dictionary	- to become involved, or have contact with someone or something. <sup>94</sup>
Collins Dictionary	- to take part; participate <sup>95</sup>

Indeed, the use of the word “*engage*” clearly indicates the legislature’s intent for Republic Act No. 7610 to cover situations where a child consents, albeit with the consent being defective. It is not designed to cover acts where the minor is completely unconscious, overpowered, or unwilling from the outset.

<sup>90</sup> Rules and Regulations on the reporting and investigation of child abuse cases (1993).

<sup>91</sup> Black’s Law Dictionary, 11<sup>th</sup> Edition (2019).

<sup>92</sup> Britannica Dictionary. Available at <https://www.britanica.com/dictionary/engage> [Last accessed on September 19, 2025.]

<sup>93</sup> Cambridge Dictionary. Available at <https://dictionary.cambridge.org/dictionary/english/engage> [Last accessed on September 19, 2025.]

<sup>94</sup> Cambridge Dictionary. Available at <https://dictionary.cambridge.org/dictionary/english/engage> [Last accessed on September 19, 2025.]

<sup>95</sup> Collins Dictionary. Available at <https://www.collinsdictionary.com/dictionary/english/engage> [Last accessed on September 19, 2025.]

To illustrate the point, the Court shall examine the liability of Gramatica.

### G.R. No. 260233

In the main, Gramatica attacks the credibility of BBB and AAA; he avers that their narration of facts and circumstances is questionable. Specifically, he points out that he and BBB were sweethearts and the sexual intercourse between them was consensual;<sup>96</sup> that there was no showing that he exercised moral ascendancy over BBB, nor was it shown that he took advantage of the latter's condition to influence her;<sup>97</sup> and that although BBB averred that she and Gramatica had sexual intercourse three times because she was under the influence of *shabu*, there is nevertheless no proof that the *shabu* came from him.<sup>98</sup>

As regards AAA, Gramatica asserts that the prosecution failed to prove that he sold or even possessed illegal dangerous drugs; that the purchase of *shabu* in itself does not automatically debase AAA's dignity and intrinsic worth as a human being;<sup>99</sup> that assuming that he sold *shabu* to AAA, there was nonetheless no evidence to show that she consumed the very same *shabu* allegedly bought from him;<sup>100</sup> and that there is no evidence that he forced AAA into addiction.<sup>101</sup>

The Petition lacks merit.

All the arguments raised are a mere rehash of Gramatica's arguments before the CA that were carefully considered and found without merit. The Court finds no cogent reason to disturb the factual findings of the RTC and the CA.

Well settled is the rule that "findings of the trial court[,] which are factual in nature and which involve the credibility of witnesses, are accorded respect[,] if not finality by the appellate court, "when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings."<sup>102</sup> This is because of a quite

<sup>96</sup> *Rollo* (G.R. No. 260233), p. 24.

<sup>97</sup> *Id.* at 29.

<sup>98</sup> *Id.* at 30.

<sup>99</sup> *Id.* at 34.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 35.

<sup>102</sup> *People v. Aspa*, 838 Phil. 302, 311–312 (2018) [Per J. Peralta, Second Division], citing *People v. De Guzman*, 564 Phil. 282, 290 (2007) [Per J. Chico-Nazario, Third Division].

simple reason: the trial judge is better situated to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.<sup>103</sup> Thus, generally, the Court will not re-examine evidence that had been analyzed and ruled upon by the RTC and affirmed by the CA.

*In Criminal Case No. 15-CR-10797, Gramatica is guilty of child prostitution under Section 5(b) of Republic Act No. 7610*

Sexual abuse and lascivious conduct as defined in the IRR of Republic Act No. 7610, known as the “Rules and Regulations on the Reporting and Investigation of Child Abuse Cases,” pertinently provides:

SECTION 2. *Definition of Terms.* – As used in these Rules, unless the context requires otherwise –

(h) “Lascivious conduct” means the 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.

The elements of Section 5(b) are as follows: (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.<sup>104</sup> Hence, for a child under Republic Act No. 7610 to prosper, the minor victim must be a child “exploited in prostitution or subjected to other sexual abuse” (EPSOSA).

In the present case, the prosecution both alleged and proved that BBB was a child in EPSOSA. The criminal information in Criminal Case No. 15-CR-10797 specifically indicated that BBB “*is deemed under the law to be a child exploited in prostitution or other sexual abuse as she indulged in sexual intercourse or lascivious conduct for some consideration.*” She also candidly testified that she agreed to have sexual intercourse with Gramatica

<sup>103</sup> *Id.* at 312, citing *People v. Villamin*, 625 Phil. 698, 713 (2010) [Per J. Peralta, Third Division].

<sup>104</sup> *People v. Jaime*, 836 Phil. 871, 879 (2018) [Per J. Martires, Third Division].

in exchange for *shabu*. She testified:

Q: Let us clarify this, you said they were allowing you to use this shabu?  
A: Yes, sir.

....

Q: And you said that after using it, they take advantage of you?  
A: After they let us use, something will happen to us.

Q: What will happen to you?  
A: They will have sex with us.

Q: Including [AAA]?  
A: Yes sir.

Q: What is the effect of taking this shabu to you?  
A: We cannot sleep and sometimes, we do not know what we were doing.

Q: Why do you use that shabu?  
A: I was curious at first but when I tasted it, I continued.

....

Q: And where is that particular place wherein this Darwin Santiago let you take in shabu?  
A: At our house in Pico, La Trinidad, Benguet.

Q: After using shabu, [is he] having sexual intercourse with you?  
A: Yes sir.

Q: Where did he have sex with you?  
A: At his house.

Q: Why did you allow Darwin Santiago to have sexual intercourse with you?  
A: Because that is the effect of the shabu that I wanted to have sex.

Q: How about Jeffrey Gramatica, where did he sell shabu to you?  
A: At the boarding house but I forgot where is he staying.

Q: How about the area?  
A: Km. 5, La Trinidad, Benguet.

Q: Aside from selling you shabu, is there anything that Jeffrey Gramatica did to you?  
A: Yes sir.

Q: What did he do to you?  
A: He also had sex with me.

Q: Why did you allow Jeffrey to have sex with you?  
A: I was under the influence of shabu.

Q: You mean, everything Jeffrey and Darwin have sex with you, you were under the influence of shabu?  
A: Yes sir.

Q: And they know you are under the influence of shabu?  
A: Yes sir[.]<sup>105</sup>

Under the circumstances, BBB engaged in sexual intercourse with Gramatica for a consideration. This is precisely the situation contemplated by the law and covered by the definition of prostitution. Unlike rape, consent is *immaterial* here as the mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes a violation of the law. While BBB may have agreed to have sex with Gramatica, the latter is nevertheless criminally liable considering that BBB, then 14 years old,<sup>106</sup> was a minor who *engaged* in prostitution at the time of their sexual congress.

In *People v. Tulagan*,<sup>107</sup> the Court explained:

To avoid further confusion, We dissect the phrase “children exploited in prostitution” as an element of violation of Section 5(b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term “lascivious conduct” has a clear definition which does not include “sexual intercourse,” the phrase “children exploited in prostitution” contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

The term “other sexual abuse,” on the other hand, is construed in relation to the definitions of “child abuse” under Section 3, Article I of R.A. No. 7610 and “sexual abuse” under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “sexual abuse” includes the 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.

<sup>105</sup> TSN, AAA, September 12, 2017, pp. 7-9.

<sup>106</sup> RTC records, p. 17. See Certificate of Live Birth.

<sup>107</sup> *People v. Tulagan*, 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a) for engaging in, promoting, facilitating [,] or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

For a clearer view, a comparison of the elements of rape under the RPC and sexual intercourse with a child under Section 5(b) of R.A. No. 7610 where the offended party is between 12 years old and below 18, is in order.

<b>Rape under Article 266-A (1) (a, b, c) under the RPC</b>	<b>Section 5 (1) of R.A. No. 7610</b>
1. Offender is a man;	1. Offender is a man;
2. Carnal knowledge of a woman;	2. Indulges in sexual intercourse with a female child exploited in prostitution other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances;
3. Through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority.	3. Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.

As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC,

as amended by R.A. No. 10158 where the definition of “prostitute” was retained by the new law[.]”<sup>108</sup> (Emphasis supplied, citations omitted)

Simply stated, sexual intercourse with a victim who is *under 12 years of age (now under 16 years old, following Republic Act No. 11648*<sup>109</sup>) or is demented is *always* statutory rape and an accused will be prosecuted under Article 266-A, paragraph 1(d), of the Revised Penal Code, as amended by Republic Act No. 8353.<sup>110</sup>

On the other hand, as in the present case, if the victim is 12 years old (*now at least 16 years old, following Republic Act No. 11648*) or less than 18 and is deemed to be a child “*exploited to prostitution and other sexual abuse*” because she agreed to the sexual intercourse “*for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group,*” the crime could not be rape under the Revised Penal Code as there is consent. Instead, the offender should be penalized under Section 5(b) of Republic Act No. 7610.<sup>111</sup> The law, in effect, acknowledges that minors subjected to such circumstances may have consented to the act or the transaction. Still, their consent *cannot* be deemed free, genuine, and fully informed. Accordingly, the law recognizes the child’s inherent vulnerability and the exploitative nature of the situation.

Meanwhile, when the victim consents to the sexual intercourse, and no consideration, coercion, or influence is involved, then *no* crime is committed, except: (1) where “force, threat, or intimidation” as an element of rape is substituted by “moral ascendancy or moral authority;” and (2) in cases involving qualified seduction under Article 337, or simple seduction under Article 338 of the Revised Penal Code.<sup>112</sup>

The first exception occurs when the usual element of “force, threat, or intimidation” required in rape is supplanted by the offender’s exercise of moral ascendancy or moral authority over the minor. In such cases, the law recognizes that a child may be compelled to submit to sexual acts not through physical force but through dominance, trust, or authority wielded by a person in a position of influence—such as a parent, guardian, or teacher.

The second exception involves the crimes of qualified seduction and simple seduction, penalized under Articles 337 and 338 of the Revised Penal Code, respectively.

<sup>108</sup> *Id.* at 242–245.

<sup>109</sup> Approved on March 4, 2022.

<sup>110</sup> *People v. Sernadilla*, 930 Phil. 1 (2022) [Per J. Gaerlan, Third Division].

<sup>111</sup> *Id.* at 14.

<sup>112</sup> *Id.*

Under Article 337, qualified seduction is committed against a virgin over twelve years and under 18 years of age, by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, *or* the seduction by any person of his sister or descendant, whether or not she be a virgin or over 18 years of age. The crime of qualified seduction consists of these elements: (a) the victim is a virgin; (b) she must be between the ages of 12 (*now 16 years old, following Republic Act No. 11648*) and 18; (c) the perpetrator engages in sexual intercourse with her; (d) there is an abuse of authority, trust, or a relationship. If, on the other hand, the offender is the victim's brother or a relative, elements (a) and (b) are not required. It is worth noting that the relationship between the offender and the victim must be one of blood relation, but does not need to be legitimate.<sup>113</sup>

The crime of simple seduction pertains to the seduction of an unmarried woman or a widow with a good reputation, who is over 12 (*now at least 16 years old, following Republic Act No. 11648*) but less than 18 years old. The prosecution is burdened to prove that the complainant possesses a good reputation.<sup>114</sup>

Collectively, this regime of rules underscores the State's heightened responsibility to safeguard minors from sexual exploitation and abuse, mindful of the complexities surrounding the concepts of consent, vulnerability, and undue influence in the context of a child's evolving maturity.

In the present case, BBB's harrowing reality highlights the most heinous violations of human rights and dignity. When a minor, like BBB, is *manipulated* or forced into engaging in prostitution or other forms of sexual abuse for a consideration or price, it represents a profound betrayal of the minor's weakness or vulnerability. The consequences for these minor victims are unimaginable and far-reaching. They experience physical and psychological trauma; they endure emotional scars and are at risk of unwanted pregnancies; they also suffer from deeply seated feelings of shame and worthlessness. In the long term, their ability to form healthy and normal relationships may likewise be irreparably damaged.

Prostitution continues to persist due to deeply rooted gender inequality and the widespread disregard for women's human rights. It is driven by the

<sup>113</sup> *People v. Servano*, 454 Phil. 257, 301 (2003) [Per J. Corona, *En Banc*], citing Reyes, REV. PENAL CODE, Book II, 14th ed., 1998, p. 865.

<sup>114</sup> *People v. Lee*, 432 Phil. 338, 362 (2002) [Per J. Puno, *En Banc*] citing Act No. 3815, REV. PENAL CODE (1930), art. 338 and V. Francisco, Revised Rules of Court of the Philippines, Vol. VII, Part I, p. 752.

misguided notion that women are inherently inferior, often perceived as mere sexual objects and commodities, while men are regarded as superior, occupying positions of power, making decisions, and owning property. These societal beliefs, unfortunately, foster an environment where the exploitation of women becomes normalized and even perpetuated. This exploitative system thrives on a combination of sociocultural and economic factors, including poverty, lack of education, unemployment, and significant economic disparities. These conditions create power imbalances that enable those with wealth and influence to exploit vulnerable individuals, drawing them into the world of prostitution and sex trade. Women, in particular, often lack the resources and opportunities to break free from these oppressive structures, leaving them with no real choice but to engage in this work.<sup>115</sup>

Truly, sexual abuse and exploitation are closely intertwined. In both cases, there is a significant power imbalance between the perpetrator and the victim. Such dynamics make it even more difficult for minor-victims, like BBB, to resist, or even escape, the advances of their perpetrators. It also exposes the vulnerable background of minors, who often face poverty, homelessness, and lack of social support. This vulnerability made minors like BBB more susceptible to exploitation and manipulation.

The penalty for child prostitution under Section 5 of Republic Act No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. The Indeterminate Sentence Law (ISLAW) is applicable because *reclusion perpetua* is merely used as the maximum period consisting of a range starting from *reclusion temporal*, medium period, which is a divisible penalty.<sup>116</sup>

In the absence of any mitigating or aggravating circumstances attending the commission of the crime, the indeterminate sentence shall be taken from the medium period of the aforesaid penalty which has a range of 17 years, four months and one day to 20 years. The minimum term, on the other hand, shall be taken from the penalty next lower in degree which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period, or eight years and one day to 14 years and eight months.

Based on the preceding discussions, considering the circumstances of the case, Gramatica should be sentenced to suffer the penalty of imprisonment for an indeterminate period of eight years and one day of *prision mayor*, as minimum, to 17 years, four months and one day of *reclusion temporal*, as maximum. The awards of civil indemnity, moral damages, and exemplary damages of PHP 50,000.00 each are proper in light of prevailing

<sup>115</sup> <https://pcw.gov.ph/assets/files/2019/07/PCW-WPLA-Policy-Brief-9-Anti-Prostitution.pdf?x16957>

<sup>116</sup> *People v. Tulagan*, 849 Phil. 197, 226 (2019) [Per J. Peralta, *En Banc*].

jurisprudence.<sup>117</sup>

In addition, a fine of PHP 15,000.00 shall be imposed on Gramatica according to Section 31(f)<sup>118</sup> of Republic Act No. 7610.<sup>119</sup>

All monetary awards, except the fine, shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.<sup>120</sup>

*In Criminal Case No. 15-CR-10798, Gramatica is guilty of child abuse under Section 10(a) of Republic Act No. 7610*

There is also no compelling reason to overturn the ruling of the lower courts that found Gramatica guilty of child abuse under Section 10(a) of Republic Act No. 7610 which provides that “a person who shall commit any other acts of child abuse, cruelty, or exploitation or be responsible for other conditions prejudicial to the child’s development shall suffer the penalty of *prision mayor* in its minimum period.”

Under Section 3(b) of Republic Act No. 7610, “Child abuse” refers to maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) [p]sychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) [*a*]ny act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) [*u*]nreasonable deprivation of his basic needs for survival, such as food and shelter; *or*

<sup>117</sup> *Beleta v. People*, 914 Phil. 777, 784–785 (2021) [Per J. Inting, Second Division]

<sup>118</sup> The said provision states:

ARTICLE XII — Common Penal Provisions  
SECTION 31. *Common Penal Provisions.* —

.....  
(f) A fine to be determined by the court shall be imposed and 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.

<sup>119</sup> *People v. VVV*, 874 Phil. 811, 835 (2020) [Per J. Inting, Second Division]; *People v. BBB*, 856 Phil. 540, 567 (2019) [Per J. Peralta, Third Division]; *People v. Caoili*, 815 Phil. 839, 896 (2017) [Per J. Tijam, *En Banc*].

<sup>120</sup> *See Lara’s Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, 929 Phil. 754 (2022) [Per J. Leonen, *En Banc*].

- (4) [f]ailure to immediately give medical treatment to an injured child resulting in serious impairment of his [or her] growth and development or in his [or her] permanent incapacity or death. (Emphasis supplied)

Section 10(a) of Republic Act No. 7610 punishes the following distinct acts: (a) child abuse; (b) child cruelty; (c) child exploitation; and (d) being responsible for conditions prejudicial to the child's development.<sup>121</sup> *Araneta v. People*,<sup>122</sup> discussed these four punishable separate acts:

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for conditions prejudicial to the child's development" supposes that there [are] four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.<sup>123</sup>

A person who commits an act that debases, degrades, or demeans the intrinsic worth and dignity of the child as a human being, whether habitual or not, can be held liable for the above-mentioned provisions of Republic Act No. 7610. It bears stressing, however, that coercion and intimidation are not material elements for an accused to be held culpable under this section.<sup>124</sup>

<sup>121</sup> *Araneta v. People*, 578 Phil. 876, 884–885 (2008) [Per J. Chico-Nazario, Third Division].

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 884–886.

<sup>124</sup> *Dela Cruz v. People*, 903 Phil. 801, 818–819 (2021) [Per J. Lopez, J., Third Division].

To be punishable under Section 10(a) of Republic Act No. 7610, the important consideration is whether Gramatica's act of selling *shabu* to AAA, a minor, is prejudicial to her development.

The Court answers in the affirmative.

Gramatica defends that he cannot be held liable for violation of Section 10(a) of Republic Act No. 7610 because there was no intent to debase, degrade, or demean AAA's intrinsic worth and dignity as a human being. However, selling drugs is prohibited *per se* and punishable by law. What is more, selling drugs to a minor, like AAA, has the effect of *impairing* her dignity and worth as a human being. It *infringes* upon her right to grow up in a safe, wholesome, and drug-free environment. AAA narrated:

Q: How did come to know of Jeffrey Gramatica?

A: Because he was our boardmate at Km. 3 so the 3 of us are staying in the same boarding house.

Q: You also came to know of him because of drugs.

A: Yes sir.

