

FIRST DIVISION

[G.R. No. 175528, September 30, 2009]

**PO3 BENITO SOMBILON, JR., PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This resolves the petition for review which seeks to annul and set aside the following rulings of the Court of Appeals (CA) in *C.A. C.R. No. 27729*: a) the Decision^[1] dated July 28, 2005 which affirmed with modification the decision^[2] dated May 13, 2003 of the Regional Trial Court of Davao City (RTC), convicting petitioner of acts of lasciviousness; and b) the Resolution^[3] dated September 22, 2006 denying petitioner's Motion for Reconsideration of the aforesaid Decision.

The facts found during trial, as succinctly stated by the CA, are as follows:

The facts found during the trial reveal that on or about August 15, 1998, AAA, a fifteen (15)-year old minor, was investigated by Appellant at the Calinan Police Station, Davao City in connection with a complaint for Theft filed by a certain Aileen Dagoc.

AAA alleged that Appellant, in conducting the investigation, took her inside a room and locked it. She testified that the room had no window but had a cot, a table, and a clothesline where some clothes were hanged. She claimed that Appellant pointed a gun at her, with the end of the barrel touching her forehead and pushed her with it, causing her head to violently bang against the wall, and asked her: "Did you steal the necklace?" She answered that she did not. Appellant then took an electric wire from a drawer and inserted its male plug to a socket. She was ordered to place her two hands on top of the table where her fingers were electrocuted with the end of the wire. She was again asked the same question, which she kept answering in the negative. Subsequently, she was asked: "Dalaga ka na ba?" (Are you a woman now?), and was told: "I am single too." Simultaneously, she was touched all over her body including her breasts, her belly, and her private parts. She was also kissed on her cheek. She struggled to resist the sexual advances but Appellant prevailed. She claimed that they were inside the room for more than one (1) hour.

Thereafter, they went out of the room where Appellant announced to P03 Danilo Mendez and Aileen Dagoc that she had already admitted having stolen the necklace. Pale, AAA was trembling and crying; her hair disheveled, her dress wet. She also had bruises on her forehead.

The police officers allowed AAA and her mother to go home on the condition that they would pay the value of the necklace. Because of AAA's condition, AAA's mother brought her daughter to the *Medical Clinic of St. Luke* where AAA was examined by Dr. Manuel Garcia, Sr.^[4] Dr. Garcia gave AAA a tranquilizer to calm down the latter who was trembling and incoherent.^[5] At first, AAA could not answer the doctor when she was asked what happened to her. Later, upon regaining her composure, she revealed that she was electrocuted and sexually molested by petitioner.^[6] The Medical Certificate^[7] issued by Dr. Garcia disclosed the following injuries:

1. Slight contusion over occiput region.
2. Slight contusion over center area of forehead.
3. Multiple slight contusions of fingers of bilateral hands.
4. Multiple slight contusions of bilateral breast areas.
5. Slight body tremors.

Diagnosis: Slight Physical Injuries

In an Information^[8] dated August 23, 1999, petitioner was charged with the crime of Acts of Lasciviousness committed as follows:

The undersigned accuses the above-named accused of the crime of Acts of Lasciviousness, under Art. 336, in relation to Art. 344 of the Revised Penal Code, upon the instance of the complainant AAA, who is 15 years old, whose affidavit is hereto attached to form part of this Information. The crime is committed as follows:

That on or about August 14, 1998, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, motivated by lewd design, willfully, unlawfully, and feloniously upon the person of AAA, by then and there embracing, mashing the breast, and touching the private part, against her will.

CONTRARY TO LAW.

Upon arraignment, petitioner pleaded "*not guilty*." Trial ensued thereafter.

On May 13, 2003, after trial on the merits, the RTC rendered a decision finding petitioner guilty of acts of lasciviousness with the aggravating circumstance of petitioner's taking advantage of his public position and sentenced him to six (6) months of *arresto mayor*, as minimum, to five (5) years, four (4) months and twenty-one (21) days of *prision correccional*, as maximum. The dispositive portion of the Decision reads:

For the foregoing judgment is hereby rendered, finding accused P03 Benito Sombilon, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness, under Article 366 of the Revised Penal Code, and is hereby sentenced to suffer imprisonment under the Indeterminate

Sentence Law from Six (6) months of Arresto Mayor, as minimum to Five (5) years, Four (4) months and Twenty-one (21) days of Prision Correccional, as maximum and directed to pay private complainant AAA the following:

- a.) by way of moral Damages, the amount of Ten Thousand Pesos (PhP10,000.00); and
- b.) by way of Exemplary Damages, the amount of ten Thousand Pesos (PhP10,000.00).^[9]

From the above decision, petitioner interposed an appeal to the CA, which was docketed as CA-G.R. CV No. 40419.

On July 28, 2005, the CA rendered the herein challenged Decision affirming with modification the RTC's judgment of conviction. Appreciating the aggravating circumstance of taking advantage of public position which was adequately established during the trial, the CA increased the maximum penalty imposed against petitioner to its maximum period of six years of *prision correccional*. The dispositive portion of the Decision reads:

WHEREFORE, the Decision of the Regional Trial Court, Br. 8, Davao City in Criminal Case No. 43, 810-99 is hereby **AFFIRMED** with **MODIFICATION**. Appellant P03 Benito Sombilon, as found guilty beyond reasonable doubt of the crime of **acts of lasciviousness**, defined and penalized under article 336 of the Revised Penal Code, is hereby sentenced to suffer the indeterminate penalty of 6 months of arresto mayor as minimum, to 6 years of prision correccional, as maximum. Appellant is likewise ordered to pay the victim, AAA, the amount of Php10,000.00 as moral damages and another Php10,000.00 as exemplary damages.

With costs.

SO ORDERED.^[10]

Thus, petitioner filed the instant petition, with the following allegations:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT THAT THE ACCUSED IS GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT;

II

ASSUMING BUT NOT ADMITTING, THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE APPRECIATION OF THE AGGRAVATING CIRCUMSTANCE OF TAKING ADVANTAGE OF HIS PUBLIC POSITION FOR

FAILURE TO ALLEGE IN THE INFORMATION;

III

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF DAMAGES.^[11]

Petitioner contends that the CA erred in affirming his conviction for acts of lasciviousness. Even as he admits having *merely touched* the victim, petitioner argues that the act of touching did not constitute lewdness. At most, he could only be convicted of unjust vexation. Petitioner likewise asserts that while the victim was being touched, the latter tried to cover her body with her arms. Lastly petitioner posits that the police station does not favor the perpetration of the crime of acts of lasciviousness.

Petitioner's contention deserves scant consideration.

The crime of acts of lasciviousness as punished under Article 336 of the Revised Penal Code provides:

ART. 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*.

For an accused to be convicted of acts of lasciviousness under the foregoing provision, the prosecution is burdened to prove the confluence of the following essential elements: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.^[12]

In the case of *Ampluyo v. People*,^[13] the Court expounded on the definition of the term lewd, thus:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, i.e., by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that -