

THIRD DIVISION

[G.R. No. 246231, January 20, 2021]

ALLAN DE VERA Y ANTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DELOS SANTOS, J.:

This is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39723, finding petitioner Allan De Vera y Ante (petitioner) guilty beyond reasonable doubt of the crime of Violation of Section 10, paragraph (a) of Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Facts

Herein petitioner was charged with the crime of Violation of Section 5, paragraph (b) of R.A. No. 7610 in the Information, which accusatory portion reads as follows:

That on or about the 7th day of July 2012 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with lewd designs, did then and there willfully and unlawfully commit acts of lascivious conduct upon the person of AAA,^[3] a minor, 16 years of age, by then and there fondling his penis and masturbating while he was beside the complainant who was then taking her examination at the XXX University, thereby prejudicing her psychological and physical development and further debasing, degrading, or demeaning the intrinsic worth and dignity of said AAA, as human being, to the damage and prejudice of said offended party. CONTRARY TO LAW.^[4]

Upon arraignment, petitioner pleaded not guilty to the offense charged. After the Pre-trial Conference, trial on the merits ensued.

Version of the Prosecution

AAA, a 16-year-old first year college student of the XXX University, is the private complainant in this case. AAA is both a Philippine and an American citizen, who was born and raised in the United States. The family moved back to the Philippines when AAA was in high school. In 2012, AAA enrolled at the XXX University as a first year college student.^[5]

AAA testified that at around 8:30a.m. of July 7, 2012, she went to the Filipino Department of the school to ask for her class section under the Special Filipino Program. Alone in the office was petitioner, who asked her if she wanted to take the Filipino for Foreigners Diagnostic Exam. AAA then agreed to take the exam since it is a requirement for the Special Filipino Program.^[6]

Petitioner then made her take the diagnostic exam inside the MiniLibrary of the Filipino Department. AAA sat on the couch and answered the exam on the coffee table inside the Mini-Library. Petitioner was standing approximately less than a meter away to the left of AAA and was facing a bookshelf.^[7]

While taking the exam, AAA heard a tapping sound, which she initially ignored. The tapping sound sounded like clapping or like skin slapping against skin. When the sound got louder, she looked to where the sound was coming from and saw the petitioner masturbating. AAA testified that she saw the petitioner holding a binder on the left hand while his right hand was masturbating his penis.^[8]

Afraid, AAA calmly packed her things, got up from the couch and told petitioner that she would continue her exam at the reception area of the Filipino Department. When AAA finished the exam, she handed her completed exam to petitioner who has come out to the reception area from the Mini-Library.^[9]

AAA immediately ran out of the office and told her classmate CCC what she saw in the Mini-Library. Upon the advice of CCC, AAA called her mother, BBB, who instructed her daughter to report the matter to the University Security Office. When BBB arrived at the university, she was told that the petitioner was already brought to the police station. BBB and AAA then went to the police station to file a formal complaint against the petitioner.^[10]

Version of the Defense

Petitioner, on his part, denied the accusations of the private complainant. Petitioner claimed that on the day of the incident, he was assigned to arrange the books at the Tinio Mini-Library. The library is adjacent to the Filipino Department's reception area and was well-lit as it is frequented by professors, students, employees, and even visitors.^[11]

Petitioner's supervisor Imelda Agbayani Estrelles (Estrelles), called petitioner's attention that the zipper of his Guess pants was broken. There was a vertical tear along the right sideline of the zipper. Since he is only required to work half-day on a Saturday and he lived in Antipolo, petitioner decided to pull the pants upward and his clothes downward as it is too impractical to go home and change clothes.^[12]

Petitioner was assigned by Professor Carlota Francisco to administer a special diagnostic exam to students of the Filipino for Non-Filipino Speakers course.^[13] Petitioner admitted that AAA decided to take the diagnostic examination despite having a 9:00a.m. class that day. Since he was tasked to arrange the books inside the Mini-Library, petitioner decided to let AAA take the exam therein. While AAA was taking the exam, the library door was open and the petitioner just stood less than one meter away from AAA facing the cabinet. The petitioner had one hand arranging the books on the shelf while the other hand was carrying books to be shelved.^[14]

Five minutes after, AAA asked petitioner if she could finish taking her exam in the reception area. Estrelles saw AAA took the exam in the reception area and was able to finish it in 20 to 30 minutes. AAA then handed the exam papers back to petitioner.^[15]

A few minutes after 9:00 a.m., petitioner was surprised upon the arrival of the university's security officers, who arrested him based on the allegations of AAA that

he masturbated in her presence while she was taking the exam. The security officers brought him to the police station. Thereat, petitioner's underwear was even inspected to check if there were some traces of discharge. The person who conducted the inspection found no discharge on petitioner's underwear.^[16]

The XXX University formed an *ad hoc* disciplinary committee, which cleared the petitioner of the alleged masturbation incident.

Nonetheless, the private complainant pursued a criminal case against the petitioner.