Q: Why is drugs related with your acquaintance with Jeffrey Gramatica?

A: If we have no drugs with [BBB], we will buy drugs from him.

Q: How much will you pay Jeffrey Gramatica?

A: [PHP] 500.00 and up.

Q: You are still a minor, where [did] you get money to pay Jeffrey Gramatica?

A: From Darwin.

Q: What do you mean that you get from Darwin?

A: Because if he will use me, he will pay me money and drugs and if I do not have anymore drugs, I will use the money to buy drugs.<sup>125</sup>

Verily, when an individual sells drugs to minors, the former is taking advantage of the latter's vulnerability and impressionability. Minors like AAA are still developing physically, mentally, and emotionally. Hence, exposing minors to drugs can have long-lasting and harmful effects on their health and well-being. Worse, selling drugs to minors degrades and disregards their humanity and worth as a person. It reduces them to mere objects for profit, rather than recognizing their inherent worth. Such reprehensible acts should never be tolerated. This kind of system can have destructive consequences for

<sup>125</sup> TSN, AAA, September 26, 2017, p. 8.

the minors' self-esteem, relationships, and opportunities. Further, it contributes to the degradation of society as a whole.

Under Section 10(a) of Republic Act No. 7610, the penalty to be imposed against Gramatica should be *prision mayor* in its minimum period, which has a period of six years and one day to eight years. In the absence of any mitigating or aggravating circumstance, the maximum penalty to be imposed upon petitioner shall be taken from the medium period of the imposable penalty which is six years, eight months, and one day to seven years and four months. Applying the ISLAW, the minimum penalty to be imposed shall be taken one degree lower from the imposable penalty, which is *prision correccional* maximum, with a range of four years, two months, and one day to six years.

Under the prevailing circumstances, the Court deems it proper to impose the penalty of six years of *prision correccional*, as minimum, to seven years and four months of *prision mayor* minimum, as maximum.

Following recent jurisprudence,<sup>126</sup> the Court affirms the CA ruling that Gramatica should be liable to pay AAA the amount of PHP 20,000.00 as moral damages. To serve as an example of the correction of the public good,<sup>127</sup> the Court also imposes the award of PHP 20,000.00 as exemplary damages. These civil liabilities shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

In light of the circumstances, BBB and AAA are referred to the Department of Social Welfare and Development and/or the Department of Health for evaluation. If the assessment suggests it is necessary, they will also receive proper treatment and rehabilitation. Their initial exposure to and dependence on drugs may have had enduring impacts on their health and conduct. Consequently, it is imperative to evaluate their current state and apply necessary interventions based on the results of the assessment. The primary objective is to support their reintegration into society and offer them a renewed opportunity for a dignified and meaningful life.

Women often find themselves in prostitution due to a multitude of intersecting factors such as gender and racial discrimination, poverty, abandonment, and the lasting effects of sexual and verbal abuse. The limited access to formal education and the existence of low-paying jobs keep them

<sup>126</sup> *San Juan v. People*, 933 Phil. 889, 916 (2023) [Per J. Lopez, J., *En Banc*].

<sup>127</sup> See CIVIL CODE, Title XVIII, Chapter 3, art. 2229, sec. 5 which states:

ARTICLE 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

stuck in this cycle of exploitation. Addressing prostitution requires dismantling these structural inequalities, providing opportunities for education and economic empowerment, and fostering a society that upholds the dignity and rights of all individuals, particularly women and vulnerable groups.<sup>128</sup>

### G.R. No. 266039

The case of XXX266039, on the other hand, is different.

The Court finds that the elements required to prove a violation of Republic Act No. 7610 are *lacking*. Unlike BBB, CCC *cannot* be considered to have “indulged” in lascivious conduct. Her clear and categorical testimony reveals that she was asleep when XXX266039 touched her vagina and breasts. There was *no* consent, not even a semblance of it. Neither can it be said that XXX266039 employed coercion or influence, as he did not compel or persuade CCC to submit to his desires. Even assuming that coercion or influence was used, CCC could not be said to have “engaged” in lascivious conduct in the legal sense, as she was asleep when XXX266039 placed his hand inside her panties without her consent. Thus, the provisions of Republic Act No. 7610 regarding coercion or influence and the minor’s act of indulging in lascivious conduct are patently wanting in this case.

At this point, the Court dismisses XXX266039’s appeal and affirms his conviction but for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code and not as charged in the Information for lascivious conduct under Section 5(b) of Republic Act No. 7610.

*The provisions of Republic Act  
No. 7610 did not repeal the  
Revised Penal Code*

*Tulagan* discussed the effects of repeal, specifically in relation to Republic Act No. 8353 and the Revised Penal Code, noting that the former did not repeal the latter. From this fact, the Court concluded that acts of lasciviousness which do not amount to rape by sexual assault and do not fall under Republic Act No. 7610 may still be prosecuted under the Revised Penal Code:

<sup>128</sup> <https://pcw.gov.ph/assets/files/2019/07/PCW-WPLA-Policy-Brief-9-Anti-Prostitution.pdf?x16957>.

We further note that *R.A. No. 8353 did not expressly repeal Article 336 of the RPC*, as amended. Section 4 of R.A. No. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is *nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. No. 8353, except in sexual assault as a form of rape*. To recall, R.A. No. 8353 only modified Article 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances applicable to rape, *viz.*: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. Hence, *Article 336 of the RPC, as amended, is still a good law* despite the enactment of R.A. No. 8353 for there is no irreconcilable inconsistency between their provisions. When the *lascivious act is not covered by R.A. No. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. No. 7610*.<sup>129</sup> (Emphasis supplied, citations omitted)

A thorough reading of *Tulagan* shows that it did not discuss the effect of Republic Act No. 7610 on the provisions of the Revised Penal Code; it merely held that “when the lascivious act is not covered by Republic Act No. 8353, then Article 336 of the Revised Penal Code is applicable, except when the lascivious conduct is covered by Republic Act No. 7610.” Nevertheless, the issue of when acts of lasciviousness to a child must be prosecuted under the Revised Penal Code or under Republic Act No. 7610 remains unresolved.

*Tulagan* acknowledged that existing legislations, particularly Republic Act No. 8353 or the Anti-Rape Law, and Republic Act No. 7610, are silent and do not address sexual intercourse or lascivious conduct involving minors who are 12 years old but less than 18, thus:

Records of committee and plenary deliberations of the House of Representative and of the deliberations of the Senate, as well as the records of bicameral conference committee meetings, further reveal no legislative intent for R.A. No. 8353 to supersede Section 5(b) of R.A. No. 7610. The only contentious provisions during the bicameral conference committee meetings to reconcile the bills of the Senate and House of Representatives which led to the enactment of R.A. No. 8353, deal with the nature of and distinction between rape by carnal knowledge and rape by sexual assault;

<sup>129</sup> *People v. Tulagan*, 849 Phil. 197, 293–294 (2019) [Per. J. Peralta, *En Banc*].

the threshold age to be considered in statutory rape [whether Twelve (12) or Fourteen (14)], the provisions on marital rape and effect of pardon, and the presumptions of vitiation or lack of consent in rape cases. While R.A. No. 8353 contains a generic repealing and amendatory clause, the *records of the deliberation of the legislature are silent with respect to sexual intercourse or lascivious conduct against children under R.A. No. 7610, particularly those who are 12 years old or below 18, or above 18 but are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.*<sup>130</sup> (Emphasis supplied)

Despite the silence and gap, the Court in *Tulagan* proceeded to rule that acts of lasciviousness committed against minors must be prosecuted in accordance with Republic Act No. 7610. At this juncture, the Court considers it imperative to address the gap by undertaking the task which *Tulagan* seemingly left unresolved: *to determine whether Republic Act No. 7610 has repealed the provisions on acts of lasciviousness under the Revised Penal Code.*

The answer is in the negative.

Section 35 of Republic Act No. 7610 specifies that all laws, decrees, or rules inconsistent with its provisions are repealed or modified accordingly. On the other hand, the law explicitly mentions that the Revised Penal Code applies when the victim of rape or lascivious conduct is *below* 12 years old.

Therefore, it is clear that Republic Act No. 7610 did *not* repeal the provisions of the Revised Penal Code. Although *Tulagan* referred to the Revised Penal Code as being applicable to cases involving minors below 12 years old, and recognized the absence of explicit legal provisions for those 12 years old and above but below 18 years old, it merely concluded that all other acts of lasciviousness committed against children *subjected to sexual abuse* shall fall under Republic Act No. 7610.

Considering the previous points and noting that there has been no repeal between Republic Act No. 7610 and the Revised Penal Code, the Court concludes that *not* all cases of acts of lasciviousness committed against minors aged 12 years old and above but below 18 years old should be prosecuted under Republic Act No. 7610. The application of this law should be confined to cases where minors are subjected to sexual abuse.

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<sup>130</sup> *Id.* at 225.

The Court now rules that based on the explicit wording of Section 2(g) of the IRR of Republic Act No. 7610 and the preceding discussion, minors subjected to sexual abuse are those who *indulge* or *engage in*, or, in other words, consent, albeit such consent being defective under the law, or are those who are convinced, cajoled, prevailed upon, to participate and *engage* in lascivious conduct, due to the “*employment, use, persuasion, inducement, enticement or coercion*” conducted by the adult.

*Legislative intent and historical context indicate that Republic Act No. 7610 is relevant only to a specific a group of minors*

In light of recent legal developments and jurisprudence, the Court deems it necessary to review and elucidate the actual extent of Republic Act No. 7610. A straightforward examination of Section 5 of the law indicates that it addresses scenarios where children engage in sexual intercourse or lascivious behavior due to coercion or manipulation. Importantly, as stated, the word “indulge” suggests some level of consent, although it may be flawed or inadequate.

In *Tulagan*, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), who likewise offered the same view advanced in the present case, forwarded a comprehensive discussion as to why the provisions of Republic Act No. 7610 apply only to a specific class of children. In his Concurring and Dissenting Opinion in *Tulagan*, Justice Caguioa astutely observed that the enactment of Republic Act No. 7610 was the legislature’s response to the circumstances after the Court’s Decision in *People v. Ritter*.<sup>131</sup>

In the case of *Ritter*, therein accused Heinrich S. Ritter was acquitted of rape with homicide. The Court determined that considering that the prosecution did not prove that the victim, Rosario Baluyot (Baluyot), was below 12 years old, it was incumbent upon the prosecution to prove the element of force and intimidation in the fact of sexual intercourse for the crime of rape to apply. Unfortunately, the Court concluded that Baluyot had consented to the sexual intercourse, as she was a street child engaged in prostitution. This led to the unfortunate acquittal of Ritter, even though Baluyot died due to infection-related complications, as Ritter had left what is thought to be a sexual vibrator inside her vagina. Pieces of the object remained inside her vaginal canal, and it was only after seven months that Baluyot

<sup>131</sup> 272 Phil. 532 (1991) [Per J. Gutierrez, Jr., Third Division].

complained of pain and was given medical help, at which point the object was fully removed. The Court explained:

And finally, *the Court deploras the lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or guardians who profit from the sale of young bodies.* The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society. Newspaper and magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children unless the Government acts and acts soon. We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. *Something must be done about it.*<sup>132</sup> (Emphasis supplied)

The circumstances in *Ritter* prompted the legislature to enact Republic Act No. 7610, as highlighted in the sponsorship speech of Senator Santanina Rasul (Senator Rasul), in which she stated:

But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested for *purely material gains*. Children with ages ranging from three to 18 years are used and abused. We hear and read stories of rape, manhandling and sexual molestation in the hands of cruel sexual perverts, local and foreigners alike. As of October 1990, records show that 50 cases of physical abuse were reported, with the ratio of six females to four males. Now, Mr. President, I ask: Is there a new life, a future for sexually abused children? Why do we have victims like them when Filipinos are known for their close family ties? How do we explain the increasing and alarming number cases of child abuse?

There are still a lot of abuses and injustices done to our children who suffer not only from strangers but, sadly, also in the hands of their parents and relatives. We know for a fact that *the present law on the matter, the Child and Welfare Code (PD No. 603) has very little to offer to abused children.* We are aware of the numerous cases not reported in media.

....

Perhaps, more lamentable than the continuing child abuses and exploitation is the seeming unimportance or the lack of interest in the way we have dealt with the said problem in the country. *No less than the Supreme Court, in the recent case of People v. Ritter, held that we lack criminal laws which will adequately protect streetchildren from*

<sup>132</sup> *Id.* at 569-570.

*exploitation by pedophiles.* But as we know, we, at the Senate have not been remiss in our bounden duty to sponsor bills which will ensure the protection of stretchchildren from the tentacles of sexual exploitation. Mr. President, now is the time to convert these bills into reality. (Emphasis supplied)

Senator Rasul's speech clearly indicates that Republic Act No. 7610 was enacted in response to the inadequacy of existing laws on child abuse. Indeed, the law was intended to "provide protection for children in special areas where gaps existed prior to its enactment." Furthermore, Senator Rasul's mention of the *inadequacy* of criminal laws reinforces the conclusion that the law was enacted to fill the gaps to address instances of sexual abuse against minors that were not addressed by prior laws. In other words, Republic Act No. 7610 was meant to complement—not repeal—the Revised Penal Code, particularly in cases where the latter fell short in providing adequate legal remedies.

The discussions during the legislative process regarding Republic Act No. 7610 suggest that there was *no* intention to completely exclude or otherwise repeal sexual crimes against minors from the scope of the Revised Penal Code's provisions:

Senator Pimentel. Just this question, Mr. President, if the Gentleman will allow. *Will this amendment also affect the Revised Penal Code provisions on seduction?*

Senator Lina. *No, Mr. President. Article 336 of Act No. 3815 will remain unaffected* by this amendment we are introducing here. As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim. And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially a foreigner, is seen with a child with whom he has no relation - blood or otherwise -- and they are just seen in a room and there is no way to enter the room and to see them in *flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles. So, we are introducing into this bill, Mr. President, an act that is considered already an attempt to commit child prostitution. *This, in no way, affects the Revised Penal Code provision on acts of lasciviousness or qualified seduction.*

In addition to providing a clear and straightforward response, Senator Jose David Lina, Jr. (Senator Lina) highlighted in his sponsorship speech that Senate Bill No. 1209 aims to enhance current penal provisions on the matter, thus:

Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. *It is intended to complement provisions of the Revised Penal Code*

*where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities.*

These are the three areas of concern which are specifically included in the United Nations Convention on the Rights of the Child. As a signatory to this Convention, to which the Senate concurred in 1990, our country is required to pass measures which protect the child against these forms of abuse.

....

Mr. President, this bill on providing higher penalties for abusers and exploiters, setting up legal presumptions to facilitate prosecution of perpetrators of abuse, and *complementing the existing penal provisions of crimes which involve children below 18 years of age* is a part of a national program for protection of children. (Emphasis supplied)

The Court considers Senator Lina's repeated use of the word "complement" as a clear indication that the legislature did *not* intend to repeal Article 336 of the Revised Penal Code. In this context, both Senator Lina and Senator Rasul affirmed that the enactment of Republic Act No. 7610 did not repeal Article 336 of the Revised Penal Code. The purpose of the law was to *strengthen* law enforcement rather than to restrict the existing legislation. The intention, in particular, was to impose penalties for exploitative actions that the Revised Penal Code was not equipped to address, such as those involving minors who are *enticed* into prostitution or coerced into compliance, as illustrated in Gramatica's case.

*The fundamental concept is complementarity, rather than overlap*

The Revised Penal Code and Republic Act No. 7610 serve different purposes. One focuses on acts carried out through force or intimidation, while the other addresses exploitative situations where coercive social and personal factors undermine the child's consent.

For instance, Justice Caguioa referred to the Dissenting Opinion of retired Associate Justice Antonio T. Carpio in *Olivarez v. Court of Appeals*.<sup>133</sup> He observed that the term "other sexual abuse" refers to *any sexual abuse other than the acts of lasciviousness complained of and other than exploitation in prostitution*.<sup>134</sup> Thus, the phrase "other sexual abuse" should

<sup>133</sup> 503 Phil. 421 (2005) [Per J. Ynares-Santiago, First Division].

<sup>134</sup> *Id.* at 445.

be understood to signify that the child is already subjected to sexual abuse *other than* the crime for which the accused is charged under Section 5 of Republic Act No. 7610. In other words, the term “other sexual abuse” denotes a component that is separate and distinct from the acts of lasciviousness that the accused committed against the child.

In sum, as Justice Caguioa noted: “[*Republic Act No.*] 7610 and the [*Revised Penal Code*], as amended by [*Republic Act No.*] 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.”

All told, all aspects of the legislative intent behind Republic Act No. 7610 indicate that the law was designed to operate alongside the existing provisions of the Revised Penal Code. Thus, when no evidence exists that the child was induced, influenced, or persuaded into the act—as in the case of CCC—the Revised Penal Code governs.

With this, the Court finds applicable the ruling in *People v. Abello*<sup>135</sup> that Article 336 of the Revised Penal Code, not Republic Act No. 7610, should apply in cases of acts of lasciviousness committed against minors 12 years old and above but below 18 years old.

In *Abello*, the 21-year-old victim contracted polio at the age of seven months, which resulted in difficulties with walking that prevented her from attending school. As a result, she only learned to read and write her name and those of her friends. On June 30, 1998, the victim was asleep in her home located in Navotas alongside her sister-in-law and nephew. Suddenly, she was awakened when Abello grabbed her breast. On July 2, 1998, around 3:00 a.m., Abello again touched her breast in a similar manner while she was asleep. During both incidents, the victim identified Abello due to the light from outside that illuminated the house. On July 8, 1998, at around 2:00 a.m., Abello placed his soft penis inside the mouth of the victim. The latter awakened when Abello accidentally kneeled on her right hand. The victim then exclaimed “*aray*” which forced the accused to enter his room hurriedly. The victim, nevertheless, saw Abello. On the same date, she reported the incident to her sister-in-law and mother.

In that case, the Court determined that the prosecution did not provide any proof indicating that force or coercion was involved in Abello’s sexual

<sup>135</sup> 601 Phil. 373 (2009) [Per J. Brion, Second Division].

abuse of the victim; the evidence shows that the victim was *asleep* when these offenses occurred and only became aware when she sensed her breasts being touched. Therefore, she would have been unable to resist Abello's advances because she was *unconscious* during the incident. Similarly, there was no evidence demonstrating that Abello forced her or intimidated her into silence regarding his sexual assault after she was awakened. There is also no proof that she had the opportunity to express a conscious lack of consent or resistance to Abello's actions. Besides, the prosecution failed to present any testimonial or documentary evidence from a qualified physician, psychologist, or psychiatrist affirming that the victim's physical condition made her incapable of fully caring for herself or protecting herself from sexual abuse. Given these circumstances, the Court did not classify the victim as a child under Section 3(a) of Republic Act No. 7610.

