

FIRST DIVISION

[G.R. No. 198389, December 11, 2013]

**VIVENCIO ROALLOS Y TRILLANES, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

RESOLUTION

REYES, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[2] dated April 29, 2011 and the Resolution^[3] dated August 19, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 32192. The CA affirmed with modification the Decision^[4] dated July 26, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 88, finding Vivencio Roallos y Trillanes (Roallos) guilty beyond reasonable doubt of the offense of sexual abuse punished under Section 5(b), Article III of Republic Act No. 7610 (R.A. No. 7610), otherwise known as the "Special Protection of Children Against Abuse, Exploitation, and Discrimination Act."

The Facts

Roallos was charged in an Information^[5] for the crime of sexual abuse under Section 5(b), Article III of R.A. No. 7610, docketed as Criminal Case No. Q-02-108825 before the RTC, viz:

The undersigned accuses VIVENCIO ROALLOS Y TRILLANES of the crime of Acts of Lasciviousness in relation to Sec. 5(b)[,] Art. III of R.A. 7610, committed as follows:

That on or about the 15th day of April, 2002, in Quezon City, Philippines, the said accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously commit acts of lasciviousness upon the person of one [AAA]^[6], a minor, 15 years of age, by then and there massaging her breast and kissing her cheek, against her will which act debases, degrades or demeans the intrinsic worth and dignity of said [AAA] as a human being.

CONTRARY TO LAW.^[7]

Upon arraignment, Roallos pleaded "not guilty" to the offense charged.^[8] On June 24, 2002, the pre-trial conference was deemed terminated. Trial on the merits ensued thereafter.^[9]

Roallos, a retired officer of the Armed Forces of the Philippines, was the Executive Director of the Aguinaldo Vets and Associates Credit Cooperative (AVACC). BBB,

AAA's mother, worked as the secretary and treasurer of Roallos.

On April 15, 2002, at around 1:00 p.m., AAA went to BBB's office at Camp Aguinaldo, Quezon City; BBB, however, was then out running office errands. AAA decided to stay in her mother's office and wait for the latter to return. At that time, two women were talking to Roallos inside the AVACC office.

AAA alleged that, after the two women left, Roallos went by the door of the office, looked outside to see if anybody was around, and then locked it. He then approached AAA and asked her if there was any pain bothering her; the latter replied that her tooth ached. Thereupon, Roallos held AAA's hand and intermittently pressed it. He then asked AAA if there is anything else aching in her body. AAA said none. Roallos then placed his left hand on the table while his right hand was on AAA's right shoulder. At this point, AAA was seated on a chair without a backrest while Roallos was standing behind her. Roallos then slid his hand towards AAA's right breast and mashed it. AAA asked Roallos why he is touching her. Roallos ignored her. He then mashed AAA's left breast. AAA shouted "Ano ba!," but Roallos still ignored her and, instead slid his hand towards AAA's abdomen. AAA then stomped her feet and pushed her chair towards Roallos. Roallos then left the office.

Thinking that her mother would soon return, AAA stayed inside the office. However, after about ten minutes, Roallos returned to the office and approached AAA. He then asked AAA if she was hungry, the latter told him that she would just wait for BBB to return. Roallos then offered to give money to AAA for her to buy food, but the latter refused the offer. AAA then felt Roallos' body pressing against her back. Thereafter, Roallos attempted to kiss AAA. AAA was unable to escape as there was no space in front of her; she just turned her face to avoid his kiss. He then held AAA's right cheek, pulled her face towards him, and kissed her left cheek. AAA then stomped her feet, still trying to free herself from the grasp of Roallos. Roallos then left the office. This time, AAA decided to stay outside the AVACC office and wait for her mother to return.

Upon her return to the office, BBB saw AAA crying. She asked AAA why she was crying. AAA then relayed what Roallos did to her. BBB then confronted Roallos about the incident. Roallos, however, denied having done anything to AAA. BBB and AAA thereafter left the office. However, BBB saw that Roallos was following them. Fearing that Roallos would do something to harm them, BBB and AAA immediately entered the office of the Department of National Defense (DND) in Camp Aguinaldo. They were then advised by the employees therein to go to DND's legal department office, where they were advised to report the incident to the police authorities.

AAA and BBB went to the police station where a report regarding the incident was prepared. They then referred the report to the provost marshal for proper coordination and to effect the arrest of the accused. Thereafter, the police and the provost marshal brought Roallos to the police station for investigation.

In his defense, Roallos denied that he molested AAA. He claimed that, on the date of the incident, he merely stayed with AAA in the AVACC office while the latter waited for her mother; that he went out of the office twice to meet clients of AVACC. Roallos further claimed that his arrest was illegal since the same was effected *sans* any warrant of arrest. He likewise averred that he was not informed of his rights when he was arrested nor was he made to undergo any preliminary investigation.

On July 26, 2007, the RTC rendered a Decision^[10] finding Roallos guilty beyond reasonable doubt of violation of Section 5(b), Article III of R.A. No. 7610, viz:

WHEREFORE, premises considered, accused VIVENCIO ROALLOS Y TRILLANES is hereby found GUILTY beyond reasonable doubt of violation of Section 5 (b) of Republic Act 7610 and he is hereby sentenced to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of *prision mayor* medium as minimum to SEVENTEEN (17) YEARS FOUR (4) MONTHS and ONE (1) DAY of *reclusion temporal* maximum as maximum; to indemnify [AAA] in the amount of [P]20,000.00 by way of moral damages; and pay the fine of [P]15,000.00.

SO ORDERED.^[11]

Roallos' Amended Motion for Reconsideration^[12] was denied by the RTC in its Order^[13] dated June 30, 2008.

On appeal, the CA rendered the Decision dated April 29, 2011 which affirmed the RTC Decision dated July 26, 2007, albeit with the modification that the awards of moral damages and civil indemnity were both increased to P50,000.00.

Roallos sought a reconsideration of the CA Decision dated April 29, 2011,^[14] but it was likewise denied by the CA in its Resolution^[15] dated August 19, 2011.

In support of the instant petition, Roallos claims that the CA erred in affirming his conviction considering that the Information filed against him was defective since it charged two crimes, *i.e.*, acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) and sexual abuse under Section 5(b), Article III of R.A. No. 7610. He further argues that he was denied due process as he was not made to undergo a preliminary investigation. Roallos also asserts that his arrest was illegal considering that the same was effected sans any warrant of arrest. Moreover, he alleges that the charge against him should have been dismissed considering the unreasonable delay in the prosecution of the case.

Further, Roallos avers that the charge against him was defective since neither AAA nor BBB signed the Information that was filed against him and, thus, Roallos claims that the prosecutor had no authority to file the said Information and, accordingly, the charge against him was defective.

Furthermore, Roallos alleges that the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610 only applies when the victim is a child engaged in prostitution or when they indulge in lascivious conduct due to the coercion of an adult or a syndicate. Thus, he claims that he is not liable for sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is not a child engaged in prostitution. In any case, he avers that the evidence adduced by the prosecution is not sufficient to establish his guilt beyond reasonable doubt of the offense charged.

Issue

Essentially, the issue presented for the Court's resolution is whether the CA erred in

affirming Roallos' conviction for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610.

The Court's Ruling

The petition is bereft of any merit.

First, Roallos' claim that the Information filed against him is duplicitous as it charged him with the commission of two crimes is plainly untenable. The designation of the crime in the Information is clear – Roallos was charged with the crime of acts of lasciviousness in relation to Section 5(b), Article III of R.A. No. 7610.

The mention of the phrase "acts of lasciviousness" in the Information does not mean that Roallos was charged with the felony of acts of lasciviousness under Article 336 of the RPC. The charge of acts of lasciviousness against Roallos is specifically delimited to that committed in relation to Section 5(b), Article III of R.A. No. 7610.

In any case, "the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information."^[16]

The recital of the ultimate facts and circumstances in the Information that was filed against Roallos clearly makes out a case for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610. The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 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.^[17]
(Emphasis supplied)

The Information that was filed against Roallos alleged that he committed lascivious acts towards AAA, *i.e.*, that he mashed the breasts and kissed the cheeks of the latter. It likewise alleged that AAA, at the time she was subjected to sexual abuse by Roallos, was only 15 years of age. Clearly, all the elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are set out in the Information that was filed against Roallos.

In this regard, the Court likewise finds that the CA and the RTC did not err in finding Roallos criminally liable for violation of Section 5(b), Article III of R.A. No. 7610. It is undisputed that AAA was only 15 years old at the time of the incident. Further, the prosecution was able to establish beyond reasonable doubt the committed lascivious conduct towards AAA, who is a child subjected to sexual abuse within the purview of Section 5(b), Article III of R.A. No. 7610.

That Roallos did in fact commit lascivious conduct towards AAA is a finding of fact by the lower courts, which this Court cannot simply disregard. In a criminal case,