The Ruling of the RTC

The RTC found petitioner guilty of the crime of violation of Section 5(b) of R.A. No. 7610. The RTC held that under Section 2(h) of the Rules and Regulations on Reporting and Investigation of Child Abuse Cases, masturbating is considered a lascivious conduct. Considering that petitioner committed a lascivious act in front of the child victim who was only 16 years old and the latter was deemed to have been subjected to other sexual abuse, petitioner must be convicted of the crime charged. The RTC gave great weight on the positive and candid manner by which the child victim testified as to how petitioner masturbated in her presence. The RTC also held that the testimony of the child victim will have to prevail over the defense of denial of the petitioner.^[17]

The dispositive portion of the RTC Decision is hereby reproduced, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Allan De Vera y Ante guilty beyond reasonable doubt of the crime of Violation of Section 5, paragraph (b) of Republic Act No. 7610 and is hereby sentenced to suffer the penalty of 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 to pay the cost.

Accused is further ordered to pay private complainant AAA P20,000.00 as civil indemnity, P30,000.00 as moral damages and P2,000.00 as exemplary damages.

SO ORDERED.^[18]

The Ruling of the CA

On appeal before the CA, petitioner interposed the following arguments: (a) that there was no sufficient proof that the child saw him actually masturbating; and (b) the prosecution failed to prove the elements of Section 5(b) of R.A. No. 7610. Petitioner averred that there was no evidence on record to support the conclusion that he committed a lascivious act and that such act was performed with a child exploited in prostitution or subjected to other sexual abuse.^[19]

The CA partly granted petitioner's appeal and modified the RTC Decision. The CA held that while petitioner cannot be convicted under Section 5(b) of R.A. No. 7610, the elements under Section 10(a) were duly established in this case. The CA held that the act of masturbating in the presence of the child is considered another act of abuse because it is prejudicial to the development of the child. The CA further opined that even if the Information did not specifically charge petitioner with child

abuse under Section 10(a) of R.A. No. 7610, he may still be convicted of the said offense considering that the prosecution was able to prove all the elements of the said crime.^[20]

The *fallo* of the now-assailed CA Decision reads as follows:

WHEREFORE, the instant appeal is PARTLY GRANTED. The August 2, 2016 Decision of the Regional Trial Court, Branch 94, Quezon City in Criminal Case No. Q-12-177236 is AFFIRMED with MODIFICATIONS. As modified, accused-appellant Allan de Veray Ante is found guilty beyond reasonable doubt of child abuse as defined and punished under Section [10(a)] of Republic Act No. 7610. He is sentenced to an indeterminate sentence of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum and is ordered to pay private complainant P10,000.00 civil indemnity and P20,000.00 moral damages with 6% interest [per annum] from the date of finality of this Decision until fully paid. SO ORDERED.^[21]

Undaunted, petitioner elevated the case before the Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

The Issue

Whether the CA erred in convicting the petitioner of the crime of violation of Section 10(a) of R.A. No. 7610.

The Court's Ruling

The petition is without merit. Herein petitioner insists on his innocence and alleges that the ruling of the CA is not in accord with applicable law and jurisprudence. Herein petitioner claims that based on the account of the minor victim, the act of masturbation was not done with the participation of and was not directed at her, hence, he should be penalized with unjust vexation under Article 287 of the Revised Penal Code (RPC) as it basically punishes acts which is intended to cause emotional distress.

As the factual milieu of the case reveals, petitioner was initially charged and convicted before the RTC of Violation of Section 5(b) of R.A. No. 7610. On appeal, the CA held that there was no sufficient basis to hold petitioner liable under Section 5(b) of R.A. No. 7610 considering that the prosecution failed to prove that the minor was subjected to other sexual abuse. Instead, the CA convicted petitioner of violation of Section 10(a) of R.A. No. 7610 considering that the act of intentional masturbation in the presence of the minor victim constitutes psychological abuse and is considered an act which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being.

After a judicious evaluation of the record of this case, the Court finds that the ruling of the CA is within the bounds of law and relevant jurisprudence.

The act of masturbation is punishable under Section 10(a) of R.A. No. 7610.

Section 10(a), Article VI of R.A. No. 7610 reads:

(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 *prision mayor* in its minimum period.

From the foregoing, Section 10(a) of R.A. No. 7610 punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, namely: (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) being responsible for conditions prejudicial to the child's development.^[22] Simply put, Section 10(a) of R.A. No. 7610 punishes any other acts of child abuse not covered under other provisions of the same law.

In relation thereto, Section 3(b) of R.A. No. 7610 defines child abuse as:

(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.

Taking into account the special circumstances surrounding the case at bench, the act of masturbating in the presence of the minor is considered a lascivious conduct and constitutes psychological abuse on the minor victim. The act of masturbation then falls within the scope of R.A. No. 7610 and not the RPC.

The Implementing Rules and Regulations of R.A. No. 7610 defines "lascivious conduct" as:

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. (Emphasis supplied)

In relation thereto, in *Amployo v. People*,^[23] the Court illustrated what a "lewd" act means, viz.: