



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **27 January 2021** which reads as follows:*

“G.R. No. 232225 (*Robin Tumaliuan y Allam vs. People of the Philippines*). –

Petitioner was properly convicted of lascivious conduct under Section 5(b) of Republic Act No. 7610 (RA 7610)

The Information against petitioner Robin Tumaliuan y Allam (petitioner) reads:

That on or about 12:30 o'clock in the afternoon of November 9, 2009 at [REDACTED], [P]rovince of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously subjected (sic) with abused (sic) and cruelty unto the private complainant, AAA,¹ being a minor at the age of 17 years old, by grabbing her hands and caressing and mashing her breast and vagina, against her will and consent.

CONTRARY TO LAW.²

¹ The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto*, [533 Phil. 703 (2005)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

² *Rollo*, p. 70.

Under Section 5(b)³ of RA 7610, the elements of sexual abuse 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.⁴

Meanwhile, Section 10(a)⁵ of RA 7610 penalizes not only those enumerated under Article 59 of Presidential Decree No. 603,⁶ but also four (4) 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 Implementing Rules and Regulations of the law distinctly and separately define child abuse, cruelty, and exploitation just to show that these three (3) acts are different from one another and from the act prejudicial to the child's development.⁷

The Information here charged petitioner with lascivious conduct under Section 5(b) and not child abuse or cruelty under Section 10(a) of RA 7610 - "*grabbing her hands and caressing and mashing her breast and vagina, against her will and consent.*" Failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the Information if the facts alleged clearly recite the facts constituting the crime charged. The allegations in the Information determine the offense, not its designation therein.⁸

Complainant is a credible witness

³ ARTICLE III Child Prostitution and Other Sexual Abuse

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.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or 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; and

x x x x

⁴ *Roallos v. People*, 723 Phil. 655, 667-668 (2013).

⁵ Sec. 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.

x x x x

⁶ The Child and Youth Welfare Code.

⁷ *Araneta v. People*, 578 Phil. 876, 885 (2008).

⁸ *People v. Nocido*, G.R. No. 240229, June 17, 2020.

Complainant AAA testified:

Q: When is your birthday?

A: August 27, 1992.

Q: Before November 2, 2009, how old were you?

A: Seventeen (17) sir.

Q: Do you know one by the name of Robin Tumaliuan?

A: Yes, sir.

x x x x

Q: Who was the driver of the tricycle?

A: Robin Tumaliuan, sir.

x x x x

Q: While conversing with you, what if anything happened?

A: That moment sir, he grabbed my hand.

Q: Madam Witness, when the accused grabbed your hand, was he still driving the tricycle at that time or not anymore?

A: Yes, sir while he was driving the tricycle, one of his hands held my hand.

x x x x

Q: When he held your hand, what did you do, if any?

A: At first, I fought him to release my hand, but I was not able to release my hand.

x x x x

Q: So when you fought back with the accused, what if anything happened?

A: At that time I fought with him that was the moment he grabbed my breast.

x x x x

Q: Now, going back at the time you were fighting back with the accused, was he still driving his tricycle at that time or not anymore?

A: One of his hands was driving and his other hand held my hand sir.

Q: What hand did the accused used (sic) in holding your hand?

A: Right hand sir.

Q: Where were you at that time when he held your hand?

A: At the handle drive of the motorcycle when he held my hand sir.

Q: Where were you sited (sic) at the time Madam Witness?

A: Inside the tricycle sir.

Q: According to you, the accused also grabbed your breast. How did he grab your breast Madam Witness?

A: He grabbed it lightly.

Q: What hand did the accused use in grabbing your breast?

A: Right hand also sir.

Q: [W]hat particular part of your breast was grabbed by the accused?

A: Both of my breast he grabbed sir.

Q: How did he grab both of your breasts?

A: He suddenly grabbed one at a time sir.

Q: So alternately?

A: Yes sir.

Q: What did you do then when he alternately grabbed your breasts?

A: I fought back by removing his hand. However, he placed his hand again sir.

Q: While grabbing your breast, was he still driving the vehicle?

A: Yes sir with his left hand.

Q: So after you fought back the accused, what if anything happened?

A: The next thing he did sir is that he grab my private part.

Q: Where is that part you are referring to Madam Witness?

A: My vagina sir.

Q: What hand did the accused use in grabbing your vagina?

A: Right hand sir.

x x x x

Q: How did the accused grab your vagina?

A: He placed his hand on my vagina and grabbed it tightly sir.

Q: What did you do when the accused placed his hand and grabbed your vagina?

A: I removed his hand but he repeated.

Q: How many times did the accused grab your vagina Madam Witness?

A: Two (2) times sir.⁹

To begin with, we affirm the trial court's finding that AAA's testimony is credible and straightforward and, as such, is sufficient to convict petitioner of sexual abuse, specifically lascivious conduct which requires the following elements: 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.

First. AAA's testimony was replete with details which she could not have narrated had she not herself actually experienced them. Petitioner lasciviously behaved when he grabbed her hand with his right hand. When she

⁹ *Rollo*, pp. 122-136.

resisted, he got aggressive and, with his right hand, grabbed her breasts, one after the other. Still she resisted, which all the more moved petitioner to grab, again with his right hand, her vagina.

“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.¹⁰ In any event, petitioner knew that AAA was only seventeen (17) years old because she told him herself before he started molesting her. Her minority did not deter him the slightest from making lewd advances on her.