In the same case, the Court recognized that because Republic Act No. 7610 is a special law addressing a *specific* group within society, the prosecution must establish that the victim truly belongs to this category to justify the application of its provisions. Any uncertainty regarding this matter must be resolved in favor of the accused. The Court instructed:

*In the present case, the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.*

....

*In arriving at this conclusion, we consider that since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. Any doubt in this regard we must resolve in favor of the accused.*

From another perspective, we also note that no evidence has been adduced showing that AAA's physical disability prevented her from resisting Abello's attacks; the evidence only reveals that Abello took advantage of the opportunity presented to him (i.e., that AAA and her companions who were then asleep) to commit the sexual abuses; this inference is supported by the fact that he stopped his sexual assault when AAA started to awaken. It can also be reasonably deduced from these circumstances that Abello sought to commit the sexual abuses with impunity — without AAA's knowledge and without any interference on her part.

In light of these conclusions, *we cannot hold Abello liable under R.A. No. 7610. However, we still find him liable for acts of lasciviousness under Article 336 of the RPC, as amended.*<sup>136</sup> (Emphasis supplied)

In *Abello*, the Court emphasized that there was *no* coercion or influence as the victim was asleep, which is directly comparable to the current case of XXX266039.

*The case at bar presents a case for violation of Article 336 of the Revised Penal Code*

With the foregoing discussion, the Court finds that XXX266039 is liable for acts of lasciviousness under Article 336 of the Revised Penal Code. The elements of the crime, as enumerated by the Court in *People v. Bon*,<sup>137</sup> are as follows:

The elements of the crime of acts lasciviousness are: (1) that the *offender commits any act of lasciviousness or lewdness*; (2) *that it is done: (a) by using force and 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; and (3) that the offended party is another person of either sex.*<sup>138</sup> (Emphasis supplied)

The direct, straightforward, and categorical testimony of the victim, CCC, reveals that XXX266039 committed acts of lasciviousness or lewdness upon her while she was *unconscious*. While asleep, she felt a hand inside her underwear. She recognized XXX266039, her own grandfather, touching her private parts. She recalled that after touching her vagina, XXX266039 proceeded to touch both her breasts, viz.:

Q: Ang inirereklamo mo dito ay si [XXX266039], kaano ano mo ito?

A: He is my grandfather, ma'am.

Q: Paano mo siya naging lolo?

A: He is my father's father, ma'am.<sup>139</sup>

....

Q: Anong oras ba nangyari itong inirereklamo mo noon?

<sup>136</sup> *Id.* at 393–395.

<sup>137</sup> 444 Phil. 571 (2003) [Per J. Ynares-Santiago, *En Banc*].

<sup>138</sup> *Id.* at 583–584.

<sup>139</sup> *Rollo* (G.R. No. 266039), pp. 11–12.

- A: At around 1:00 am, ma'am.
- Q: Ala-una ng madaling araw, ano ang ginagawa mo noon?  
A: I was sleeping. Ma'am.
- Q: You were sleeping, and then you said that may nararamdaman ka?  
A: Yes, ma'am.
- Q: Can you tell me ano yung nararamdaman mo?  
A: *I felt that there is (sic) a hand inside my underwear, ma'am. When I opened my eyes, I saw him because there is light in the room.*
- Q: Pagkatapos mo siyang makita, anong ginawa mo?  
A: I wasn't able to move because of fear, ma'am.
- Q: Pagkatapos, noong hindi ka makagalaw, ano ang ginawa ng akusado kung mayroon man?  
A: After he put his hand inside my underwear, he pulled it out *and then he put his hands inside my bra and touch (sic) my left breast ma'am, and then after that, he touched my right breast.*<sup>140</sup>
- .....
- Q: Kapag sinabi mong ipinasok ang kamay mo sa loob ng panty, mayroon ba siyang hinawakan sa loob ng panty?  
A: Yes, ma'am.
- Q: Anong parte ng katawan mo? Ang ibig mo bang sabihin ang iyong ari?  
A: Yes, ma'am.<sup>141</sup> (Emphasis supplied)

The Information in the present case states that XXX266039 touched the genitals of CCC using intimidation, coercion and influence, but it does not provide that XXX266039 committed it while CCC was unconscious. Following Rule 120, Section 4<sup>142</sup> of the Rules of Court and the mandate that the accused must be informed of the nature and the cause of the accusation against him, XXX266039 may *not* be held liable for the charge of acts of lasciviousness committed *while the victim is unconscious*.

However, XXX266039 may still be held liable for acts of lasciviousness considering that the Information provides that XXX266039 accomplished the crime *through intimidation*. While indeed the first incident of touching CCC's vagina happened when she was asleep, XXX266039 was

<sup>140</sup> *Id.* at 12.

<sup>141</sup> *Id.* at 12-13.

<sup>142</sup> SECTION 4. *Judgment in case of variance between allegation and proof.* - When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

able to further gratify his desire by using moral ascendancy against her. XXX266039's position as CCC's grandfather and the wide disparity between their ages undoubtedly gave XXX266039 moral ascendancy over CCC. It is settled in jurisprudence<sup>143</sup> that in cases of incestuous sexual abuse, moral ascendancy *supplants* the element of intimidation. In the same way that the Court has recognized that a father exercises moral ascendancy over his child,<sup>144</sup> so must such principle apply in the case of XXX266039 in relation to his granddaughter, CCC.

As XXX266039 managed to perform lewd act by leveraging moral authority, which supplants intimidation, he should be held liable for violation of Article 336 of the Revised Penal Code.

XXX266039's defense that the crime could not have been committed due to the presence of other persons in the house where it occurred has *no* merit. The Court has consistently held that there is no standard time or place for the commission of rape, or similarly, sexual abuse. In *People v. XXX*,<sup>145</sup> the Court held:

On this score, the alleged inconsistency or improbability in the victim's testimony pertaining to whether appellant's father was also inside the house when she got raped or *whether there were also many people nearby* since it was then the feast day of the barangay refer to trivial matters which *do not affect the credibility of the victim's testimony*. For another, the *proximity of a number of people at the rape scene does not disprove the commission of rape*. For lust is no respecter of time and place. *Rape can be committed anywhere*, even in places where people congregate. *People v. Balora* decrees:

The court has time and again held that "*the evil in man has no conscience. The beast in him bears no respect for time and place*, driving him to commit rape anywhere — even in places where people congregate such as in parks, along the roadside, within school premises and *inside a house where there are other occupants*." "Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances." Indeed, no one would think that rape could happen in a public place like the comfort room of a movie house and in broad daylight.<sup>146</sup> (Emphasis supplied, citation omitted)

<sup>143</sup> *People v. ZZZ*, 955 Phil. 733 (2024) [Per J. Singh, Third Division].

<sup>144</sup> *Id.* at 755.

<sup>145</sup> 887 Phil. 734 (2020) [Per J. Lazaro-Javier, First Division].

<sup>146</sup> *Id.* at 749–750, citing *People v. Balora*, 388 Phil. 193, 203 (2000) [J. Pardo, First Division].

Under the circumstances, the mere presence of other occupants in the house where XXX266039 committed his lewd act upon CCC did not make the commission of the lascivious conduct impossible or even improbable.

Anent XXX266039's argument that CCC did not shout when he allegedly touched her, this has been sufficiently explained through her testimony in court, where she consistently said that she was unable to move due to fear.<sup>147</sup> The Court has recognized this as a common reason why victims fail to shout for help in cases of sexual abuse. In *People v. Ofemiano*,<sup>148</sup> the Court elucidated:

Jurisprudence holds that the *failure of the victim to shout for help does not negate rape*. Even the victim's *lack of resistance, especially when intimidated by the offender into submission, does not signify voluntariness or consent*. In *People v. Corpuz*, we acknowledged that even absent any actual force or intimidation, rape may be committed if the malefactor has moral ascendancy over the victim. We emphasized that in rape *committed by a close kin*, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, *moral influence or ascendancy substitutes for violence or intimidation*.<sup>149</sup> (Emphasis supplied; citations omitted)

Finally, XXX266039's argument that the prosecution's inability to support CCC's testimony with that of her relatives diminishes its credibility and reliability does not persuade the Court.

It is well-settled that the prosecutor has the exclusive prerogative to prosecute a case. Likewise, the prosecutor has the discretion to present witnesses.<sup>150</sup> In *People v. Montierro*,<sup>151</sup> the Court held:

However, it must be noted with import that the exclusive prerogative of the Executive begins and ends with matters involving purely prosecutorial discretion. *Prosecutorial discretion pertains to who to prosecute, what case to prosecute, and how the case would be pursued based on the evidence available to the prosecution*. The prosecution has the freedom and authority to determine whether to charge a person, what information to file against them and *how to prosecute the case filed before the courts*.[.]<sup>152</sup> (Emphasis supplied)

<sup>147</sup> *Rollo* (G.R. No. 266039), p. 12.

<sup>148</sup> 625 Phil. 92 (2010) [Per J. Velasco, Jr., Third Division].

<sup>149</sup> *Id.* at 99.

<sup>150</sup> See *Montelibano v. Yap*, 822 Phil. 262, 273 (2017) [Per J. Martires, Third Division].

<sup>151</sup> 926 Phil. 430 (2022) [Per J. Caguioa, *En Banc*].

<sup>152</sup> *Id.* at 463-464.

Thus, the absence of testimony from CCC's relatives who might have seen the incident does not undermine the prosecution's case; it is not fatal in establishing XXX266039's liability. At most, such testimony only serves as corroborative and is not essential or indispensable for establishing that the crime took place. Additionally, the Court has often ruled that the lone testimony of a victim of acts of lasciviousness is sufficient to produce a finding of guilt on the part of the accused. In *Garingarao v. People*,<sup>153</sup> the Court emphasized:

The Court has ruled that *in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.* In this case, both the trial court and the Court of Appeals found the testimony of AAA credible over Garingarao's defense of denial and alibi. It is a settled rule that *denial is a weak defense as against the positive identification by 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.* Garingarao's defense of denial and alibi must fail over the positive and straightforward testimony of AAA on the incident[.]<sup>154</sup> (Emphasis supplied, citations omitted)

The Court is satisfied that the prosecution has proved XXX266039's guilt beyond reasonable doubt. Thus, the Court affirms his conviction for *acts of lasciviousness under Article 336 of the Revised Penal Code.*

The penalty to be imposed for acts of lasciviousness under Article 366 of the Revised Penal Code is *prision correccional* or six months and one day to six years.

The Information alleged that XXX266039 was the grandfather of CCC. He likewise admitted this fact through stipulation during pre-trial.<sup>155</sup> Relationship, an alternative circumstance under Article 15 of the Revised Penal Code, is an *aggravating circumstance* in crimes against chastity, whether the offender is a higher or a lower degree relative of the offended party.<sup>156</sup>

Considering the presence of an aggravating circumstance, the penalty imposed shall be in its maximum period, or within the range of four years, two months, and one day to six years of *prision correccional*. Applying the

<sup>153</sup> 669 Phil. 512 (2011) [Per J. Carpio, Second Division].

<sup>154</sup> *Id.* at 522.

<sup>155</sup> *Rollo* (G.R. No. 266039), p. 10.

<sup>156</sup> *People v. Orilla*, 467 Phil. 253, 283 (2004) [Per J. Carpio, *En Banc*].

ISLAW, the minimum of the penalty shall be taken from that one degree lower or *arresto mayor* which has a range of one month and one day to six months.

Thus, XXX266039 must suffer the indeterminate penalty of imprisonment of six months of *arresto mayor* to six years of *prision correccional*.

The Court deems it proper to increase the awards of civil indemnity, moral damages, and exemplary damages to PHP 150,000.00 each, given the following: (1) the penalty imposed upon XXX266039 is considerably lower than that which would have been imposed had XXX266039 been found liable under Republic Act No. 7610; and (2) the presence of the alternative circumstance of relationship, XXX266039 being the grandfather of the minor victim, CCC. This is also consistent with *People v. ABC260708*,<sup>157</sup> which recognized that law and jurisprudence set the minimum amounts of civil indemnity and damages but do not impose a maximum limit. It increased the award of civil indemnity, moral damages, and exemplary damages from that outlined in *Tulagan* to deter incestuous sexual abuse perpetrated against minors.

All monetary awards shall earn legal interest at the rate of 6% per annum from date of finality of the Decision until full payment.

*Guidelines on the proper application of Section 5(b), Republic Act No. 7610, in relation to acts of lasciviousness involving minors*

In clarifying the proper application of Section 5(b) of Republic Act No. 7610, particularly in relation to acts of lasciviousness involving minors, the Court finds it necessary to delineate the scope of this provision and distinguish it from the related crimes under the Revised Penal Code. The following guidelines are thus issued to aid in the uniform and consistent prosecution of such cases, especially in the light of the amendments introduced by Republic Act No. 11648 and the relevant jurisprudence.

*First*, Section 5(b) of Republic Act No. 7610, as amended by Republic Act No. 11648 (which raised the age of sexual consent to 16), applies to minors aged 16 and above but below 18 years old who are subjected to other

<sup>157</sup> 950 Phil. 199, 235 (2024) [Per J. Lopez, M., *En Banc*].

forms of sexual abuse. This provision specifically covers situations where a minor engages in sexual intercourse or lascivious conduct due to the to the act.

*Second*, the provision contemplates a semblance of consent that is defective or vitiated—where the minor allows, yields, or participates in the act not through free will but because of the coercion or influence exerted by an adult. Such coercion or influence is distinct from the concepts of force or intimidation under the Revised Penal Code. Therefore, when the minor's participation is induced by pressure, manipulation, or abuse of authority that does not rise to the level of force or intimidation, Section 5(b) properly applies.

*Third*, Section 5(b) does not apply when the lascivious conduct is committed through force or intimidation, or when the victim is deprived of reason, unconscious, or otherwise subjected to fraudulent machination or grave abuse of authority. In such cases, the proper charge is acts of lasciviousness under Article 336 of the Revised Penal Code, and Republic Act No. 7610 does not find application.

*Fourth*, suppose the victim is below 12 years old, or below 16 years old, and the case does not fall under the specific conditions of Section 5(b). In that case, the offense should be prosecuted as either rape or acts of lasciviousness, as the case may be, under the provisions of the Revised Penal Code, as amended.

The rules are summarized as follows:

	Lascivious conduct committed through force, threat, or intimidation, or where the victim is deprived of reason or otherwise unconscious, or by fraudulent machination or grave abuse of authority	Where the child <i>indulges and engages</i> in lascivious conduct, thus subjected to sexual abuse, through the adult's employment of coercion and influence, or in other words, when the child gives defective "consent"
A child below 12 years old	Statutory Acts of Lasciviousness under Article 336 of the Revised Penal Code	Statutory Acts of Lasciviousness under Article 336 of the Revised Penal Code

A child 12 years old or above but below 18 years old	Acts of Lasciviousness under Article 366 of the Revised Penal Code	Sexual abuse under Section 5(b) of Republic Act No. 7610
--	--	--

These principles on the delineation of the elements of force and intimidation on one hand, and coercion and influence on the other, and the applicability of Republic Act No. 7610 *only* as to minors who are EPSOSA, shall also apply to other similar crimes sexual in nature, including rape by carnal knowledge and rape by sexual assault.

*Final note*

*“The true character of a society is revealed in how it treats its children.”*

-Nelson Mandela in his speech at Worcester Station, September 27, 1997

All told, it cannot be gainsaid that the Court is aware of the deficiencies in our present laws, which have resulted in situations such as the instant case—where a grandfather like XXX266039, who committed abhorrent and bestial acts against his minor granddaughter, is meted a penalty that is regrettably lower than that prescribed under Republic Act No. 7610. The Court fully recognizes that the punishment imposed does not reflect the full gravity and depravity of the acts committed. Nevertheless, the Court emphasizes that, while it is neither blind nor indifferent to the manifest injustice brought about by the current state of the law, it is bound to interpret and apply the law as written. The Court’s duty is to give effect to the clear letter of the law, not to rewrite it to impose a penalty more suited to the moral outrage evoked by the facts. Any modification or enhancement of the prescribed penalties lies within the *exclusive* province of the legislature, not the judiciary.

In line with the above, and in fulfillment of the Court’s duty to uphold the Constitution, which mandates the special protection of children from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development, let this serve as a call to the legislature to fulfill its bounden duty of reviewing and amending our present laws and ensuring the safety, well-being, and dignity of our Filipino children.

**ACCORDINGLY**, the Court resolves to:

1. **DENY** the Petition for Review on *Certiorari* in G.R. No. 260233. The Decision dated March 11, 2021, and the Resolution dated March 29, 2022, of the Court of Appeals in CA-G.R. CR No. 42318 are **AFFIRMED with MODIFICATIONS** as follows:
  - a. In Criminal Case No. 15-CR-10797 filed before Branch █, Regional Trial Court, La Trinidad, Benguet, petitioner Jeffrey Gramatica y Laurista is found **GUILTY** of child prostitution under Section 5(b) of Republic Act No. 7610. He is sentenced to suffer imprisonment of eight years and one day of *prision mayor* medium, as minimum, to 17 years, four months and one day of *reclusion temporal* minimum, as maximum. Petitioner is likewise **ORDERED** to pay the victim, BBB, PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages. In addition, he is **ORDERED** to pay a **FINE** of PHP 15,000.00 according to Section 31(f) of Republic Act No. 7610.
  - b. In Criminal Case No. 15-CR-10798 filed before Branch █, Regional Trial Court, La Trinidad, Benguet, petitioner Jeffrey Gramatica y Laurista is found guilty of child abuse under Section 10(a) of Republic Act No. 7610. He is sentenced to suffer imprisonment of six years of *prision correccional*, as minimum, to seven years and four months of *prision mayor* minimum, as maximum. Further, he is **ORDERED** to pay the victim AAA PHP 20,000.00 as moral damages, and PHP 20,000.00 as exemplary damages.

All monetary awards, except the fine, shall earn interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.


Further, BBB and AAA are both **REFERRED** to the Department of Social Welfare and Development and/or the Department of Health for evaluation, and if deemed necessary, for treatment and rehabilitation.

2. **DISMISS** the appeal in G.R. No. 266039. The Decision dated October 7, 2021, of the Court of Appeals in CA-G.R. CR No. 44840 is **AFFIRMED with MODIFICATION**, in that accused-appellant XXX266039 is found **GUILTY** of acts of lasciviousness under Article 336 of the Revised Penal Code in Criminal Case No. 2018-


1383 filed before Branch [redacted], Regional Trial Court, Lucena City, and he is **SENTENCED** to suffer the indeterminate penalty of imprisonment of six months of *arresto mayor*, as minimum, to six years of *prision correccional*, as maximum.

