

## THIRD DIVISION

[ G.R. No. 201414, April 18, 2018 ]

**PEDRO PEREZ PETITIONER, VS. PEOPLE OF THE PHILIPPINES,  
RESPONDENT.**

### DECISION

**LEONEN, J.:**

Inserting a finger in a 12-year-old girl's vagina and mashing her breasts are not only acts of lasciviousness but also amount to child abuse punished under Republic Act No. 7610.

This is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the 1997 Rules of Civil Procedure, praying that the September 30, 2011 Decision<sup>[2]</sup> and April 10, 2012 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CR No. 33290 be reversed and set aside.<sup>[4]</sup> The Court of Appeals affirmed the March 8, 2010 Judgment<sup>[5]</sup> of the Regional Trial Court, which found Pedro Perez (Perez) guilty beyond reasonable doubt of violation of Section S(b) of Republic Act No. 7610.

On March 29, 1999, an Information was filed against Perez, charging him with violation of Section S(b) of Republic Act No. 7610 or the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act:<sup>[6]</sup>

[T]hat on or about the 7<sup>th</sup> day of November 1998, in Quezon City, Philippines, the said accused, with lewd design, did, then and there willfully, unlawfully, feloniously commit an act of sexual abuse upon the person of [AAA], a minor, 12 years of age, by then and there inserting his finger [into] her private organ while mashing her breast against her will and without her consent which act debases, degrades or demeans the intrinsic worth and dignity of complainant as a human being, to the damage and prejudice of the said offended party.

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

Perez pleaded not guilty during arraignment.<sup>[8]</sup> Pre-trial was held, wherein the prosecution and the defense stipulated the following:

1. That at the time of the commission of the crime, the minor, the victim in this case was only 12 years of age; and
2. That the accused was residing at that time at No. 4, Pangasinan Street, Luzviminda Street, Brgy. Batasan Hills, Quezon City.<sup>[9]</sup>

Thereafter, trial on the merits ensued.<sup>[10]</sup> The prosecution presented AAA,<sup>[11]</sup> SPO4 Mila Billones (SPO4 Billones), and Dr. Winston Tan (Dr. Tan) as its witnesses.<sup>[12]</sup>

AAA testified that she met Perez for the first time on November 6, 1998 when she attended her cousin BBB's birthday party. The next day, November 7, 1998, she saw Perez again when she visited her friend CCC at her house. Aside from her, Perez, and CCC, their other companions inside the house were BBB, DDD, and EEE.<sup>[13]</sup>

AAA recalled that she was wearing a sleeveless blouse, a skirt, and cycling shorts under her skirt that day.<sup>[14]</sup>

AAA narrated that she "went to the kitchen to drink water."<sup>[15]</sup> She saw Perez following her.<sup>[16]</sup> After drinking, Perez "kissed her on the nape and simultaneously told her to keep silent."<sup>[17]</sup> Then, Perez slid his finger in her vagina while massaging her breasts. AAA stated that it was painful when Perez inserted his finger. She attempted to remove his hands but he forced himself. Because she was very afraid, she failed to fight back. Perez succeeded in his sexual advances, which lasted for around ten seconds. He then told her not to tell anybody about what happened.<sup>[18]</sup>

AAA later narrated what happened to her other cousin FFF, who disclosed the incident to AAA's parents. Her parents reported the incident to the barangay officials, who eventually referred the matter to the police for investigation.<sup>[19]</sup>

SPO4 Billones testified that she was the women's desk officer who interviewed AAA. At first, AAA hesitated to answer the questions but eventually disclosed what happened. SPO4 Billones observed that AAA almost cried when she narrated that Perez inserted his finger into her vagina. After the interview, she prepared AAA's statement and thereafter filed the case. She also recommended AAA to undergo further medical examination.<sup>[20]</sup>

Dr. Tan testified that he was a Medico-Legal Officer of the Philippine National Police Crime Laboratory in Camp Crame, Quezon City.<sup>[21]</sup> He examined AAA and stated in his Medico Legal Report that there were "signs of physical abuse, particularly, deep healed laceration at three (3) o'clock on the hymen of [AAA] and ecchymosis in the right mammary region."<sup>[22]</sup> He noted that the laceration was consistent with AAA's allegation of sexual abuse and that the ecchymosis or bruising matched with the date of the alleged incident.<sup>[23]</sup> However, he also testified that the "injuries can likewise be inflicted in a consensual relationship."<sup>[24]</sup>