Second. Petitioner’s claim that AAA’s testimony is absolutely superfluous, has no basis. Petitioner attempts to mislead by claiming that it was impossible for anyone to simultaneously drive a tricycle and grab a woman’s body parts at the same time. Yet, AAA categorically testified that petitioner used only his right hand in grabbing her body parts while his left hand continued steering the tricycle. Apparently, petitioner was a multitasker. Indeed, lust is no respecter of time or place,¹¹

Third. AAA was not shown to have had any ill motive in accusing petitioner as the lecher who touched her private parts. In the absence of ill-motive, a victim’s simple, candid, straightforward and unflawed testimony is entitled to full faith and credence.¹²

Against complainant’s positive identification of petitioner as the one who lasciviously groped her during her tricycle ride, petitioner merely interposed denial. Denial is the weakest of all defenses. It easily crumbles in the face of positive identification of the accused as the perpetrator of the crime.¹³

Imposable Penalties and Damages

People v. Tulagan¹⁴ provides the following designation of crimes and corresponding penalties for crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, *viz.*:

Designation of the Crime & Imposable Penalty

¹⁰ Section 2(h), RA 7610.

¹¹ *People v. Pareja*, 724 Phil. 759, 777 (2014).

¹² *People v. De Guzman*, 644 Phil. 229, 243 (2010).

¹³ *People v. Glino*, 564 Phil. 396, 420 (2007).

¹⁴ G.R. No. 227363, March 12, 2019.

Age of Victim:	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances ¹	18 years old and above
Crime Committed:			
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period	Lascivious conduct under Section 5(b) of R.A. No. 7610: <i>reclusion temporal</i> in its medium period to <i>reclusion perpetua</i> (Emphasis supplied)	Not applicable
x x x	x x x	x x x	x x x

As for the indeterminate penalty to be imposed, *People v. Udang*,¹⁵ teaches:

In sum, this Court is morally convinced that Udang committed two (2) counts of sexual abuse under Section 5(b) of Republic Act No. 7610, with each count punishable by *reclusion temporal* in its medium period to *reclusion perpetua*. **Applying the Indeterminate Sentence Law and absent any mitigating or aggravating circumstance in the present case, the maximum imposable penalty for each count should be the penalty prescribed by law in its medium period which is *reclusion temporal* in its maximum period ranging from 17 years, four (4) months, and one (1) day to 20 years. On the other hand, the minimum term of the imposable penalty shall be the next penalty lower in degree than that prescribed by law which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. This minimum term ranges from eight (8) years and one (1) day to 14 years and eight (8) months. Udang shall serve the penalties successively. (Emphasis supplied)**

Verily, in the absence of mitigating or aggravating circumstances, the Court of Appeals correctly sentenced petitioner to eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

Additionally, Section 31(f)¹⁶ of RA 7610 imposes a fine on the perpetrator, which jurisprudence pegs at ₱15,000.00.¹⁷

As for the amount of monetary awards to be imposed, *Tulagan* further provides:

¹⁵ 823 Phil. 411, 442-443 (2018).

¹⁶ Sec. 31. Common Penal Provisions. –

x x x x

(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.

¹⁷ *People v. Caocili*, 815 Phil. 839, 896 (2017).

In summary, the award of civil indemnity, moral damages and exemplary damages in Acts of Lasciviousness under Article 336 of the RPC, Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, Lascivious Conduct under Section 5(b) of R.A. No. 7610, Sexual Assault under paragraph 2, Article 266-A of the RPC, and Sexual Assault in relation to Section 5(b) of R.A. No. 7610, are as follows:

Crime	Civil Indemnity	Moral Damages	Exemplary Damages
x x x	x x x	x x x	x x x
Sexual Abuse or Lascivious Conduct under Section 5(b) of R.A. No. 7610 [Victim is a child 12 years old and below 18, or above 18 under special circumstances]	P75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)	P75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)	P75,000.00 (If penalty imposed is <i>reclusion perpetua</i>)
	P50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)	P50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)	P50,000.00 (If penalty imposed is within the range of <i>reclusion temporal medium</i>)
x x x	x x x	x x x	x x x

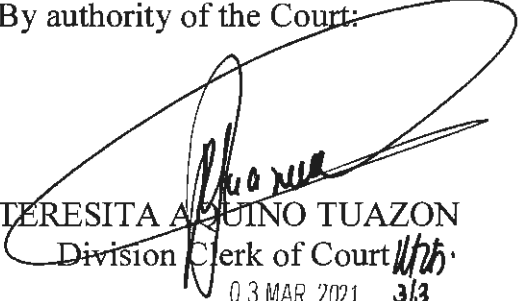
Thus, petitioner is liable for ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages in conformity with *Tulagan*. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated January 19, 2017 and Resolution dated May 31, 2017 of the Court of Appeals in CA-G.R. CR No. 38188 are **AFFIRMED WITH MODIFICATION**. Petitioner **ROBIN TUMALIUAN y ALLAM** is found **GUILTY** of lascivious conduct under Section 5(b) of Republic Act No. 7610. He is sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and **FINE** of ₱15,000.00.

He is further required **TO PAY** AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages. All monetary awards are subject to six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

SO ORDERED.” (J. Lopez, J., additional member per Special Order No. 2797 dated January 26, 2021)

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court
03 MAR 2021 3/3

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HON. PRESIDING JUDGE (reg)
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(Crim. Case No. 22-2378)

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*with copy of CA Decision dated 19 January 2017
Please notify the Court of any change in your address.
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