



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **18 January 2021** which reads as follows:*

“G.R. No. 253202 (*Robert Pig-ed v. People of the Philippines*) — The Court resolves to **DENY** the petition for failure to sufficiently show that the Court of Appeals committed reversible error when it affirmed the verdict of conviction against petitioner for acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b) of Republic Act No. (RA) 7610, the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*.

Article 336 of the RPC defines and penalizes acts of lasciviousness, *viz.:*

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*.

Meanwhile, Section 5 of RA 7610 prescribes a stiffer penalty for acts of lasciviousness when the victim is a minor, thus:

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:

xxxx

(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 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;** xxx (emphasis added)

Before an accused can be held criminally liable for acts of lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610, the following elements must concur:¹

1. The offender commits any act of lasciviousness or lewdness;
2. It is done under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
3. It is performed with a child exploited in prostitution or subjected to other sexual abuse; and
4. The offended party is a child, whether male or female, below 18 years of age.

The prosecution successfully established the presence of all the foregoing elements here.

During the trial, AAA² testified that on June 23, 2014, Robert Pig-Ed (petitioner) brought her to the basement of their house, pulled down her pants and undergarment, and touched her vagina, thus:³

Q: [AAA], do you recall going to a place and telling that a man lowered your pants?

A: Yes.

Q: And can you still recall who is that man who removed your pants?

A: Lolo Robert.

¹ *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

² 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 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

³ *Rollo*, pp. 73-74.

Q: Now, if you will see him again can you identify him, do you know him, can you point to us if you will see him?

MRS. ORALLO:

Witness pointed to a man who identified himself as Robert Pig-ed.

PROS. PATARAS:

Q: And you said you reported to the police that he lowered your pants?

A: Yes.

Q: Where did he lower your pants?

A: Downstairs, near the stairs.

Q: Of your house?

A: Yes.

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COURT ON CLARIFICATORY QUESTIONS:

Q: Were you called by your Lolo Robert or you were brought down by him?

A: Brought down.

xxxx

Q: So he did not tell you anything when he put down your pants? You did not get angry when he put down your pants?

A: I did not get angry.

Q: You did not tell him to stop?

A: No, I did not tell.

Q: When he put down your pants, did he also put down your panty?

A: Yes.

Q: Until where did he put down your pants and panty?

A: In my feet.

Q: On your feet and he immediately touched your vagina?

A: Yes.

Q: Do you know what your vagina is?

A: (No answer)

Q: What do you call the one where you will "wiwi"?

A: Anything.

Q: So when he lowered your pants and your panty he touched your anything?

A: Yes.

Q: He touched it. Was it long when he touched it or was it just for a while?

A: I cannot remember.

Q: When he touched it he was still wearing his clothes?

A: Yes.

Q: He never removed his clothes?

A: No.

Q: He did not let you touch any part of his body?

A: No.

Q: He did not, so it was just him touching your anything?

A: Yes.

Despite her tender age, at three (3) years and six (6) months at the time of the incident and about seven (7) years when she gave her testimony, AAA was still able to respond to the questions propounded by the prosecutor and the presiding judge. Indeed, AAA's straightforward and categorical testimony withstands scrutiny sufficient to produce a verdict of conviction.

In *Dulla v. Court of Appeals*⁴ the trial court and the Court of Appeals accorded great weight and credence to the testimony of a three (3)-year old child who, despite her young age, was able to respond to the questions asked of her. She answered "yes" and "no" to questions and, when unable to articulate her thoughts, demonstrated what she meant. She showed an understanding of what was being asked. She was consistent in her answers to the questions asked by the prosecutor, the defense counsel, and even by the judge, as here. More:

The determination of the competence and credibility of a child as a witness rests primarily with the trial judge who has the opportunity to see the witness and observe his manner, his apparent intelligence or lack of it, and his understanding of the nature of the oath. As many of these qualities cannot be conveyed by the record of the case, the trial judge's evaluation will not be disturbed on review, unless it is clear from the record that his judgment is erroneous.⁵

So must it be.

Petitioner nevertheless denies liability, claiming he merely helped AAA urinate. He admitted to lowering her pants and undergarments but denies touching her vagina. Had he grazed her organ somehow, it would have been by mere accident and unintentional.⁶

We are not persuaded.

