

SPECIAL EIGHTH DIVISION

[CA-G.R. CR. No. 35152, May 09, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON UBALDO Y MORTERA, ACCUSED-APPELLANT.**

D E C I S I O N

INTING, S.B., J.:

On appeal before us is the *Decision*^[1] of the Regional Trial Court Branch 50, Villasis, Pangasinan, in Criminal Case No. V-1576 dated 31 July 2012 convicting appellant Marlon Ubaldo of the crime of Acts of Lasciviousness in relation to Section (5), Article III of R.A. No. 7610^[2].

Accused-appellant was duly charged in an Information^[3] which states:

"That on or about May 23, 2010 in the evening at Brgy. Caramutan, Villasis, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, being the uncle of AAA^[4], minor, 6 years old, possessing moral ascendancy over the latter, with lewd design, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously perform lascivious conduct upon said AAA, by bringing her to a barn and while they were there, inserted his hand into the shorts of said AAA and touched her vagina, against her will and without her consent, to her damage and prejudice and which acts degraded and demeaned the intrinsic worth and dignity of said minor as a human being.

CONTRARY to Article 336, Revised Penal Code in relation to Sec. 5, par. b, R.A. 7610."^[5]

When arraigned, accused-appellant pleaded "NOT GUILTY" to the charge.

The facts of the case as found by the trial court are as follows:

"The prosecution's version of the incident subject of the case, based principally on the testimony of the 7 year old AAA^[6], shows that accused Marlon Ubaldo brought AAA to a "kamarin" (barn) and once inside he put his hand inside her panty then touched her vagina. AAA went out of the barn when she heard her mother calling. She went straight home and told her mother what Marlon did to her. AAA was then brought to the police station where she was interviewed by a policewoman and made to sign a piece of paper."^[7]

Accused Marlon Ubaldo proffered denial. He testified that in the evening of May 23, 2010, he was in their house watching television with AAA, Manny Soriano, Bianca Soriano and August Soriano. At about 7:30

o'clock, AAA asked him to bring her home. AAA's house is 12 meters away from their house.^[8]

At about 9:00 o'clock, he [accused-appellant] was awakened by his mother because barangay captain Roel Banao was looking for him. The barangay captain told him to go with him to the municipal hall to talk about AAA.^[9]

Upon reaching the municipal hall, he was brought to the police station where he was put in jail. He did not know the reason for his incarceration. The following morning, he was told by the barangay captain that he did something disrespectful to AAA ("Binastos mo kano ni AAA").^[10]

He did not see AAA or her mother Jocelyn at the police station in the evening of May 23, 2010.^[11]

He denied the accusation against him that he put his hand inside the panty of AAA and touched her vagina."^[12]

TRIAL COURT'S RULING

After due proceedings, the trial court promulgated a Judgment dated 31 July 2012, the decretal portion of which reads as follows:

"WHEREFORE, premises considered, the Court finds accused Marlon M. Ubaldo guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b), Article III of R.A. No. 7610 and is hereby sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of reclusion temporal, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of reclusion temporal, as maximum, and to pay the offended party P20,000.00 as moral damages.

SO ORDERED."^[13]

Aggrieved, accused-appellant filed the present appeal.

ASSIGNMENT OF ERRORS

In assailing the trial court's judgment of conviction, the accused-appellant assigned these errors, *viz*:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR PATENT INCONSISTENCIES.^[14]

Accused-appellant averred that the prosecution was not able to establish his guilt beyond reasonable doubt. He contended that the complainant's demeanor during the alleged incident was contrary to normal human behavior. He argued that it was highly improbable for him to tell AAA what they were going to do inside the barn. Thus, accused-appellant concluded that complainant's testimony is not credible nor worthy of belief.

THIS COURT'S RULING

The appeal is bereft of merit.

Section 5 (b), Article III of R.A. No. 7610^[15] defines and penalizes acts of lasciviousness committed against a child:

“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.

X X X

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(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;”

The essential elements of this provision are: 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.

The allegations stated in the information sufficiently constitute acts punishable under the aforesaid provision and under Article 336 of the RPC whose elements are:

1. That the offender commits any act of lasciviousness;
2. That the offended party is another person of either sex; and
3. 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 or is demented.^[16]

Paragraph (h), Section 2 of the Implementing Rules and Regulations of R.A. 7610^[17] (*implementing rules*) defines lascivious conduct as a crime committed through the intentional touching,