Meanwhile, the defense presented Perez; his sister, Alma Perez (Alma); and CCC as its witnesses.<sup>[25]</sup>

At the time of his testimony on May 23, 2005, Perez mentioned that he was 26 years old. Thus, he was about 19 years old in 1998 when the offense was committed.<sup>[26]</sup>

Perez denied abusing AAA. He stated that he first met AAA on October 17, 1998. AAA purportedly informed him that she was already 16 years old. He testified that he was not romantically involved with AAA. However, AAA supposedly gave him a

love letter through Alma but he did not reciprocate her affection. He admitted that he met AAA again at BBB's birthday on November 6, 1998.<sup>[27]</sup>

Perez narrated that on the day of the alleged incident, he and his aunt, Nena Rodrigo, went to a school in New Manila. He left her aunt around 6:00p.m. and went straight home.<sup>[28]</sup>

Perez added that on November 11, 1998, AAA filed a complaint against him for slander before the barangay. They were able to settle the matter, and their agreement was put in writing.<sup>[29]</sup>

Alma testified that she noticed that AAA liked her brother Perez. She was also surprised when AAA gave her a love letter for her brother. She stated that AAA went to their place frequently and that she talked to her at BBB 's party.<sup>[30]</sup>

CCC testified that she, AAA, and BBB were together on the day of the alleged incident. However, she swore that she did not see Perez enter her house. She also did not see anything unusual with AAA that day. She claimed that they just slept for five (5) hours the whole time they were together.<sup>[31]</sup>

On March 8, 2010, the Regional Trial Court rendered a Judgment,<sup>[32]</sup> finding Perez guilty beyond reasonable doubt of violation of Section S(b) of Republic Act No. 7610, in relation to Article 336 of the Revised Penal Code.<sup>[33]</sup> It held that the prosecution was able to establish the presence of all elements of violation of Section S(b). Perez likewise failed to provide proof of his alibi.<sup>[34]</sup> Lastly, it noted that "the location as well as the presence of other persons [are] not a barometer that a rapist will be deterred in his lustful intentions to commit the crime of rape if and when his urgings call for it."<sup>[35]</sup>

The dispositive portion of the trial court Judgment provided:

**WHEREFORE**, judgment is hereby rendered finding accused Pedro Perez **GUILTY** beyond reasonable doubt of Violation of R.A. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act in relation to Article 336 of the Revised Penal Code, as amended, and is sentenced to suffer an indeterminate penalty of **EIGHT (8) YEARS** and **ONE (1) DAY OF PRISION MAYOR IN ITS MEDIUM PERIOD AS MINIMUM TO FOURTEEN (14) YEARS** and **EIGHT (8) MONTHS OF RECLUSION TEMPORAL IN ITS MINIMUM PERIOD AS MAXIMUM.**

Accused Pedro Perez is likewise ordered to pay FIFTY THOUSAND PESOS (P50,000.00) as moral damages and TWENTY[FIVE] THOUSAND PESOS (P25,000.00) as exemplary damages plus costs of suit.

SO ORDERED.<sup>[36]</sup> (Emphasis in the original)

Perez filed an appeal<sup>[37]</sup> before the Court of Appeals.<sup>[38]</sup>

On September 30, 2011, the Court of Appeals promulgated a Decision,<sup>[39]</sup>

dismissing the appeal and affirming the trial court's Judgment.<sup>[40]</sup> The dispositive portion of this Decision provided:

**WHEREFORE**, premises considered, the instant appeal is hereby **DISMISSED**. Accordingly, the assailed Judgment of the Regional Trial Court of Quezon City (RTC), Branch 94, dated March 8, 2010 is **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>[41]</sup> (Emphasis in the original)

Perez moved for reconsideration,<sup>[42]</sup> which was denied by the Court of Appeals in its April 10, 2012 Resolution.<sup>[43]</sup>

On May 30, 2012, Perez filed a Petition for Review<sup>[44]</sup> before this Court. Respondent People of the Philippines, through the Office of the Solicitor General, filed its Comment<sup>[45]</sup> on September 6, 2013. Meanwhile, petitioner filed a Manifestation and Motion (In Lieu of Reply)<sup>[46]</sup> on September 30, 2013.

