

SECOND DIVISION

[G.R. NO. 173491, November 23, 2007]

**EDWIN CABILA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

The January 31, 2006 Decision of the Court of Appeals^[1] which affirmed that of the Regional Trial Court, Branch 71 of Iba, Zambales^[2] convicting petitioner, Edwin Cabila, of violation of Section 5(b), Article III of Republic Act (RA) No. 7610, "SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT," is before this Court on appeal.

The accusatory portion of the Information against petitioner reads:

That on or about the 7th day of August, 1998 at around 5:30 o'clock in the afternoon, in Sitio St. Joseph, Brgy. Namatacan, in the Municipality of San Narciso, Province of Zambales, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd design, and by means of persuasion, enticement and coercion, did then and there willfully, unlawfully and feloniously commit lascivious conduct with one [AAA]^[3], a minor of eight (8) years old, by touching her private parts against her will and consent, to the damage and prejudice of the said [AAA].

CONTRARY TO LAW.^[4] (Underscoring supplied)

On arraignment, petitioner pleaded not guilty.^[5]

Except for denying the offense charged, petitioner either admitted or did not deny the following tale of AAA, the private complainant.

On August 7, 1998, at around 5:30 p.m., AAA, who was born on September 23, 1990,^[6] boarded together with her classmates a tricycle driven by petitioner to be brought home from Namatacan, Doce Martires Elementary School, San Narciso, Zambales. On petitioner's direction, AAA sat in front of him atop the gasoline tank of the motorcycle.

After AAA's classmates had disembarked, leaving AAA and petitioner on the tricycle, petitioner inserted his fingers inside AAA's underwear and touched her private part. The pain notwithstanding, AAA did not do anything, fearing that petitioner might push her off the bridge through which the tricycle was passing.^[7]

As petitioner was about to enter the yard of AAA's house, he tried to give AAA a one peso coin which she refused to accept. Petitioner then told AAA not to tell anyone that he gave her a free ride.

AAA further gave the following account:

Once inside her house, AAA cried. The following morning, AAA's mother BBB became aware that AAA had difficulty urinating. AAA soon cried profusely and recounted what petitioner did to her.

AAA's father lost no time in reporting the matter to the Office of the Barangay Chairman of Grullo, San Narciso, Zambales where a confrontation took place in which petitioner denied the accusation. The matter was later referred to the police authorities of San Narciso, Zambales.^[8]

AAA underwent medical examination which revealed the following:

DIAGNOSIS/FINDINGS:

- Linear erythema, 1 mm. hymenal area, 9:00 o'clock position.
- Hymen is intact.^[9]

Hence, spawned the filing of the Information against petitioner.

Denying the charge, petitioner gave the following version:

The road on the way to the houses of AAA and her classmates was rough and undergoing construction, hence, the ride was bumpy. When AAA alighted from his tricycle, he did not notice any unusual behavior on her part. He in fact became acquainted with AAA only when he had a confrontation with her at the barangay office.^[10]

As earlier mentioned, the trial court convicted petitioner of violation of Section 5(b), Article III of RA No. 7610 by Decision dated October 25, 2004, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court renders judgment finding accused EDWIN CABILA guilty beyond reasonable doubt of the crime of Violation of Section 5(b), Article III of Republic [Act No.] 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", and he is hereby sentenced to suffer the indeterminate penalty of EIGHT (8) YEARS AND ONE (1) DAY of prison mayor as minimum to **FIFTEEN (15) YEARS, SIX (6) MONTHS AND TWENTY (20) DAYS** of reclusion temporal as maximum.

Accused is likewise ordered to pay the private complainant [AAA] the amount of P30,000.00 as moral damages.^[11] (Emphasis supplied)

In affirming the trial court's decision, the Court of Appeals declared:

Unfortunately for the accused-appellant, his defense is a bare denial not established by clear and convincing evidence, thus undeserving of weight in law. It cannot prevail over the positive declarations of private

complainant who in a simple and straightforward manner, convincingly and categorically identified accused-appellant as the person who touched her private parts. His suggestion that private complainant had a bumpy and an uneasy ride in his tricycle is not only difficult to believe but also preposterous. We cannot believe that a victim of private complainant's age (barely 8 years old per her certificate of live birth, Exh. C) could concoct a tale of lasciviousness, allow her [sic] examination of private parts and undergo the expense of trouble, inconvenience, not to mention the trauma of a public trial if the same were not true. Her account of her horrible ordeal evinces sincerity and truthfulness.^[12]

Hence, the present petition for review anchored on the sole issue of:

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.^[13]

The appellate court affirmed the trial court's conviction of petitioner under Section 5(b), Article III of RA No. 7610, the pertinent portions of which section read:

SEC. 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.**

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following;

(a) x x x

(b) Those who commit the **act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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;*

x x x x (Emphasis and underscoring supplied)

For an accused to be convicted of child abuse through lascivious conduct on a minor below 12 years of age, **“the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of Rep. Act No. 7610.”**^[14]

Section 5, Article III of RA No. 7610 enumerates the elements of sexual abuse as follows:

(1) The accused commits the act of sexual intercourse or lascivious conduct;