In addition, he is **ORDERED** to **PAY** CCC the sum of PHP 150,000.00 as civil indemnity, PHP 150,000.00 as moral damages, and PHP 150,000.00 as exemplary damages, each of which shall earn interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.

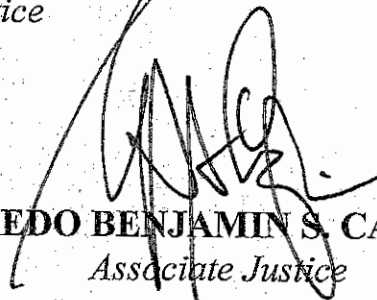
**SO ORDERED.**

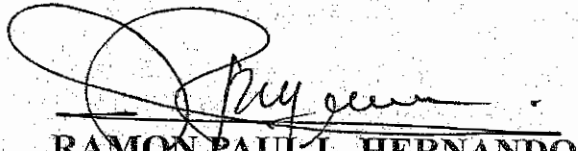
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*


**WE CONCUR:**

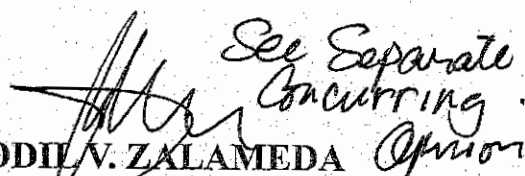
*See separate concurring opinion*  
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*


  
**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*  
*See Concurring*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*


  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

*See Separate Concurring Opinion*  
  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*



**RICARDO R. ROSARIO**  
*Associate Justice*



**JHOSEP Y. LOPEZ**  
*Associate Justice*



**JAPAR B. DIMAAMPAO**  
*Associate Justice*



**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*



**ANTONIO T. KHO, JR.**  
*Associate Justice*

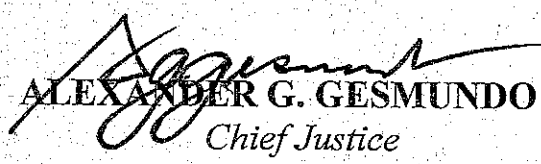
No part and on leave  
**MARIA FILOMENA D. SINGH**  
*Associate Justice*



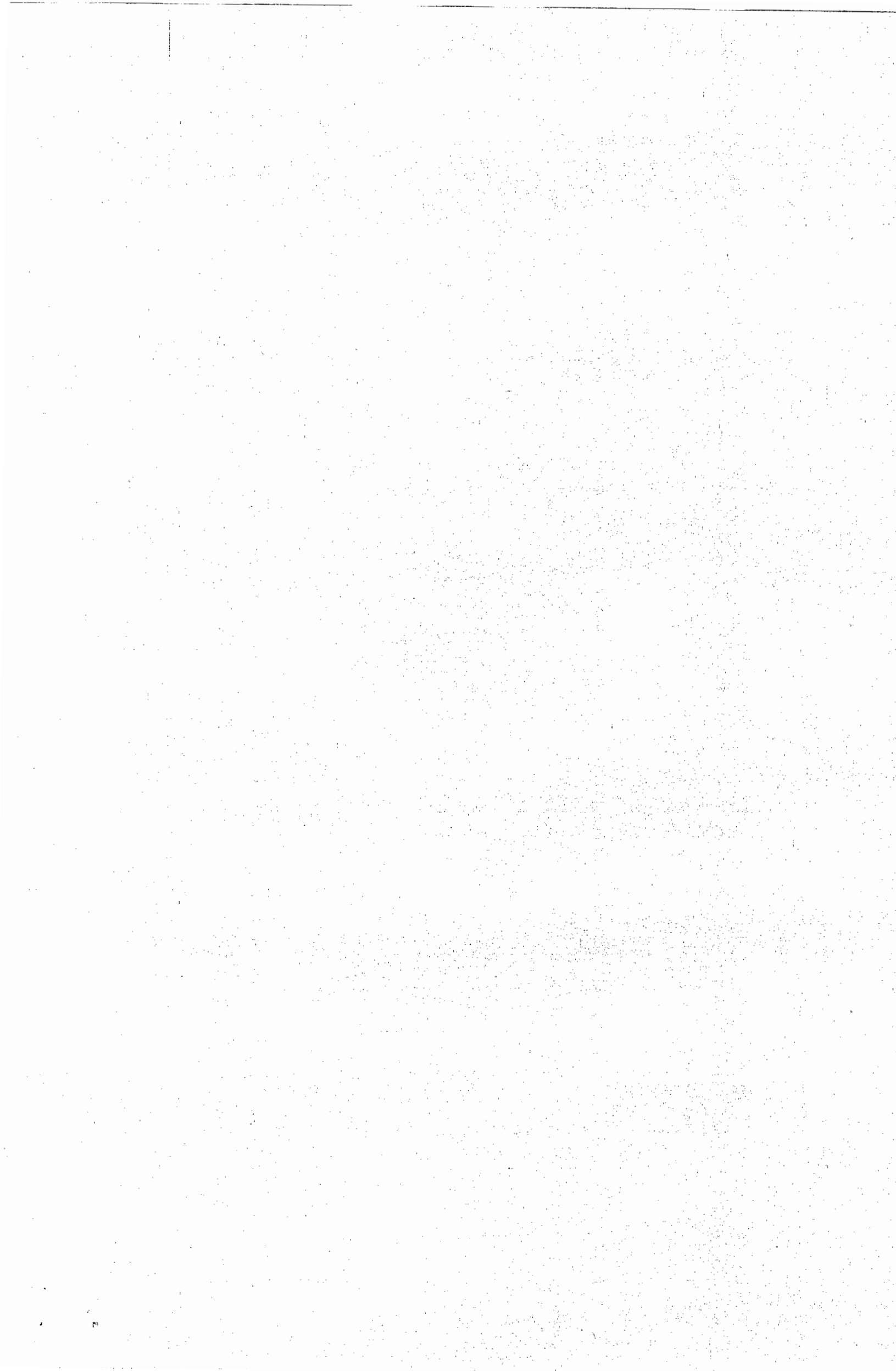
**RAUL B. VILLANUEVA**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.



**ALEXANDER G. GESMUNDO**  
*Chief Justice*



EN BANC

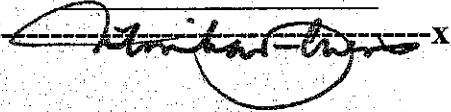
G.R. No. 260233 – JEFFREY GRAMATICA y LAURISTA, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 266039 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, v. XXX266039, Accused-appellant.

Promulgated:

August 12, 2025

X



X

SEPARATE CONCURRING OPINION

LEONEN, SAJ:

I concur in the result.

However, accused-appellant XXX266039 should be convicted of Lascivious Conduct under Section 5(b) of Republic Act No. 7610 or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act and not Acts of Lasciviousness under Article 336 of the Revised Penal Code. I reiterate my opinion in *Quimvel v. People*,<sup>1</sup> *People v. Tulagan*,<sup>2</sup> and *Carbonell v. People*<sup>3</sup> that Republic Act No. 8353 or The Anti-Rape Law of 1997 has rendered ineffective the provision on Acts of Lasciviousness in the Revised Penal Code.

The consolidated cases present an opportunity for this Court to clarify the definition of the term “exploited under prostitution and other sexual abuse” or EPSOSA under Republic Act No. 7610 and how the presence of such element takes the crime out of the coverage of the Revised Penal Code.

I

In G.R. No. 260233, the Petition for Review on Certiorari assails the March 11, 2021 Decision and March 29, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 4231, affirming with modification the Decision of the Regional Trial Court, La Trinidad, Benguet in Criminal Case Nos. 15-CR 101797 and 10798 finding petitioner Jeffrey Gramatica y Laurista

<sup>1</sup> 808 Phil. 889 (2017) [Per J. Velasco, Jr., En Banc].

<sup>2</sup> 849 Phil. 197 (2019) [Per J. Peralta, En Banc].

<sup>3</sup> 901 Phil. 501 (2021) [Per J. Delos Santos, Third Division].



(Gramatica) guilty of violating Sections 5(b) and 10(a) of Republic Act No. 7610.<sup>4</sup>

Gramatica was charged in four separate Informations.

In Criminal Case No. 15-CR-10794:

That sometime in the second week of June 2015 up to the last week of June 2015, at [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and knowingly sell, deliver, or give away methamphetamine hydrochloride, commonly known as "shabu," a dangerous drug to [REDACTED] and [REDACTED], which they thereafter use and consume together inside his room at [REDACTED], Benguet, in violation of the said law.

The commission of the crime is aggravated by the fact that the victims, [REDACTED] and [REDACTED] are minors, they having been born respectively on January 19, 199 and July 18, 2000.

CONTRARY TO LAW.<sup>5</sup>

In Criminal Case No. 15-CR-10797:

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED] Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly commit acts of sexual intercourse with [REDACTED], a child who was born on July 18, 2000, and who is deemed under the law to be a child exploited in prostitution or other sexual abuse as she indulged in sexual intercourse or lascivious conduct for some consideration and due to the influence of the accused who is an adult, thereby demeaning her intrinsic worth and dignity as a child, to her great damage and prejudice.

CONTRARY TO LAW.<sup>6</sup>

In Criminal Case No. 15-CR-10798:

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly commit child abuse upon the person of [REDACTED], a minor born on January 19, 1998, by placing or causing her

<sup>4</sup> Ponencia, p. 2.

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 3-4.

to be in a situation or condition prejudicial to her growth and development as a child, that is, by selling, delivering, or giving away methamphetamine hydrochloride also known as 'shabu,' a dangerous drugs, to her and allowing her to use and consume the drug in his place, to her great damage and prejudice.

CONTRARY TO LAW.<sup>7</sup>

In Criminal Case No. 15-CR-10799:

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly commit child abuse upon the person of [REDACTED], a minor born on July 18, 2000, by placing or causing her to be in a situation or condition prejudicial to her growth and development as a child, that is, by selling, delivering, or giving away methamphetamine hydrochloride also known as 'shabu,' a dangerous drugs, to her and allowing her to use and consume the drug in his place, to her great damage and prejudice.

CONTRARY TO LAW.<sup>8</sup>

In Criminal Case No. 15-CR-10794, the trial court acquitted Gramatica for the prosecution's failure to establish the elements of Illegal Sale of shabu. It also acquitted Gramatica in Criminal Case No. 15-CR-10799 on the ground of reasonable doubt.<sup>9</sup>

In Criminal Case Nos. 15-CR-10797 and 15-CR-10798, both the trial court and the Court of Appeals found Gramatica guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) and violation of Section 10(a) of Republic Act No. 7610, respectively.<sup>10</sup>

The *ponencia* affirmed the convictions but modified the disposition, as follows:

ACCORDINGLY, the Court resolves to:

1. DENY the Petition for Review on Certiorari in G.R. No. 260233. The Decision dated March 11, 2021, and the Resolution dated March 29, 2022, of the Court of Appeals in CA-G.R. CR No. 42318 are AFFIRMED WITH MODIFICATIONS as follows:
  - a. In Criminal Case No. 15-CR-10797 filed before Branch 9, Regional Trial Court, La Trinidad, Benguet, petitioner Jeffrey Gramatica y Laurista is found GUILTY of Child Prostitution under Section 5 (b) of Republic Act No. 7610. He is sentenced to suffer imprisonment

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 7-8.

<sup>10</sup> *Id.* at 7-10.

of eight years and one day of *prison mayor* medium, as minimum, to seventeen years, four months and one day of *reclusion temporal* minimum, as maximum. Petitioner is likewise ORDERED to pay the victim, [REDACTED], PHP 50,000.00 as civil indemnity, PHP 50,000.00 as moral damages, and PHP 50,000.00 as exemplary damages. In addition, he is ORDERED to pay a FINE of PHP 15,000.00 according to Section 31(f) of Republic Act No. 7610.

- b. In Criminal Case No. 15-CR-10798 filed before Branch 9, Regional Trial Court, La Trinidad, Benguet, petitioner Jeffrey Gramatica y Laurista is found guilty of Child Abuse under Section 10 (a) of Republic Act No. 7610. He is sentenced to suffer imprisonment of six years of *prison correccional*, as minimum, to seven years and four months of *prison mayor* minimum, as maximum. Further, he is ORDERED to pay the victim [REDACTED] PHP 20,000.00 as moral damages, and PHP 20,000.00 as exemplary damages.

All monetary awards, except the fine, shall earn interest at the rate of 6% per annum from the date of finality of this Resolution until fully paid.

Further, [REDACTED] and [REDACTED] are both REFERRED to the Department of Social Welfare and Development and/or the Department of Health for evaluation, and if deemed necessary, for treatment and rehabilitation.<sup>11</sup>

In Criminal Case No. 15-CR-10797, I concur with the *ponencia* that Gramatica is guilty of Child Prostitution under Section 5(b) of Republic Act No. 7610.

Republic Act No. 7610 introduced the term "exploited in prostitution or other sexual abuse," as seen in Article III, Section 5(b) of the law:

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:

(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*

<sup>11</sup> *Id.* at 53-54.

for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Emphasis supplied)

In *People v. Larin*,<sup>12</sup> this Court discussed that a child “deemed exploited in prostitution or subjected to other sexual abuse”<sup>13</sup> refers to a child who “indulges in sexual intercourse or lascivious conduct[:] (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.”<sup>14</sup>

There are two offenses punishable under Section 5(b) of the law: (1) child prostitution; and (2) other sexual abuse.<sup>15</sup> Child prostitution is committed when children “who for money, profit or any other consideration . . . indulge in sexual intercourse or lascivious conduct.”<sup>16</sup> Meanwhile, the crime of other sexual abuse is committed when children who, “due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct[.]”<sup>17</sup>

In these kinds of offenses, it is important to bear in mind that “[c]hildren do not willingly indulge in sexual intercourse or lascivious conduct with an adult. There is always an element of intimidation or coercion involved. Thus, the crime is punishable not merely under the Revised Penal Code, but also under Republic Act No. 7610.”<sup>18</sup>

For a successful prosecution of child prostitution, the prosecution must establish the following elements: “(1) the accused commits the act of sexual intercourse or lascivious conduct,”<sup>19</sup> (2) “the said act is performed with a child exploited in prostitution;”<sup>20</sup> and (3) “the child, whether male or female, is below 18 years of age.”<sup>21</sup>

Here, all the elements of child prostitution were proven by the prosecution. AAA260233 clearly and categorically testified that she engaged in sexual intercourse with Gramatica in exchange for shabu.<sup>22</sup> Consequently, AAA260233 is deemed to be a child exploited in prostitution. It was also proven that AAA260233 was only 14 years old at the time of the incident.

<sup>12</sup> 357 Phil. 987 (1998) [Per J. Panganiban, First Division].

<sup>13</sup> *Id.* at 998.

<sup>14</sup> *Id.*

<sup>15</sup> J. Leonen, Concurring Opinion in *People v. Tulagan*, 849 Phil. 197, 326 (2019) [Per J. Peralta, En Banc].

<sup>16</sup> Republic Act No. 7610 (1992), sec. 5.

<sup>17</sup> Republic Act No. 7610 (1992), sec. 5.

<sup>18</sup> J. Leonen, Concurring Opinion in *People v. Tulagan*, 849 Phil. 197, 326–327 (2019) [Per J. Peralta, En Banc].

<sup>19</sup> *People v. Udang Sr.*, 823 Phil. 411, 435 (2018) [Per J. Leonen, Third Division], citing *Amplayo v. People*, 496 Phil. 747, 758 (2005) [Per J. Chico-Nazario, Second Division].

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Ponencia*, pp. 26–28.

In Criminal Case No. 15-CR-10798, I also concur with the *ponencia* that Gramatica is guilty of Child Abuse under Section 10(a) of Republic Act No. 7610.

Section 3(b) of Republic Act No. 7610 provides for the definition of child abuse:

SECTION 3. *Definition of Terms.* —

(b) “*Child abuse*” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
- (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

To strengthen the State’s protection of children’s welfare, the law widened the scope of child abuse to other acts of child abuse<sup>23</sup> as found under Section 10 of Republic Act No. 7610.

In this case, Gramatica was charged with violation of Section 10(a) of the law, which provides:

SECTION 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.* —

- (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prison mayor* in its minimum period.

In *Malcampo-Repollo v. People*,<sup>24</sup> this Court clarified that generally, “intent is not an indispensable element to sustain all convictions under Section 10 (a) of Republic Act No. 7610.”<sup>25</sup> The exceptions where specific intent becomes relevant in child abuse cases are “when it is alleged in the information or required by a specific provision of law.”<sup>26</sup>

<sup>23</sup> *Malcampo-Repollo v. People*, 890 Phil. 1166, 1181 (2020) [Per J. Leonen, Third Division].

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1177.

<sup>26</sup> *Id.* at 1166.

Based on the facts alleged in the Information in Criminal Case No. 15-CR-10798, the prosecution does not have to establish the accused's specific intent to debase, degrade, or demean the child's intrinsic worth and dignity as a human being. The Information specifically charged Gramatica with child abuse by giving shabu to BBB260233 and allowing her to use this in his place:

That from the second week of June, 2015 up to the last week of June, 2015 at [REDACTED] Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, *did then and there willfully, unlawfully and knowingly commit child abuse* upon the person of [REDACTED], a minor born on January 19, 1998, by placing or causing her to be in a situation or condition prejudicial to her growth and development as a child, that is, *by selling, delivering, or giving away methamphetamine hydrochloride also known as 'shabu,' a dangerous drugs, to her and allowing her to use and consume the drug in his place, to her great damage and prejudice.*

CONTRARY TO LAW.<sup>27</sup> (Emphasis supplied)

The Information sufficiently described all the elements of child abuse as required under the law. It was alleged and proved that BBB260233 was only a minor at the time of the incident. Gramatica's acts of "selling, delivering, or giving away . . . 'shabu,' a dangerous drug, to [BBB260233] and allowing her to use and consume the drug in his place,"<sup>28</sup> constitute child abuse punishable under Section 10(a) of Republic Act No. 7610.

## II

G.R. No. 266039 involves an appeal from the October 7, 2021 of the Court of Appeals Decision in CA-G.R. CR No. 44840 affirming with modification the February 19, 2020 Decision of the Regional Trial Court, Lucena City in Criminal Case No. 2018-1383, which found accused-appellant Rodolfo Dizon y Rances (Dizon) guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.<sup>29</sup>

In an Information, Dizon was charged with a violation of Section 5(b) of Republic Act No. 7610:

That on or about August 24, 2018, at [REDACTED] Quezon Province, Philippines and within the jurisdiction of this Honorable Court, the accused, *did then and there knowingly, willfully, and feloniously caress the breasts and vagina of [REDACTED], his 17-year old granddaughter, and through his intimidation, coercion, and influence the*

<sup>27</sup> Ponencia, p.4.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 2-3.

child indulge[d] in such lascivious conduct, thus subjecting her to sexual abuse.<sup>30</sup>

According to the *ponencia's* narration of facts, on August 24, 2018, while CCC266039 was sleeping, her grandfather, Dizon, inserted his hand inside her panties. When CCC266039 woke up, she could not move because of fear. Dizon then proceeded to touch her breasts.<sup>31</sup>

Both the trial court and the Court of Appeals found Dizon guilty beyond reasonable doubt of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.<sup>32</sup>

The *ponencia* affirmed the conviction but found Dizon guilty instead of Acts of Lasciviousness under Article 336 of the Revised Penal Code. The disposition was modified as follows:

ACCORDINGLY, the Court resolves to:

2. DISMISS the appeal in G.R. No. 266039. The Decision dated October 7, 2021, of the Court of Appeals in CA-G.R. CR No. 44840 is AFFIRMED with MODIFICATION. Accused-appellant Rodolfo Dizon y Rances is found GUILTY of Acts of Lasciviousness under Article 336 of the Revised Penal Code in Criminal Case No. 2018-1383 filed before Branch 15, Regional Trial Court, Lucena City, and he is SENTENCED to suffer the indeterminate penalty of imprisonment of six months of *arresto mayor*, as minimum, to six years of *prison correccional*, as maximum.

In addition, he is ORDERED to PAY [REDACTED] the sum of PHP 150,000.00 as civil indemnity, PHP 150,000.00 as moral damages, and PHP 150,000.00 as exemplary damages, each of which shall earn interest at the rate of 6% per annum from the date of the finality of this Decision until fully paid.<sup>33</sup>

I concur with the *ponencia's* conclusion that Dizon should be convicted. However, I respectfully disagree that Dizon should be convicted of Acts of Lasciviousness under Article 336 of the Revised Penal Code. Instead, Dizon should be convicted of the crime of Lascivious Conduct under Section 5(b) of Republic Act No. 7610, as correctly held by the trial court and Court of Appeals.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.* at 11-13.

<sup>33</sup> *Id.* at 54.

I wish to reiterate my view as expressed in *Quimvel v. People*,<sup>34</sup> *People v. Tulagan*,<sup>35</sup> and *Carbonell v. People*<sup>36</sup> that Article 366 of the Revised Penal Code has been repealed by Republic Act No. 8353 or the Anti-Rape Law of 1997. In my separate opinion in *Carbonell v. People*.<sup>37</sup>

Article 336 of the Revised Penal Code provided:

ARTICLE 336. Acts of Lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

The “preceding article” mentioned in Article 336 refers to Article 335, under which the crime of rape had formerly been punished. Both rape and acts of lasciviousness were considered crimes against chastity under Title XI of the Revised Penal Code. With the Anti-Rape Law enacted, rape was reclassified as a crime against person and transferred to Title VIII. Left without the provision it used to refer to, Article 336 was rendered incomplete and ineffective.

However, victims of acts of lasciviousness are not without recourse. These acts may still be punished under different laws, such as Republic Act No. 7610 or Republic Act No. 9262, which impose stricter penalties.<sup>38</sup> (Citations omitted)

With the repeal of Article 336 of the Revised Penal Code, Dizon should be convicted of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.

To sustain a conviction for Lascivious Conduct, it is imperative for the prosecution to establish the following elements: “(1) [t]he accused commits the act of sexual intercourse or lascivious conduct; (2) [t]he said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) [t]he child, whether male or female, is below 18 years of age.”<sup>39</sup>

In this case, the *ponencia* essentially pronounced that Dizon cannot be convicted of the crime of lascivious conduct considering that the second element was not proven. The *ponencia* ruled that there existed no evidence to conclude that CCC266039 was a child subjected to other sexual abuse as she was not induced, influenced, or persuaded into the lascivious conduct.<sup>40</sup> The *ponencia*'s discussion zeroed in on the conclusion that CCC266039 cannot be deemed to have indulged in lascivious conduct, as she was asleep when Dizon

<sup>34</sup> 808 Phil. 889 (2017) [Per J. Velasco, Jr., En Banc].

<sup>35</sup> 849 Phil. 197 (2019) [Per J. Peralta, En Banc].

<sup>36</sup> 901 Phil. 501 (2021) [Per J. Delos Santos, Third Division].

<sup>37</sup> Id.

<sup>38</sup> J. Leonen, Concurring Opinion in *Carbonell v. People*, 901 Phil. 501, 514–515 (2021) [Per J. Delos Santos, Third Division].

<sup>39</sup> *People v. Villacampa*, 823 Phil. 70, 34 (2018) [Per J. Carpio, Second Division].

<sup>40</sup> *Ponencia*, pp. 43–44.

touched her vagina and breasts.<sup>41</sup> Consequently, the *ponencia* ruled that “[Republic Act No. 7610] does not apply to cases where the minor is entirely unaware, coerced, or unconscious.”<sup>42</sup>

However, it is my opinion that the *ponencia* placed too much emphasis on the meaning of the words “indulges” and “engages” in the law as to conclude that there must be active participation by the victim for the crime to fall under Section 5(b) of R.A. No. 7610.<sup>43</sup> This kind of interpretation and application of the law seems to shift the focus to the acts of the victim, instead of focusing on the acts of the accused. While it is true that the law requires that a child in EPSOSA must have consented, this consent given by the child must be viewed in the context of the acts of the accused. A child subjected to other sexual abuse must have only consented due to the “coercion or influence of any adult[.]”<sup>44</sup>

In *Caballo v. People*,<sup>45</sup> this Court explained that “sexual intercourse or lascivious conduct under the coercion or influence of an adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party’s free will.”<sup>46</sup>

In my dissenting opinion in *Bangayan v. People*,<sup>47</sup> I have highlighted the importance of determining whether coercion or influence is present in cases of sexual abuse of children:

In cases of children subjected to sexual abuse, *the courts must determine whether coercion or influence was present, which compelled the child to indulge in sexual conduct.* The resolution of this issue cannot be formulaic, but it must be based on the unique factual parameters of each case. Considering the range of age which covers children in EPSOSA, the courts must carefully ascertain if the child freely gave sexual consent to the sexual act.

Factors such as age difference, the victim and perpetrators’ relationship, and the child’s psychological disposition must be considered by this Court, having in mind the child’s best interest.<sup>48</sup> (Emphasis supplied)

Moreover, the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines lascivious conduct as “the intentional touching, either directly or through clothing, of the . . . breast . . .

<sup>41</sup> *Id.* at 37.

<sup>42</sup> *Id.* at 21.

<sup>43</sup> *Id.* at 23–24.

<sup>44</sup> Republic Act No. 7610 (1992), sec. 5.

<sup>45</sup> 710 Phil. 792 (2013) [Per J. Perlas-Bernabe, Second Division].

<sup>46</sup> *Id.* at 805.

<sup>47</sup> 885 Phil. 405 (2020) [Per J. Carandang, Third Division].

<sup>48</sup> J. Leonen, Dissenting Opinion in *Bangayan v. People*, 885 Phil. 405, 459 (2020) [Per J. Carandang, Third Division].

of any person . . . 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[.]”<sup>49</sup>

Based on the foregoing, it is evident that Dizon’s acts, as alleged in the Information and as found by both the trial court and Court of Appeals, prove that CCC266039 should be deemed a child subjected to other sexual abuse. Contrary to the *ponencia*’s finding that CCC266039 could not have consented to the sexual conduct since she was asleep,<sup>50</sup> CCC266039 was already awake when Dizon touched her breasts. This is clear in CCC266039’s testimony:

Q: Ang inirereklamo mo dito ay si Rodolfo Dizon Y Rances, kaano ano mo ito?

A: He is my grandfather, ma’am.

Q: Paano mo siya naging lolo?

A: He is my father’s father, ma’am.

Q: Anong oras ba nangyari itong inirereklamo mo noon?

A: At around 1:00 am, ma’am.

Q: Ala-una ng madaling araw, ano ang ginagawa mo noon?

A: I was sleeping, Ma’am.

Q: You were sleeping, and then you said that may nararamdaman ka?

A: Yes, ma’am.

Q: Can you tell me ano yung nararamdaman mo?

A: I felt that there is (sic) a hand inside my underwear, ma’am. *When I opened my eyes, I saw him because there is light in the room.*

Q: Pagkatapos mo siyang makita, anong ginawa mo?

A: I wasn’t able to move because of fear, ma’am.

Q: Pagkatapos, noong hindi ka makagalaw, ano ang ginawa ng akusado kung mayroon man?

A: *After he put his hand inside my underwear, he pulled it out and then he put his hands inside my bra and touch (sic) my left breast ma’am, and then after that, he touched my right breast.*<sup>51</sup> (Emphasis supplied)

Being only 17 years old at the time of the incident, CCC266039 was a minor. To make things worse, Dizon is CCC266039’s grandfather. Consequently, Dizon committed these acts with coercion and influence as Dizon’s moral ascendancy was enough to intimidate CCC266039. Given that there is no dispute as to the existence of the other two elements, Dizon should

<sup>49</sup> Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, sec. 2(h).

<sup>50</sup> *Ponencia*, p.37.

<sup>51</sup> *Id.* at 46-47.

be convicted of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.

### III

At this juncture, it is important to point out that this is not the first time this Court was confronted with the duty to clarify the application of Republic Act No. 7610 *vis-à-vis* the Revised Penal Code. This shows the difficulty of having special laws without carefully reviewing the existing provisions in the Revised Penal Code which in turn, reveals the bigger underlying problem: The legislature's inability to consolidate our criminal laws in one book. The lack of consolidation of these accumulated laws may lead to confusion and inconsistency in their interpretation and application, *i.e.*, what approach should be taken when there are conflicting provisions in the said laws.

In line with this, this Court may be guided by the Spanish Framework in resolving Conflict of Criminal Rules.<sup>52</sup> This framework is embodied in Article 8 of the Spanish Criminal Code:

Acts liable to be defined pursuant to two or more provisions of this Code and not included in Articles 73 to 77 shall be punishable by observing the following rules:

1. A special provision shall have preferential application rather than a general one.
2. A subsidiary provision shall be applied only if the principal one is not, whether such a subsidiary nature is specifically declared or when it may tacitly be deduced.
3. The most ample or complex penal provision shall absorb those that punish offences committed therein.
4. Failing the preceding criteria, the most serious criminal provision shall exclude those punishing the act with a minor punishment.

These rules known as the relationships of specialty, subsidiarity, absorption, and alternativity<sup>53</sup> have been adopted in the Philippine Legal System. The challenge then is for us to apply these rules not only in the interpretation and application of the laws, but more significantly, in creating a unified legal framework of existing laws on specific subject matters.

**ACCORDINGLY**, I vote to:

1. **DENY** the Petition for Review on Certiorari in G.R. No. 260233; and

<sup>52</sup> See Antonio Obregón García, *Key Elements of the Criminal Law Conflict System, with Special Reference to Spanish Criminal Law*, 17 IUS NOVUM 1-8 (2023).

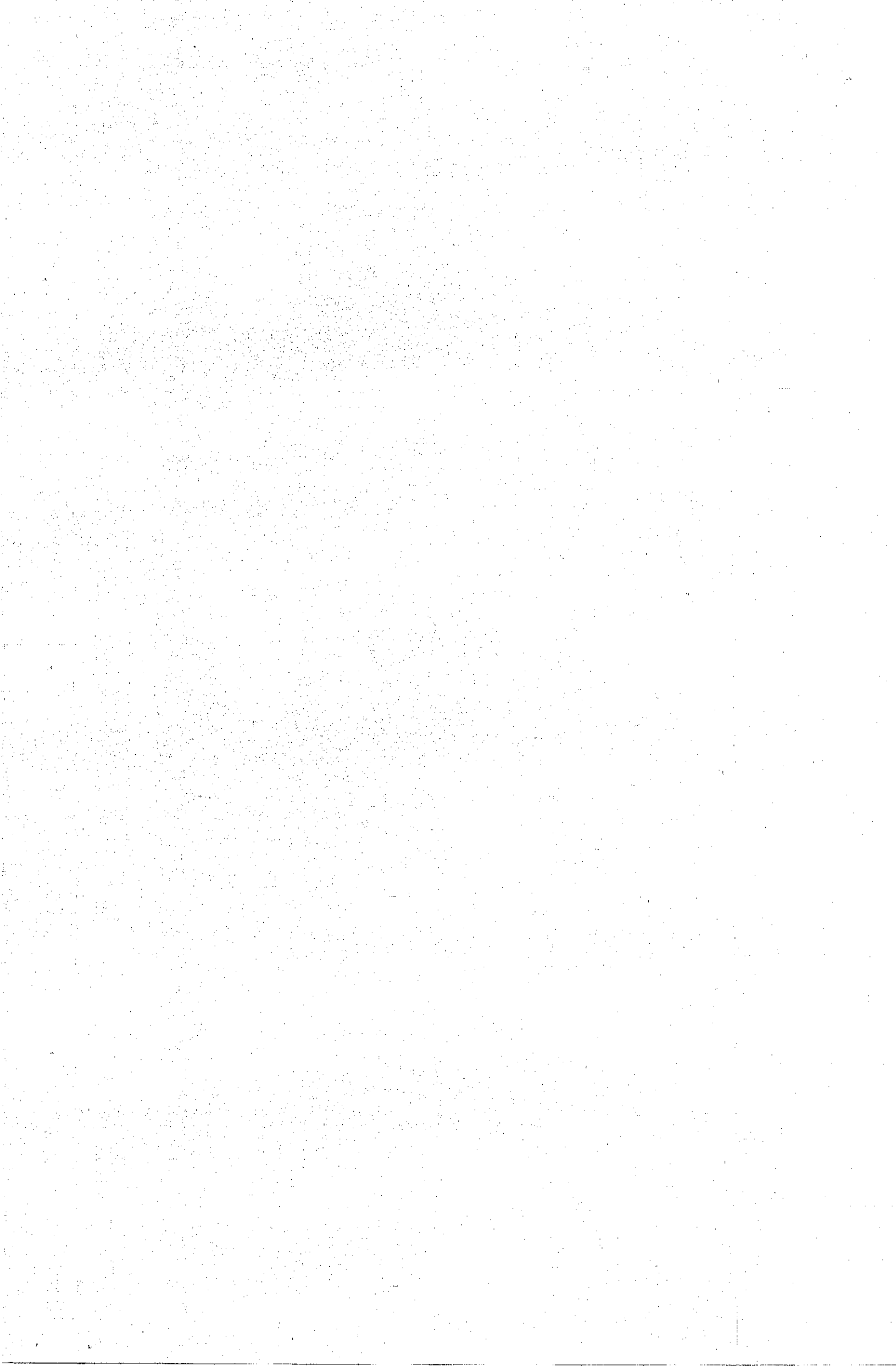
<sup>53</sup> *Id.* at 12-14.

2. **DISMISS** the appeal in G.R. No. 266039 with the modification that accused-appellant Rodolfo Dizon y Rances should be found **GUILTY** of Lascivious Conduct under Section 5(b) of Republic Act No. 7610.



MARVIC M.V.F. LEONEN

Senior Associate Justice



EN BANC

G.R. No. 260233 – JEFFREY GRAMATICA y LAURISTA, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. No. 266039 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, v. XXX266039,\* Accused-appellant.

Promulgated:

August 12, 2025

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CONCURRING OPINION

CAGUIOA, J.:

I join the Court in its ruling in the present cases, which finally clarifies and correctly retools the proper application of the various laws governing sexual abuse against children. Indeed, these cases show that dissent must never be curtailed, for the opinion of the minority may indeed become the prevailing understanding in a future where the people are more enlightened.

The past years, even before *People v. Tulagan*<sup>1</sup> was promulgated, saw convictions for Section 5(b)<sup>2</sup> of Republic Act No. 7610<sup>3</sup> even when the facts did not merit conviction under the said law. This is because, prior to *Tulagan*, the Court (and consequently, the other courts under its jurisdiction) had already been rendering judgments of conviction under the said provision by anchoring its rulings primarily on *Quimvel v. People*<sup>4</sup> and *People v. Caoili*.<sup>5</sup> During these years when *Quimvel*, *Caoili*, and *Tulagan* were the controlling

\* The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 8505, entitled "Rape Victim Assistance and Protection Act of 1998," approved on February 13, 1998; and Amended Administrative Circular No. 83-2015 dated September 5, 2017, titled "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances."

<sup>1</sup> 849 Phil. 197 (2019) [Per J. Peralta, *En Banc*].

<sup>2</sup> 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:

(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[.]

<sup>3</sup> Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act (1992).

<sup>4</sup> 808 Phil. 889 (2017) [Per J. Velasco, Jr., *En Banc*].

<sup>5</sup> 815 Phil. 839 (2017) [Per J. Tijam, *En Banc*].



doctrines, hundreds (or probably even thousands) of people were meted with penalties of imprisonment much longer than what they deserved. To be clear, this is not to say that the acts committed in those convictions did not deserve a harsh condemnation, for indeed the perpetrators of the crimes victimized children. Instead, what I am saying is that while they deserved to be punished, due process and the rule of law required that they be punished only to the extent which existing laws allow. In this sense, the Court failed to dispense justice in those instances.

What the Court, through *Tulagan* and the related cases, failed to take into account is that it is *not* the sole place for society's expression of condemnation. The mere enactment of laws, for instance, already signals that we, as a society, denounce certain acts. The criminalization—instead of mere prohibition or regulation—of certain conduct is in itself already a message that society condemns a particular conduct. The Court, however, was under the mistaken impression that to *strongly condemn* meant seeking a longer sentence, even if it also meant taking an unconstitutional shortcut.

The Court's duty under the present constitutional framework is to apply the law. If it were to somehow go against or disregard a law enacted by Congress, it must do so because of a constitutional provision or principle. After all, the interpretation and enforcement of the Constitution is ultimately lodged with the Court under the current framework of our fundamental law.

In *Tulagan* and the related cases, however, there was no constitutional provision or principle implicated, at least not one which is judicially enforceable. In justifying the rulings it created, the Court in the above cases cited the policy of the State to promote and protect the physical, moral, spiritual, intellectual, and social well-being of the youth.<sup>6</sup> While such is indeed a state policy found in the Constitution, it is well-established that provisions found in Article II are generally not self-executing. They are not empty words and promises; but instead of being judicially enforceable rights, provisions found in Article II are understood to be principles which should primarily guide the legislature in enacting laws and creating policies. The Court, however, mistakenly took this guideline to another branch as a license to *make* law—with the end in view of imposing longer prison sentences—under the guise of statutory interpretation. This much is obvious from *Tulagan* itself which, despite going through all the legal gymnastics just to expand the coverage of Section 5(b) of Republic Act No. 7610, refused to apply the same when the act committed against the minor constituted sexual intercourse. Even if all the supposed elements of Section 5(b) of Republic Act No. 7610 are present, the crime committed would still be rape under the Revised Penal Code as amended by Republic Act No. 8353,<sup>7</sup> simply because doing so would result in the imposition of the harshest penalty possible, *reclusion perpetua*, upon the accused. To echo my unequivocal criticism in my Opinion in

<sup>6</sup> CONST., art. II, sec. 13.

<sup>7</sup> The Anti-Rape Law of 1997 (1997).

*Tulagan*, “it is fundamentally unsound to let the penalty determine the crime. To borrow a phrase, this situation is letting the tail wag the dog.”<sup>8</sup>

I thus write to express appreciation to the *ponencia* and the current composition of the Court in finally seeing that the Revised Penal Code and Republic Act No. 7610 do indeed have separate spheres of application, and therefore Republic Act No. 7610 does not apply in all instances where the victim of sexual abuse is a minor.

Having said the foregoing, it is still worth clarifying that unlike the *ponencia*, I do not share the view that there is a “manifest injustice” brought by the imposition to accused-appellant XXX266039 of a “lower [penalty] than that prescribed under Republic Act No. 7610”<sup>9</sup> and that the “punishment imposed does not reflect the full gravity and depravity of the acts committed.”<sup>10</sup> I am not saying that the acts committed by XXX266039—constituting acts of lasciviousness done against his own granddaughter—are not serious or depraved. The fault in the Court’s statement though is its regurgitation of the fallacy that every crime needs an exceedingly long sentence for it to be considered a serious punishment.

The Court must refrain from contributing to a culture of wanting longer and longer prison sentences. **The Court must bear in mind that imprisonment as punishment is itself already very serious and harsh.** It is so harsh that the Constitution has dedicated half of its Bill of Rights<sup>11</sup> to safeguard its exercise, and the burden of proof before it can impose the same is extremely high: proof beyond reasonable doubt. **Imprisonment is the very definition of deprivation of liberty which the Bill of Rights guards against. Imprisonment is in itself an unnatural state of affairs**—where an individual is caged, under constant surveillance, prohibited from free contact with loved ones, and generally unable to engage in anything that furthers the pursuit of happiness. Especially in the Philippine context, with underfunded and overcrowded prison cells, imprisonment can and does become a threat to human dignity. It is thus erroneous to imply that XXX266039, who is bound to spend up to six years in prison, would seemingly receive a “slap on the wrist.”

For far too long, the Court has encouraged the imposition of longer penalties because it deems it as giving “more justice” to the victim. As a result, more and more penal laws are enacted which impose the penalty of *reclusion perpetua*, thereby blurring the lines between crimes and affecting the proportionality of the punishment to the crime committed. For instance, rape<sup>12</sup> and robbery with rape<sup>13</sup> are both punished by *reclusion perpetua*. Intuitively,

<sup>8</sup> J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, *supra* note 1, at 370.

<sup>9</sup> *Ponencia*, p. 54.

<sup>10</sup> *Id.*

<sup>11</sup> See CONST., art. III, secs. 12 to 22.

<sup>12</sup> See Republic Act No. 8353 (1997), sec. 2.

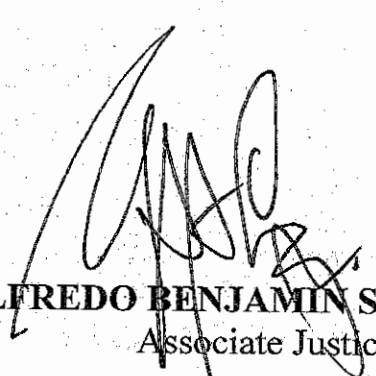
<sup>13</sup> See Republic Act No. 7659 (1993), sec. 9.

robbery with rape should receive a heavier punishment for not just violating the bodily autonomy of the victim but also for taking some personal property of the victim. However, the relative gravity of the offense can no longer be reflected in our laws because rape is already punished by the highest penalty currently possible, which is *reclusion perpetua*. This is the result when prison sentences are deemed as “light” if they are not “long enough”: a failure to reflect the principle that punishment should fit the crime, the continued increase of penalties in the statute books, and an ever growing prison population and congestion. And it does not help when the Court itself adds fuel to the fire of society’s thirst for punishment—expressions of disappointment like the one in the *ponencia* add to the perception that prison sentences in Philippine statute books are still not enough even though, when compared to other countries, ours is already one of the longest.

I thus join the *ponencia* and the discussions therein with the hope that it sparks a new way of thinking especially for those in the legal profession. Protection of children does not only mean imposing long terms of imprisonment, and mere length of prison sentences *per se* does not indicate that the courts are dispensing justice. Protection of children takes so much more than *post facto* incarceration of those who victimize them, and sending people to cages for a long time will not solve any problem.

To end, I emphasize that never in history has an increase in criminal penalties alone solved any societal problem. Time and again, ***certainty of punishment, rather than its severity, has proven to be the real deterrent to criminal behavior.*** The chase to impose the heaviest penalties, instead of solving problems, just created a new one: severe jail congestion. The present decision is, therefore, not just legally correct, but is also a step in the right direction as far as judicial mindsets and policies are concerned.

**ACCORDINGLY**, I join the *ponencia* in **AFFIRMING with MODIFICATION** the convictions of petitioner Jeffrey Gramatica y Laurista and accused-appellant XXX266039.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

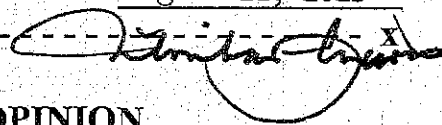
EN BANC

G.R. No. 260233 — JEFFREY GRAMATICA y LAURISTA, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent; and G.R. No. 266039 — PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. XXX266039, Accused-Appellant.

Promulgated:

August 12, 2025

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SEPARATE CONCURRING OPINION

ZALAMEDA, J.:

The *ponencia* revisits the ruling in *People v. Tulagan*<sup>1</sup> and lays down guidelines on the proper application of Section 5(b) of Republic Act No. 7610, or the “Special Protection of Children Against Abuse, Exploitation, and Discrimination Act,” in relation to acts of lasciviousness under the Revised Penal Code.

While I agree with the *ponencia*’s disposition, I submit that the application of Republic Act No. 7610 must be hinged not only on the fact of the minor indulging or engaging in lascivious conduct. Rather, due consideration must also be given to the status of the child as one exploited in prostitution or subjected to other sexual abuse (EPSOSA). Section 5(b) of Republic Act No. 7610 only applies to children who are considered EPSOSA.


*The Court correctly upheld Gramatica’s conviction for violation of Section 5(b) of Republic Act No. 7610*

In *Gramatica v. People*,<sup>2</sup> the *ponencia* denied the Petition for Review on *Certiorari* of petitioner Jeffrey Gramatica (Gramatica) and affirmed with modification his conviction for violation of Sections 5(b) and 10(a) of Republic Act No. 7610.

Complainant BBB, then 17 years old during the relevant period, testified that she met Gramatica and a certain Darwin Santiago (Darwin)

<sup>1</sup> 849 Phil. 197 (2019) [Per C.J. Peralta, *En Banc*].

<sup>2</sup> G.R. No. 260233, August 12, 2025, [Per J. Inting, *En Banc*].



through a pimp she called "lolo." BBB claimed that she got *shabu* from Darwin in exchange for sexual intercourse. Sometimes, she would have sexual intercourse with Darwin in exchange for money to buy illegal drugs from Gramatica.<sup>3</sup>

Meanwhile, complainant AAA averred that BBB introduced her to Gramatica and Darwin. She disclosed that, similar to BBB, she engaged in sexual intercourse with Darwin multiple times in exchange for *shabu*. Furthermore, AAA claimed that she had sexual encounters with Gramatica after using *shabu* in his apartment and that he eventually became her boyfriend. However, she emphasized that she would not have engaged in sexual activities with either Gramatica or Darwin had she not been under the influence of drugs. AAA was 14 years old during the relevant period.<sup>4</sup>

BBB's mother reported her missing after BBB had not returned home for almost a month. Police learned from AAA that BBB was living with Gramatica in his boarding house and was being used as a drug courier. Subsequently, the police coordinated with the Municipal Anti-Illegal Drugs Operatives, which resulted in Gramatica's arrest and BBB's rescue. Following this, the police arrested Darwin at his boarding house.

In his defense, Gramatica denied the charges against him. He alleged that his friend, Denver Estigoy, introduced the victims to him and that he allowed them to stay in his boarding house because they had no place to go. Gramatica also stated that he courted AAA and had a sexual relationship with her. He emphasized that he did not force her to have sexual intercourse and maintained that he was unaware AAA was a minor because she looked mature.<sup>5</sup>

After trial on the merits, the trial court found Gramatica guilty of lascivious conduct under Section 5(b) of Republic Act No. 7610. The trial court held that Gramatica had sexual relations with AAA, a minor, and the age disparity between them placed Gramatica in a dominant position over AAA which enabled him to force his will upon the latter. The CA affirmed the RTC Decision with modification as to the damages awarded. The CA found that Gramatica, aged 23 years old at the time, engaged in a sexual relationship with AAA, a 14-year-old who was then staying with him in his boarding house. The CA concluded that Gramatica took advantage of AAA's minority and unfortunate situation, and that he caused her to believe and trust him so that he could wield influence upon her to submit to his sexual desires.<sup>6</sup>

In denying the petition, the *ponencia* held that Gramatica is guilty of child prostitution under Section 5(b) of Republic Act No. 7610. The law

<sup>3</sup> *Ponencia*, p. 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 9-10.

considers any sexual intercourse with a minor for consideration as prostitution, regardless of consent. Gramatica is liable because AAA, the minor, engaged in prostitution at the time of their sexual encounter. The *ponencia* also found Gramatica guilty of child abuse under Section 10(a) of Republic Act No. 7610 since selling drugs to minors exploits their vulnerability and has harmful developmental effects, degrading their worth, and potentially damaging society.<sup>7</sup>

I concur with the *ponencia*'s decision to affirm Gramatica's conviction. The prosecution alleged and proved that AAA was EPSOSA. AAA testified that she engaged in sexual intercourse with Gramatica for a consideration. Thus, the situation precisely falls under the definition of prostitution under the law. While AAA may have given her consent to have sexual intercourse, Gramatica is still criminally liable as AAA was a minor and was engaged in prostitution at the time of their sexual congress.

*The Court correctly modified XXX266039's conviction from lascivious conduct under Section 5(b) of Republic Act No. 7610 to acts of lasciviousness under the Revised Penal Code*

Meanwhile, in *People v. XXX266039*,<sup>8</sup> the *ponencia* denied the appeal of accused-appellant XXX266039 but modified his conviction to acts of lasciviousness under Article 336 of the Revised Penal Code.

The case was filed by complainant CCC, then 17 years old, against his grandfather XXX266039. According to CCC, at around 1:00 a.m., while she was asleep in her room, she was suddenly awakened by someone inserting his hand inside her panties. When she opened her eyes, she recognized that it was her grandfather. She was so terrified that she could not move or shout. XXX266039 then reached inside her bra and fondled her breasts. Thereafter, XXX266039 stood up and left the room as if nothing happened. On the other hand, XXX266039 denied the allegations against him. He claimed that he merely woke CCC to ask for help with his medication.<sup>9</sup>

The RTC found XXX266039 guilty of lascivious conduct under Section 5(b) of Republic Act No. 7610. The Court of Appeals (CA) upheld the RTC's ruling, albeit with modifications to the penalty and the amount of damages imposed against XXX266039.<sup>10</sup>

<sup>7</sup> *Id.* at 14–15.

<sup>8</sup> G.R. No. 266039, August 12, 2025, [Per J. Inting, *En Banc*].

<sup>9</sup> *Ponencia*, p. 11.

<sup>10</sup> *Id.* at 12.

In modifying XXX266039’s conviction, the Court held that the elements required to prove a violation of Republic Act No. 7610 are lacking. According to the *ponencia*, Section 5(b) of Republic Act No. 7610 applies when children *indulge* or *engage* in sexual intercourse or lascivious conduct due to the coercion or influence of an adult. The term “sexual abuse,” as defined under Republic Act No. 7610, encompasses situations wherein a minor *indulges* or, put differently, *consents*, albeit defectively—to engage in sexual intercourse or lascivious conduct as a result of coercion or undue influence exerted by an adult.<sup>11</sup>

The *ponencia* ruled that CCC cannot be considered to have “indulged” in lascivious conduct as she was asleep when XXX266039 touched her vagina and breasts. There was no semblance of consent. Moreover, XXX266039 did not employ coercion or influence, as he did not compel or persuade CCC to submit to his desires. Thus, XXX266039 should be held liable for acts of lasciviousness under Article 336 of the Revised Penal Code.<sup>12</sup>

In so ruling, the *ponencia* summarizes the rules regarding the application of Section 5(b) of Republic Act No. 7610 in relation to acts of lasciviousness under the Revised Penal Code:

	Lascivious conduct committed through force, threat, or intimidation, or where the victim is deprived of reason or otherwise unconscious, or by fraudulent machination or grave abuse of authority	Where the child <i>indulges and engages</i> in lascivious conduct, thus subjected to sexual abuse, through the adult’s employment of coercion and influence, or in other words, when the child gives defective “consent”
A child below 12 years old	Statutory Acts of Lasciviousness under Article 336 of the Revised Penal Code	Statutory Acts of Lasciviousness under Article 336 of the Revised Penal Code
A child 12 years old or above but below 18 years old	Acts of Lasciviousness under Article 366 of the Revised Penal Code	Sexual abuse under Section 5(b) of Republic Act No. 7610 <sup>13</sup>

*The Tulagan ruling must be revisited*

<sup>11</sup> *Id.* at 24.

<sup>12</sup> *Id.* at 38.

<sup>13</sup> *Id.* at 53–54.

I agree with the *ponencia* that it is time to revisit the Court's ruling in *Tulagan*. These cases are the right opportunity to do so since they involve acts not constituting sexual intercourse or sexual assault against victims above 12 but below 18 years old. To recall, *Tulagan* only involved statutory rape and the sexual assault of a 9-year-old child. Strictly speaking, therefore, *Tulagan* could have limited its ruling to the application of the provisos in Section 5(b) of Republic Act No. 7610. Yet, *Tulagan* ruled on the nomenclature and penalty of other offenses, such as acts of lasciviousness or lascivious conduct committed against children above 12 but below 18 years old, or 18 and above under special circumstances.

Moreover, it has been six years since the Court promulgated *Tulagan*. Thus, the Court is now in a position to examine the ruling's effect and consider other developments in substantive law.

To recall, in *Tulagan*, the Court discussed the intersection between Republic Act No. 7610 and the related provisions of the Revised Penal Code. We established guidelines for the proper nomenclature of *all* crimes of sexual abuse against children, their circumstances, and appropriate penalties therefor. Since then, *Tulagan* has directed the course of prosecuting cases of sexual abuse against minors and has been followed by the courts when applying the provisions of Republic Act No. 7610.

In that case, accused-appellant was charged with two crimes: sexual assault and statutory rape, under Article 266-A(2) and (1)(d) of the Revised Penal Code, respectively. The facts of the case revealed that, sometime in September 2011, accused-appellant abused AAA, then only nine years old, by inserting his finger into her private part. Then on October 8, 2011, AAA was playing with her cousin in front of accused-appellant's house when accused-appellant brought her to his house. Inside the house, he told her to lie down on the floor and be quiet. Afterwards, he removed her short pants and panties and undressed himself. After kissing AAA's cheeks, he inserted his penis into her vagina.

Acting on accused-appellant's appeal, the Court sustained the factual findings of the lower courts and the correctness of his conviction for sexual assault and statutory rape under the Revised Penal Code. However, the Court also decided to reconcile the provisions on acts of lasciviousness, rape, and sexual assault under the Revised Penal Code *vis-à-vis* sexual intercourse and lascivious conduct under Section 5(b) of Republic Act No. 7610.

The Court juxtaposed the designation of, and imposable penalties for, acts of lasciviousness, lascivious conduct, rape by carnal knowledge, and sexual assault—depending on the age of the victim, as follows:



Designation of the Crime and Imposable Penalty			
Age of victim Crime committed	<i>Under 12 years old or demented</i>	<i>12 years old or below 18, or 18 under special circumstances</i>	<i>18 years old and above</i>
<i>Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse</i>	Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious conduct under Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
<i>Sexual Assault committed against children exploited in prostitution or other sexual abuse</i>	Sexual Assault under Article 266-A (2) of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious conduct under Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
<i>Sexual intercourse committed against children exploited in prostitution or other sexual abuse</i>	Rape under Article 266-A (1) of the Revised Penal Code: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed <sup>14</sup>	Sexual Abuse under Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Not applicable
<i>Rape by carnal knowledge</i>	Rape under Article 266-A (1), in relation to Art. 266-B of the Revised Penal Code: <i>reclusion perpetua</i> , except when the victim is below 7 years old in which case death penalty shall be imposed <sup>15</sup>	Rape under Article 266-A (1) in relation to Article 266-B of the Revised Penal Code: <i>reclusion perpetua</i>	Rape under Article 266-A (1) of the Revised Penal Code: <i>reclusion perpetua</i>
<i>Rape by Sexual Assault</i>	Sexual Assault under Article 266-A (2) of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610: <i>reclusion</i>	Lascivious Conduct under Section 5 (b) of Republic Act No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i>	Sexual Assault under Article 266-A (2) of the Revised Penal Code: <i>prision mayor</i>

<sup>14</sup> By virtue of Republic Act No. 9346, the death penalty is prohibited. Instead, the penalty shall be *reclusion perpetua* without the eligibility for parole.

<sup>15</sup> *Id.*

	<i>temporal</i> in its medium period		
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The *Tulagan* ruling is primarily motivated by the desire to impose higher penalties and provide stronger deterrence against all forms of child abuse.<sup>16</sup> The Court also adopted a broader definition of EPSOSA, covering children indulging in lascivious conduct due to coercion or influence, thus:

To clarify, once and for all, the meaning of the element of “exploited in prostitution” under Section 5 (b), Article III of [Republic Act] No. 7610, We rule that it contemplates [four] scenarios, namely: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; (c) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

The term “other sexual abuse,” on the other hand, should be construed in relation to the definitions of “child abuse” under Section 3, Article I of [Republic Act] No. 7610 and “sexual abuse” under Section 2 (g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, “child abuse” refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, “sexual abuse” includes the 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. Thus, the term “other sexual abuse” is broad enough to include all other acts of sexual abuse other than prostitution. *Accordingly, a single act of lascivious conduct is punished under Section 5 (b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances.* In contrast, when the victim is under 12 years old, the proviso of Section 5 (b) states that the perpetrator should be prosecuted under Article 336 of the RPC for acts of lasciviousness, whereby the lascivious conduct itself is the sole element of the said crime. This is because in statutory acts of lasciviousness, as in statutory rape, the minor is presumed incapable of giving consent; hence, the other circumstances pertaining to rape—force, threat, intimidation, etc.—are immaterial.