On April 7, 2014, this Court issued a Resolution<sup>[47]</sup> giving due course to the petition. The parties subsequently submitted their respective Memoranda.<sup>[48]</sup>

In his pleadings, petitioner asserts that the situation created by AAA is improbable and not in line with common human experience, given her tight fitting clothes at the time of the incident. Although not impenetrable, her attire was restricting and the time needed to consummate the alleged act was enough for her to ask for help from her companions. AAA likewise fails to mention how petitioner subdued her in spite of her resistance. Petitioner stresses that the alleged crime occurred in close proximity of other persons. It is then impossible that nobody noticed what was happening.<sup>[49]</sup>

Petitioner points out that the medico-legal officer testified that there was a possibility that the injuries sustained by AAA were inflicted with her consent in a sexual relationship.<sup>[50]</sup> In addition to his denial of any romantic relationship with AAA,<sup>[51]</sup> he claims that "the medico-legal report did not conclusively prove that [he] was responsible for [AAA's] vaginal laceration."<sup>[52]</sup>

Finally, petitioner contends that assuming a crime was committed, it should only be acts of lasciviousness under Article 336 of the Revised Penal Code since the prosecution failed to prove beyond reasonable doubt the presence of the elements of child abuse.<sup>[53]</sup> Petitioner explains:

[B]efore an accused may be convicted of child abuse through lascivious conduct involving a minor below twelve (12) years of age, the requisites for acts of lasciviousness under Article 336 of the Revised Penal Code must be met **IN ADDITION** to the requisites for sexual abuse under Section 5 of R.A. No. 7610. The elements of the offense aforementioned, are as follows:

"1.The accused commits the acts of sexual intercourse  
or *lascivious conduct*.

2. **The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.**
3. The child, whether male or female, is below 18 years of age."<sup>[54]</sup> (Emphasis in the original, citations omitted)

Petitioner claims that the prosecution failed to allege the second element either in the Complaint or in the Information. According to petitioner, the prosecution must also prove that AAA was "exploited in prostitution or subjected to other sexual abuse" aside from being subjected to acts of lasciviousness since these are separate and distinct elements.<sup>[55]</sup>

On the other hand, respondent avers that petitioner tried to challenge the credibility of the prosecution's witnesses when he raised the matter of the attire worn by AAA and when he questioned her reaction during the incident. However, respondent pointed out that the trial court already found its witnesses credible. Hence, the trial court's findings should be given great weight considering that it did not commit any misappreciation of facts.<sup>[56]</sup>

Respondent maintains that AAA's garment, no matter how tight-fitting as petitioner claims, is not unpiercable and petitioner could have easily slid his hand inside it. AAA's inaction is also understandable since she was only 12 years old when the incident happened and fear already overcame her when petitioner threatened her not to speak or shout.<sup>[57]</sup>

In addition, the medico-legal report verifies AAA's claim that she was sexually assaulted. This report and Dr. Tan's testimony corroborate AAA's allegation that it was petitioner who committed the crime.<sup>[58]</sup>

Respondent also counters that petitioner failed to timely question the nature of his indictment since he only raised it for the first time on appeal. Moreover, the allegations contained in the Information sufficiently support a conviction for Child Abuse under Section 5(b) of Republic Act No. 7610 in relation to Article 336 of the Revised Penal Code.<sup>[59]</sup>

There are two (2) issues for this Court's resolution:

First, whether the evidence sufficiently establishes AAA's narrative; and

Second, whether all the elements charged in the Information are sufficiently proven beyond reasonable doubt.

## **I**

Petitioner advances the seeming impossibility of AAA's allegation of child abuse considering AAA's outfit that day, her inaction during and after the commission of the alleged act, and the presence of other persons in the house where it happened.

Petitioner's contention has no merit.