As the Court of Appeals keenly assessed, the scenario that petitioner paints is utterly preposterous. For even if petitioner was simply helping AAA urinate, he would only have to touch the bands of AAAs undergarment and his hands would still be nowhere near AAA's vagina. The only reason his hands would have been in that region is if it were intentional.⁷

Petitioner, too, claims that the prosecution was caught in a contradiction when BBB, AAA's father, claimed he caught petitioner in a kneeling position

⁴ 382 Phil. 791 (2000).

⁵ *Id.*

⁶ *Rollo*, p. 9.

⁷ *Id.* at 85.

with his pants lowered and his hands holding his erect penis while AAA testified that petitioner remained clothed when he touched her.⁸

But the inconsistency petitioner points out pertains only to collateral or trivial matters and has no bearing on his culpability.⁹ For despite the inconsistency, it is clear on record that petitioner brought AAA to their basement, lowered her undergarment, and touched her vagina. Whether petitioner was clothed when he performed the dastardly act is immaterial and does not negate the commission of the crime.

Finally, petitioner claims that the presence of three (3) other people directly above the basement made it impossible to commit the crime in the house of a police officer no less.¹⁰ To our mind, however, the commission of the crime only adds credence to the adage that lust is not a respecter of people, time, or place.¹¹ As the Court observed in *People v. Peyra*:¹²

The Court has encountered far too many instances where rape was committed in plain view. We even took judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons there. Rape could be committed under circumstances as indiscreet as a room full of family members sleeping side by side.

If rape can be committed brazenly in plain view, then it is not farfetched that petitioner would perform acts of lasciviousness on AAA despite the presence of three (3) other individuals directly above them and in the house of a police officer.

All told, the Court of Appeals did not err in affirming the verdict of conviction against petitioner. Considering that AAA was below twelve (12) years old when the crime was committed, the Court of Appeals correctly designated the crime as *Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of RA 7610* in accordance with *People v. Tulagan*.¹³

Applying Section (b) of RA 7610 as well as the Indeterminate Sentence Law, the courts below correctly sentenced petitioner to twelve (12) years and one (1) day of *reclusion temporal* as minimum to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal* as maximum. The Court of Appeals, too, properly increased the award of moral damages, civil indemnity and exemplary damages to ₱50,000.00 each pursuant to *Tulagan*. These amounts shall earn six percent (6%) interest per annum from finality of this Resolution until fully paid.

⁸ *Id.* at 11.

⁹ See *People v. Mamaruncas*, 680 Phil. 192, 206-207 (2012).

¹⁰ *Rollo*, p. 13.

¹¹ See *People v. Ofemiano*, 625 Phil. 92, 100 (2010).

¹² G.R. No. 225339, July 10, 2019.

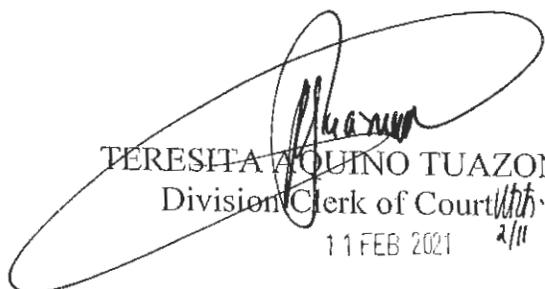
¹³ G.R. No. 227363, March 12, 2019.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated November 19, 2019 and Resolution dated June 16, 2020 of the Court of Appeals in CA-G.R. CR No. 42428 are **AFFIRMED**.

Petitioner **ROBERT PIG-ED** is found **GUILTY** of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610 and sentenced to twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum. He is ordered to pay moral damages, civil indemnity and exemplary damages of ₱50,000.00 each. These amounts shall earn six percent (6%) interest per annum from finality of this Resolution until fully paid.

SO ORDERED." (Rosario, *J.*, designated additional member per S.O. 2797 dated November 5, 2020; on official leave)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 11 FEB 2021 2/11

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HON. PRESIDING JUDGE (reg)
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 (Crim. Case No. 14-CR-10164)

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