<sup>16</sup> *People v. Tulagan*, 849 Phil. 197, 272 (2019) [Per C.J. Peralta, *En Banc*]:  
However, when the victim of such acts of lasciviousness is a child, as defined by law, We hold that the penalty is that provided for under Section 5 (b) of [Republic Act] No. 7610—i.e., *reclusion temporal medium* in case the victim is under 12 years old, and *reclusion temporal medium* to *reclusion perpetua* when the victim is between 12 years old or under 18 years old or above 18 under special circumstances—and not merely *prision correccional* under Article 336 of the [Revised Penal Code]. Our view is consistent with the legislative intent to provide stronger deterrence against all forms of child abuse, and the evil sought to be avoided by the enactment of [Republic Act] No. 7610, which was exhaustively discussed during the committee deliberations of the House of Representatives[.]

*We are unconvinced that [Republic Act] No. 7610 only protects a special class of children, i.e., those who are “exploited in prostitution or subjected to other sexual abuse,” and does not cover all crimes against them that are already punished by existing laws. It is hard to understand why the legislature would enact a penal law on child abuse that would create an unreasonable classification between those who are considered as “exploited in prostitution and other sexual abuse” or EPSOSA and those who are not. After all, the policy is to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development.<sup>17</sup> (Emphasis in the original omitted; emphasis supplied)*

While *Tulagan*'s objectives are indeed laudable, and while the Court has always striven to uphold the best interests of the child, *Tulagan* has problematic consequences: (1) the ruling effectively eliminated the EPSOSA element in Section 5(b) of Republic Act No. 7610; and (ii) *Tulagan* eliminated the application of the Revised Penal Code in cases of acts of lasciviousness where the victim is 12 years old (now 16)<sup>18</sup> or below 18, or 18 and above under special circumstances.

*First*, the EPSOSA element found in Section 5(b) of Republic Act No. 7610 has become insignificant. To recall, the elements of a violation of Section 5(b) are as follows:

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.<sup>19</sup>

The first element refers to the act committed by the accused (sexual intercourse or lascivious conduct), while the second element refers to the status of the child (EPSOSA). However, due to the broad construction in *Tulagan*, the first and second elements are now conflated. Once the first element is established, the second element is automatically proven because the first element comprises the second. Otherwise put, sexual intercourse with or lascivious conduct upon a minor automatically makes such minor EPSOSA.

As such, sexual intercourse or lascivious conduct serves a dual role—it is the act punished by law (first element) and, at the same, characterizes the child as EPSOSA (second element). The aftermath of *Tulagan* has rendered the EPSOSA element under Republic Act No. 7610 a hollow requirement.

<sup>17</sup> *Id.* at 255–258.

<sup>18</sup> Republic Act No. 11648 (2022).

<sup>19</sup> *Bangayan v. People*, 885 Phil. 405, 428 (2020) [Per J. Carandang, *Third Division*].

*Second*, the Revised Penal Code is no longer applied when acts of lasciviousness are committed against children aged 12 years old but below 18, or 18 and above under special circumstances. All convictions for victims within that age range are made under Republic Act No. 7610; the law is applied so long as the victim is a minor and there is sexual abuse not constituting sexual intercourse. This is evident from the *Tulagan* table itself, where the focus is on the age of the victim and the act committed (sexual intercourse or otherwise). If there is no sexual intercourse, the conviction is automatically made under, or in relation to, Republic Act No. 7610.

Indeed, a survey of jurisprudence post-*Tulagan* reveals a pattern: once the victim is established to be a minor aged 12 to below 18, or 18 and above under special circumstances, and the act does not constitute sexual intercourse, conviction is almost automatically based on Republic Act No. 7610. The statutory requirement to establish whether the victim is EPSOSA is routinely bypassed, as the focus shifts to the victim's age and the nature of the act.

For instance, in *People v. Fornillos*,<sup>20</sup> the Court found the accused liable for lascivious conduct under Section 5(b) of Republic Act No. 7610 without passing upon factual circumstances that would make the child have EPSOSA status. This is because the Court simply had to follow *Tulagan*, which fixes the nomenclature and penalty of the offense primarily based on the age of the victim and the act committed. In that case, the accused sexually abused the victim in five separate incidents, thus:

In particular, the series of sexual abuses were outlined as follows: *first*, one evening in January 2006, AAA was walking towards a neighborhood store when she passed by Fornillos. Suddenly, Fornillos grabbed AAA and pulled her into a dark area and thereat, kissed and touched AAA's breasts. After some time, AAA managed to escape Fornillos' grip and was able to run away; *second*, about a month later, or in the evening of February 22, 2006, AAA was supposed to go to a neighbor's house to watch television when Fornillos appeared out of nowhere, grabbed her, and then took her to a dark area, where Fornillos again touched AAA's private parts; *third*, the next night, or on February 23, 2006, AAA's father and Fornillos were having a drinking session at their house when AAA's parents went out to gather firewood. Fornillos was able to gain access inside the house and while inside, inserted his penis into AAA's mouth until a white substance came out therefrom; *fourth*, in the afternoon of February 24, 2006, AAA was in school when Fornillos appeared by the school fence and motioned her to come near him. When AAA approached Fornillos, the latter took her to an isolated area where he again inserted his penis into AAA's mouth until a whitish liquid came out; and *fifth*, in the evening of the same day, Fornillos and AAA's father was then having a drinking spree when the latter ordered AAA to buy food at the neighborhood store. While AAA was on her way to the store, Fornillos caught up with her and started touching her private parts again, only letting her go when he heard AAA's cousin looking for her.<sup>21</sup>

<sup>20</sup> 869 Phil. 448 (2020) [Per J. Perlas-Bernabe, *Second Division*].

<sup>21</sup> *Id.* at 452-453. (Emphasis in the original)

Upon proof of the commission of the foregoing facts, the Court convicted the accused under Republic Act No. 7610 pursuant to *Tulagan*.<sup>22</sup>

Similarly, in *People v. Nocado (Nocado)*,<sup>23</sup> the accused was convicted under Republic Act No. 7610 without discussing the factual circumstances that would make the child EPSOSA. The victim therein was walking outside when the accused pointed a fan knife at her and forcibly brought her to a secluded area where she was sexually abused. Upon proof of these facts, the Court convicted the accused for violating Section 5(b) of Republic Act No. 7610 even without allegation and proof that the child was EPSOSA.

Thus, *Tulagan* has the effect of making Article 336 of the RPC completely inoperative when the victim of acts of lasciviousness is aged 12 years old but below 18, or 18 and above under special circumstances. Republic Act No. 7610 is consistently applied to this age group due to the higher penalties in said law. Ironically, *Tulagan* denied the existence of this practice, stating that “[c]ontrary to the view of Justice Caguioa, there is, likewise, no such thing as a recurrent practice of relating the crime committed to Republic Act No. 7610 in order to increase the penalty, which violates the accused’s constitutionally protected right to due process of law.”<sup>24</sup> Yet, the ruling in *Tulagan* solidified said practice of making all convictions under, or relating them to, Republic Act No. 7610 when such law provides for higher penalties.

For these reasons, I agree with the *ponencia*’s decision to reconsider Our ruling in *Tulagan* and adopt a ruling that is more faithful to the intended scope of Republic Act No. 7610.

*Section 5 of Republic Act No. 7610 does not apply to all cases of sexual abuse*

I share the position of the *ponencia* and of Associate Justice Alfredo Benjamin S. Caguioa that Section 5 of Republic Act No. 7610 does not apply to all cases of sexual abuse. This is evident from the text of the law itself.

Specifically, Section 5(b) of Republic Act 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

<sup>22</sup> *Id.* at 456–459.

<sup>23</sup> 874 Phil. 653 (2020) [Per C.J. Peralta, *First Division*].

<sup>24</sup> *People v. Tulagan*, 849 Phil. 197, 265 (2019) [Per C.J. Peralta, *En Banc*].

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:

(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 [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 [12] years of age shall be *reclusion temporal* in its medium period. (Emphasis supplied)

Thus, to convict an accused of lascivious conduct under Section 5(b) of Republic Act No. 7610, one of the required elements is that the child must be “exploited in prostitution or subjected to other sexual abuse” or EPSOSA.<sup>25</sup> As noted by former Senior Associate Justice Estella M. Perlas-Bernabe in her Separate Opinion in *Tulagan*, “[n]either the old provisions of the Revised Penal Code nor existing jurisprudence at the time Republic Act No. 7610 was passed ever mentioned the phrase “exploited in prostitution or subject to other sexual abuse.”<sup>26</sup>

Notably, Republic Act No. 7610 was recently amended by Republic Act No. 11648<sup>27</sup> which took effect on March 22, 2022. It increased the age for determining statutory rape and other sexual acts from 12 to 16 years old. In addition, it also amended the relevant laws and penalties for crimes of lasciviousness, lascivious conduct, and rape by carnal knowledge or sexual assault.<sup>28</sup> Specifically in relation to Section 5(b) of “[Republic Act No. 11648] raised the age of consent to 16 years old. As a result, acts of lasciviousness committed against a child who is less than 16 years old, becomes statutory acts of lasciviousness. In this situation, [Republic Act No. 11648] made it easier to establish the guilt of the accused because it eased the burden of the prosecution to prove the lack of consent on the part of the victim.”<sup>29</sup>

<sup>25</sup> *People v. Dalaguet*, 926 Phil. 713, 740 (2022) [Per J. J. Lopez, Second Division].

<sup>26</sup> J. Perlas-Bernabe, Dissenting Opinion in *People v. Tulagan*, 849 Phil. 197, 301 [Per C.J. Peralta, *En Banc*].

<sup>27</sup> An Act Providing for Stronger Protection Against Rape and Sexual Exploitation and Abuse, Increasing the Age for Determining the Commission of Statutory Rape, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as “The Revised Penal Code,” Republic Act No. 8353, also known as “The Anti-Rape Law of 1997,” and Republic Act No. 7610, as amended, Otherwise Known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act” (2022).

<sup>28</sup> *People v. Dalaguet*, 926 Phil. 713, 746–747 (2022) [Per J. J. Lopez, Second Division].

<sup>29</sup> *Id.* at 750.

Despite these recent amendments, and even after the Court's Decision in *Tulagan*, Republic Act No. 11648 retained the element that the child must be EPSOSA, thus:

SECTION 3. Sections 5 (b), 7, 9, and 10 (b) of Republic Act No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act are hereby amended to read as follows:

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.

.....

(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 [16] years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, otherwise known as "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 [16] years of age shall be *reclusion temporal* in its medium period[.]”  
(Emphasis supplied)

Thus, the text of Republic Act No. 7610 clearly evinces the legislative intent that the child must be EPSOSA to convict one of lascivious conduct under Section 5(b) of the law, and to distinguish it from lascivious conduct under Article 336 of the Revised Penal Code. In other words, the mere fact that the victim is 12 years old (now 16) but below 18 years old does not automatically mean that the accused should be convicted of lascivious conduct under Section 5(b) of Republic Act No. 7610.

When the text of the law is clear, then there is nothing for the Court to do but to apply it: “[t]he elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule [...]. It is expressed in the maxim, *index animi sermo*, or speech is the index of

intention. Furthermore, there is the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.”<sup>30</sup>

In fact, as pointed out by Associate Justice Alfredo Benjamin S. Caguioa and former Senior Associate Justice Estella M. Perlas-Bernabe in their opinions in *Tulagan*, even the legislative deliberations on Republic Act No. 7610 reflect the rationale for the specific scope of the law.

Republic Act No. 7610 was enacted to address the alarming prevalence of child abuse, exploitation, and neglect by fortifying the legal mechanisms designed to safeguard children from various forms of violence and exploitation. In her sponsorship speech, Senator Santanina Rasul (Senator Rasul), one of the principal proponents of Republic Act No. 7610, emphasized that the law was conceived to be a response to the “persistent reports of children being sexually exploited and molested for purely material gains,” as well as the inadequacy of existing criminal laws to provide sufficient protection for street children against exploitation by pedophiles.<sup>31</sup> In her speech, she underscored that no less than the Court, in its ruling in *People v. Ritter*,<sup>32</sup> had acknowledged the glaring absence of specific criminal laws in the Philippines designed to protect street children from exploitation:

Perhaps more lamentable than the continuing child abuse and exploitation is the seeming unimportance or the lack of interest in the way we have dealt with the said problem in the country. *No less than the Supreme Court, in the recent case of People v. Ritter, held that we lack criminal laws which will adequately protect street children from exploitation by pedophiles.* But as we know, we at the Senate have not been remiss in our bounden duty to sponsor bills which will *ensure the protection of street children from the tentacles of sexual exploitation.*<sup>33</sup> (Emphasis supplied)

To recall, *Ritter* was a highly publicized case involving Rosario Baluyot, a young street child who was exploited by a pedophile. She died due to the insertion of a foreign object into her vagina while performing sexual acts for which she was paid PHP 300.00. In acquitting the pedophile, the Court found that the prosecution had failed, among others, to show that force or intimidation accompanied the sexual act, as Rosario voluntarily engaged in sexual acts with him as a child prostitute.

In its reluctant acquittal, the Court emphasized the unfortunate reality that the Philippines lacked the necessary laws at the time to address this specific issue effectively, thus:

And finally, *the Court deplores the lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps,*

<sup>30</sup> *Padua v. People*, 581 Phil. 489 (2008) [Per J. Quisumbing, Second Division].

<sup>31</sup> Record of the Senate, Volume III, No. 104, March 19, 1991, p. 1204.

<sup>32</sup> 272 Phil. 532 (1991) [Per J. Gutierrez, Jr., Third Division].

<sup>33</sup> Record of the Senate, vol. III, no. 104, March 19, 1991, p. 1204.

*and, perhaps, their own parents or guardians who profit from the sale of young bodies. The provisions on statutory rape and other related offenses were never intended for the relatively recent influx of pedophiles taking advantage of rampant poverty among the forgotten segments of our society.* Newspaper and magazine articles, media exposes, college dissertations, and other studies deal at length with this serious social problem but pedophiles like the appellant will continue to enter the Philippines and foreign publications catering to them will continue to advertise the availability of Filipino street children unless the Government acts and acts soon. We have to acquit the appellant because the Bill of Rights commands us to do so. We, however, express the Court's concern about the problem of street children and the evils committed against them. Something must be done about it.<sup>34</sup> (Emphasis supplied)

*Ritter* serves as a prime example that sets the backdrop for the enactment of Republic Act No. 7610. As such, the law must be viewed through the lens and context shaped by the *Ritter* decision, which underscored the absence of legal safeguards *specifically* for vulnerable children who consent to perform sexual acts in exchange for money. *Ritter* states:

Since Rosario was not established to have been under 12 years of age at the time of the alleged sexual violation, it was necessary to prove that the usual elements of rape were present; i.e. that there was force or intimidation or that she was deprived of reason or otherwise unconscious in accordance with Article 335 of the Revised Penal Code.

We agree with the defense that there was no proof of such facts. On the contrary, *the evidence shows that Rosario submitted herself to the sexual advances of the appellant. In fact, she appears to have consented to the act as she was paid [PHP] 300.00 the next morning while her companion, Jessie Ramirez was paid [PHP] 200.00 (T.S.N. p. 50, January 6, 1988). The environmental circumstances coupled with the testimonies and evidence presented in court clearly give the impression that Rosario Baluyot, a poor street child, was a prostitute in spite of her tender age. Circumstances in life may have forced her to submit to sex at such a young age but the circumstances do not come under the purview of force or intimidation needed to convict for rape.* (Emphasis supplied)

Clearly, the law was enacted to complement the provisions of the Revised Penal Code and to address gaps in existing legislation. Specifically, it aimed to target crimes that led children into prostitution and trafficking.

This specific purpose and intention of the law were articulated by Senator Jose Lina (Senator Lina) in his own sponsorship speech, when he stated that:

Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. **It is intended to complement provisions of the Revised Penal**

<sup>34</sup> *Id.*

**Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities.**<sup>35</sup> (Emphasis and underscoring supplied)

To further prove the point of focus of the law, Senator Lina enumerated several reported cases which emphasized the pressing need for the proposed legislation:

Senate Bill No. 1209 directs its attention to individual or group abuse. Recent reported cases attest to the urgency of legislative remedies.

*G. Pangulo at mga Kasaman sa Senado, nais kong banggitin ang ibang mga piling kaso nitong mga nakaraang araw tungkol sa mga balitang pang-aabuso sa ating mga kabataan at bata.*

*Recent Cases of Reported Abuse.* In the last two months alone, there have been several reports on individual and group abuse and exploitation.

1. A baby girl, 18 months old, was found positive for a sexually transmitted disease, allegedly from a serviceman who sleeps with the mother of the baby girl. This was reported in Olongapo. (*Inquirer*, 3-4-91)
2. A father received payment from a 78-year-old pedophile for allowing said pedophile to take pictures of the father raping his own ten-year old daughter and who took pictures of the pedophile raping the ten-year old daughter. (*Ngayon*, 3-14-91)
3. An American and his Filipino wife "adopted" three minors and raped all three of them with the help and connivance of the wife. The adopted children are now ages 11, 14 and 19. (*Malaya*, 2-17-91)
4. A street child recounts that her stepfather raped her from the age of seven. She ran away but is now a prostitute plying the trade in the streets. She was also raped by a stranger. (*Inquirer*, 3-11-91)
5. A set of cases have been reported of minors being rescued from a dance studio, a recruitment agency for domestics, a sauna and massage parlor, and from prostitution dens.

Mr. President, a paper on street children released recently reports that there are about 3,000 child prostitutes of both sexes who can be seen in the streets of Ermita, Makati, Pasay Caloocan, and the shopping districts of Quezon City and Manila.

Estimates reported on the number of street children who are high-risk cases of actual and potential child abuse range from 50,000 to 70,000 in the Metro Manila area. Estimates of street children in Olongapo range

<sup>35</sup> Record of the Senate, vol. VI, no. 111, April 29, 1991, p. 191.

from 1,000 to 3,000. Street children are becoming visible in other urban areas such as Cebu, Bacolod, Iloilo, Davao, Baguio, and Zamboanga.<sup>36</sup>

The harrowing reports listed by Senator Lina collectively demonstrate that the immediate legislative intent behind the enactment of the law was to protect children who had been sexually exploited, primarily for profit, and sometimes by their own guardians. Such children, due to their unique and vulnerable circumstances, deserve special treatment and categorization under the law, separate from other children who are not similarly situated.

*Section 5(b) of Republic Act No. 7610 applies to children who are considered EPSOSA*

With the foregoing, I submit that Section 5(b) of Republic Act No. 7610 applies only to a special class of children, i.e., those who are EPSOSA. The second element of Section 5(b) contemplates sexual intercourse with or lascivious conduct upon *a child who already has the status of being EPSOSA*. Thus, the child must qualify as an EPSOSA *independent of* the sexual intercourse or lascivious conduct complained of, which is the first element of the offense. This is the only application of the law that would be faithful to its provisions. To summarize:

Element	What the element pertains to
1. The accused commits the act of sexual intercourse or lascivious conduct	Accused's act subject of the case
2. The said act is performed with a child "exploited in prostitution or subjected to other sexual abuse"	Status of the child
3. The child, whether male or female, is below 18 years of age	Age of the child

To reiterate, the prevailing rule as laid down in *Tulagan* conflates the first and second elements, *i.e.*, the act subject of the case makes the child attain the status of being an EPSOSA. However, this construction renders the EPSOSA element meaningless and eradicates the distinction between the Revised Penal Code and Republic Act No. 7610. To preserve the essence of Republic Act No. 7610, We must bring back the EPSOSA element in our adjudication. This would be accomplished when the first and second elements of the offense are treated separately, as originally intended.

<sup>36</sup> *Id.* at 192.

Notably, then Senior Associate Justice Antonio Carpio made a similar observation in his dissenting opinion in *Quimvel v. People*,<sup>37</sup> thus:

First, I would like to distinguish the first and second elements of Section 5 (b) of [Republic Act No.] 7610. The first element—that the accused commits the act of sexual intercourse or lascivious conduct—refers to the very act complained of against the accused. The second element—that the act is performed with a child exploited in prostitution or subjected to other sexual abuse—refers to the circumstance of the child against whom the act was committed. *This second element does not necessarily have any relation to the act of the accused as this relates to the child alone. The first and second elements refer to two entirely different and separate matters. One refers to the act committed by the accused while the other refers to the circumstance of the child victim, which may or may not be related to the act committed by the accused.*<sup>38</sup> (Emphasis supplied)

Previously, in *Olivarez v. Court of Appeals*,<sup>39</sup> then Senior Associate Justice Carpio also opined that the special circumstance of being an EPSOSA “already exists when the accused performs acts of lasciviousness on the child. In short, the acts of lasciviousness that the accused performs on the child are separate and different from the child’s exploitation in prostitution or subjection to ‘other sexual abuse.’”<sup>40</sup>

The next question that must be asked then is: when is the child considered EPSOSA?

Following the language of Section 5 of Republic Act No. 7610, a child is considered EPSOSA when either of the following circumstances are present:

1. *Child exploited in prostitution* — the child indulges in sexual intercourse or lascivious conduct for money, profit, or any other consideration; or
2. *Child subjected to other sexual abuse* — the child indulges in sexual intercourse or lascivious conduct due to the coercion or influence of any adult, syndicate or group

*Tulagan* interpreted the second classification, *i.e.*, a child subjected to other sexual abuse, to cover all situations where the child may have been coerced or intimidated to indulge in lascivious conduct. The *ponencia* in *Tulagan* referred to the amendment introduced by then Senator Edgardo J.

<sup>37</sup> 808 Phil. 889 (2017) [Per J. Velasco, Jr., *En Banc*].

<sup>38</sup> J. Carpio’s Dissenting Opinion in *Quimvel v. People*, 808 Phil. 889, 969–970 (2017) [Per J. Velasco, Jr., *En Banc*].

<sup>39</sup> 503 Phil. 421 (2005) [Per J. Ynares-Santiago, First Division].

<sup>40</sup> J. Carpio’s Dissenting Opinion in *Olivarez v. Court of Appeals*, 503 Phil. 421, 444 (2005) [Per J. Ynares-Santiago, First Division].

Angara, or the Angara Amendment, that added the phrase “who for money, profit, or any other consideration or due to coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct” in Section 5(b).<sup>41</sup> The majority construed this to mean that Congress expanded the scope of Section 5 of Republic Act No. 7610 to reflect the broader concept of child abuse, which includes acts of lasciviousness under Article 336 of the Revised Penal Code.<sup>42</sup>

However, as aptly pointed out by Justice Caguioa and former Senior Associate Justice Perlas-Bernabe in their respective opinions in *Tulagan*, the Angara Amendment was not intended to eliminate the distinction between prosecution under the Revised Penal Code and Republic Act No. 7610. Instead, the amendment was intended to plug the loophole where there are exploitative circumstances that are not based on money or profit, but other considerations.<sup>43</sup> This is evident from the deliberations, thus:

**Senator Angara.**

*I refer to line 9, “who for money or profit.” I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave a loophole in this section.*

*This proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.*

**The President Pro Tempore.**

*I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?*

**Senator Angara.**

*No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover*

<sup>41</sup> J. Caguioa, Concurring and Dissenting Opinion in *People v. Tulagan*, 849 Phil. 197, 351 [Per C.J. Peralta, *En Banc*].

<sup>42</sup> *Tulagan*, 849 Phil. 197, 279–280 (2019) [Per J. Peralta, *En Banc*] states: To our mind, however, the amendment highlights the intention to expand the scope of Section 5 to incorporate the broader concept of “child abuse,” which includes acts of lasciviousness under Article 336 of the RPC committed against “children,” as defined under Section 3 of [Republic Act] No. 7610. Records of the Senate deliberation show that “child prostitution” was originally defined as “minors, whether male or female, who, for money or profit, indulge in sexual intercourse or lascivious conduct are deemed children exploited in prostitution.” With the late addition of the phrase “or subject to other sexual abuse,” which connotes “child abuse,” and in line with the policy of [Republic Act] No. 7610 to provide stronger deterrence and special protection of children against child abuse, We take it to mean that Section 5 (b) also intends to cover those crimes of child sexual abuse already punished under the [Revised Penal Code], and not just those children exploited in prostitution or subjected to other sexual abuse, who are coerced or intimidated to indulge in sexual intercourse or lascivious conduct.

<sup>43</sup> J. Perlas-Bernabe, Dissenting Opinion in *People v. Tulagan*, 849 Phil. 197, 312 (2019) [Per C.J. Peralta, *En Banc*].

*is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.*

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or . . .

**The President Pro Tempore.**

So, it is no longer prostitution. Because the essence of prostitution is profit.

**Senator Angara.**

Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

**The President Pro Tempore.**

What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

**Senator Angara.**

The new section will read something like this, Mr. President: MINORS, 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, et cetera.

**Senator Lina.**

It is accepted, Mr. President.

**The President Pro Tempore.**

Is there any objection? [*Silence*] Hearing none, the amendment is approved.

How about the title, "Child Prostitution," shall we change that too?

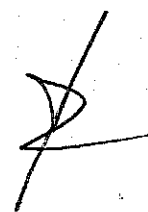
**Senator Angara.**

Yes, Mr. President, to cover the expanded scope.

**The President Pro Tempore.**

Is that not what we would call probably "child abuse"?

**Senator Angara.**



Yes, Mr. President.

**The President Pro Tempore.**

Is that not defined on line 2, page 6?

**Senator Angara.**

Yes, Mr. President. Child prostitution and other sexual abuse.

**The President Pro Tempore.**

Subject to rewording. Is there any objection? [*Silence*] Hearing none, the amendment is approved. Any other amendments?<sup>44</sup>  
(Emphasis supplied)

Clearly, then, the Angara Amendment was intended to cover situations where a child has a certain status, *i.e.*, the child is being abused or misused for sexual purposes, but in lieu of money or profit, the offender employs coercion or influence. The amendment was never intended to be an all-encompassing provision covering all types of sexual abuse, including those already covered by the RPC. The amendment was also not envisioned to cover all situations where acts of lasciviousness are committed upon a child through coercion or influence. The coercion or influence must have been used to sexually abuse or misuse the child.

The dissenting opinion of then Senior Associate Justice Antonio Carpio in *Quimvel* is illuminating:

Second, being under the “coercion or influence” of an adult does not, by itself, make the child automatically subjected to “other sexual abuse.”

.....

Based on the foregoing, it is clear that this provision was crafted to cover a situation where sexual intercourse or lascivious conduct is performed with *a child who is being abused or misused for sexual purposes*. The phrase “or any other consideration or due to the coercion or influence of any adult, syndicate or group” was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. This was significant because profit or monetary gain is essential in prostitution. Thus, the lawmakers intended that in case all the other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if [they] were in the same situation as a child exploited in prostitution.

<sup>44</sup> Record of the Senate, vol. I, no. 7, August 1, 1991, p. 262.

Accordingly, “coercion or influence,” on its own, does not make the child subjected to “other sexual abuse.” The “coercion or influence” must have been used to abuse or misuse the child for sexual purposes, and again, this must have been the circumstance of the child when the act complained of — the lascivious conduct of the accused — was performed against the child. The “coercion or influence” should refer to the circumstance of the child and not to the lascivious conduct complained of.<sup>45</sup>

Indeed, the employment of coercion or influence does not refer to the commission of the lascivious conduct itself (the first element of the offense); it refers to the means used to exploit the child (the second element of the offense). As noted by then Senior Associate Justice Carpio, “‘coercion or influence’ as used in Republic Act No. 7610 should be read with reference to the circumstance of the child, that is, whether ‘coercion or influence’ was used to exploit the child in prostitution or to subject the child to ‘other sexual abuse.’”<sup>46</sup>

Interestingly, *Tulagan* arrived at this exact same conclusion. Specifically, in distinguishing the Revised Penal Code provisions on rape and Section 5(b) of Republic Act No. 7610, *Tulagan* held, thus:

In *Quimvel*, it was held that the term “coercion or influence” is broad enough to cover or even synonymous with the term “force or intimidation.” Nonetheless, *it should be emphasized that “coercion or influence” is used in Section 5 of [Republic Act] No. 7610 to qualify or refer to the means through which “any adult, syndicate or group” compels a child to indulge in sexual intercourse.* On the other hand, the use of “money, profit or any other consideration” is the other mode by which a child indulges in sexual intercourse, without the participation of “any adult, syndicate or group.” In other words, “coercion or influence” of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of [Republic Act] No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the “coercion or influence” is exerted upon the child by “any adult, syndicate, or group” whose liability is found under Section 5(a) for engaging in, promoting, facilitating, or inducing child prostitution, whereby sexual intercourse is the necessary consequence of the prostitution.

As can be gleaned above, “force, threat or intimidation” is the element of rape under the [Revised Penal Code], while “due to coercion or influence of any adult, syndicate or group” is the operative phrase for a child to be deemed “exploited in prostitution or other sexual abuse,” which is the element of sexual abuse under Section 5(b) of [Republic Act] No. 7610. *The “coercion or influence” is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual* because that is the logical

<sup>45</sup> J. Carpio’s Dissenting Opinion in *Quimvel v. People*, 808 Phil. 889, 970–972 (2017) [Per J. Velasco, JR., *En Banc*].

<sup>46</sup> *Id.*

consequence of prostitution as defined under Article 202 of the [Revised Penal Code], as amended by [Republic Act] No. 10158 where the definition of "prostitute" was retained by the new law:

....

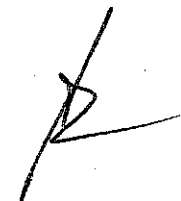
Therefore, *there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the [Revised Penal Code], and at the same time violation of Section 5 (b) of [Republic Act] No. 7610 where the victim indulged in sexual intercourse because she is exploited in prostitution either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group"—the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of [Republic Act] No. 7610.*

However, *Tulagan* limited this pronouncement to sexual intercourse and did not apply the same reasoning to lascivious conduct, without explaining the basis for making such distinction. This inconsistency in reasoning was also pointed out by Justice Caguioa in his opinion in *Tulagan*.

The majority in *Tulagan* held that, for lascivious conduct, coercion or influence is synonymous with force or intimidation; it suffices that force or intimidation was employed to commit the lascivious conduct (referring to the first element of the offense). This varied pronouncement led to the current situation where Article 336 of the Revised Penal Code and Section 5(b) of Republic Act No. 7610 completely overlap when it comes to lascivious conduct committed against children aged 12 years old to below 18, but the distinction between the two offenses is maintained when it comes to sexual intercourse.

Considering the rationale behind the enactment of the law and the adoption of the Angara Amendment, I submit that *the child must be abused or misused for sexual purposes for the child to be considered EPSOSA*. The means used to abuse or misuse the child can be through money, profit, or any other consideration (as in the case of prostitution) or through coercion or influence of any adult, syndicate, or group (as in the case of other sexual abuse).

For instance, a child who is coerced to perform in obscene exhibitions or indecent shows is considered a child subjected to other sexual abuse because they are abused for sexual purposes. When lascivious conduct is committed upon such a child, the act shall be punishable under Section 5(b) of Republic Act No. 7610 since the child is considered EPSOSA. Similarly, a child who is coaxed into posing for pornographic materials is considered EPSOSA, and lascivious conduct committed upon them is covered by Section 5(b) of Republic Act No. 7610.



Absent factual circumstances showing the child’s EPSOSA status, the act must be punished under the Revised Penal Code so long as the requisite elements are present. For example, when the child was forcibly grabbed and harassed by a stranger on the street, similar to the factual milieu in *Fornillos* and *Nocido*, the accused must be convicted under the Revised Penal Code absent a showing that the child is EPSOSA.

This specific application of Republic Act No. 7610 is consistent with the legislative intent to have the law complement, and simultaneously operate with, the Revised Penal Code. This intent is further evinced by Republic Act No. 11648, which amended both the Revised Penal Code and Republic Act No. 7610. Clearly, then, Congress intended to maintain the distinction and operation of both laws. To stress, the broad construction in *Tulagan* runs counter to this legislative intent as it fails to harmonize the two laws and results in a partial inoperability of the Revised Penal Code.

*A precise application of Republic Act No. 7610 would streamline the rules on sexual intercourse and lascivious conduct*

If the Court were to observe the limited scope of Republic Act 7610, then the rules would be simple: Republic Act No. 7610 should apply when the child is EPSOSA, applying the principle of *lex specialis derogant generali*, or specific laws prevailing over general ones.<sup>47</sup> If the child is not EPSOSA, then the RPC must apply. Nonetheless, an act punishable under Republic Act No. 7610 may fall within the purview of the Revised Penal Code if it is covered by the provisos in Section 5(b), pertaining to offenses committed against children below 12 (now 16) years old.

Such straightforward application of the two laws would prevent confusion and honor the will of the Legislature. Observance of these guidelines would yield a table that is identical with that proposed by Justice Caguioa in *Tulagan*.<sup>48</sup>

Acts done by the accused consist of:	Crime committed if the victim is under 12 years old or demented	Crime committed if the victim is 12 years old or older but below 18, or is 18 years old but under special circumstances	Crime committed if victim is 18 years old and above
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<sup>47</sup> *Disomangcop v. Datumanong*, 486 Phil. 398, 448 (2004) [Per J. Tinga, *En Banc*].

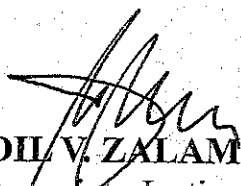
<sup>48</sup> Concurring and Dissenting Opinion of J. Caguioa in *People v. Tulagan*, 849 Phil. 197, 383–385 (2019) [Per C.J. Peralta, *En Banc*].

<p>Acts of Lasciviousness</p>	<p>Acts of Lasciviousness under Article 336 of the Revised Penal Code</p> <p>Penalty: <u>Prision Correccional</u></p> <p>If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime committed would still be Acts of Lasciviousness but the penalty would be <u>reclusion temporal in its medium period</u> in accordance with Section 5 (b) of Republic Act No. 7610</p>	<p>Acts of Lasciviousness under Article 336 of the Revised Penal Code</p> <p>Penalty: <u>Prision Correccional</u></p> <p>If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime committed would be Lascivious conduct under Section 5 (b) of Republic Act No. 7610 and the penalty would be <u>reclusion temporal in its medium period to reclusion perpetua</u></p>	<p>Acts of Lasciviousness under Article 336 of the Revised Penal Code</p> <p>Penalty: <u>Prision Correccional</u></p>
<p>Sexual Assault</p>	<p>Sexual Assault under Article 266-A (2) of the Revised Penal Code.</p> <p>Penalty: <u>prision mayor</u></p> <p>If committed against a child exploited in prostitution or subjected to other sexual abuse, it would still be Sexual Assault but the penalty would be <u>reclusion temporal in its medium period</u> in accordance with Section 5 (b) of Republic Act No. 7610</p>	<p>Sexual Assault under Article 266-A (2) of the Revised Penal Code.</p> <p>Penalty: <u>prision mayor</u></p> <p>If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime would be Lascivious conduct under Section 5 (b) of Republic Act No. 7610 and the penalty would be <u>reclusion temporal in its medium period to reclusion perpetua</u></p>	<p>Sexual Assault under Article 266-A (2) of the Revised Penal Code.</p> <p>Penalty: <u>prision mayor</u></p>
<p>Carnal knowledge/Rape by Sexual Intercourse</p>	<p>Rape under Article 266-A (1) of the Revised Penal Code</p> <p>Penalty: <u>reclusion perpetua</u>, except when the victim is</p>	<p>Rape under Article 266-A (1) of the Revised Penal Code</p> <p>Penalty: <u>reclusion perpetua</u></p>	<p>Rape under Article 266-A (1) of the Revised Penal Code</p> <p>Penalty: <u>reclusion perpetua</u></p>

	<p>below 7 years old in which case death penalty shall be imposed</p>	<p>If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime would be <i>Sexual Abuse under Section 5 (b) of Republic Act No. 7610</i> and the penalty would be <i>reclusion temporal in its medium period to reclusion perpetua</i></p>	
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I submit that the propriety of imposing harsher penalties should not have been a decisive factor in ascertaining the applicable law. Unless shown to be unconstitutional, the Court must apply the penalty as provided by the Legislature, this being a matter of policy.<sup>49</sup> The Court must concern itself with facts and the presence of elements, not the soundness of a particular penalty. Any inequity in penalties must be referred to the Legislature.

Accordingly, I vote to **CONCUR** in the results.

  
**RODIL V. ZALAMEDA**  
 Associate Justice

<sup>49</sup> *Cahulogan v. People*, 828 Phil. 742, 753 (2018) [Per J. Perlas-Bernabe, Second Division].

