



Republic of the Philippines
SUPREME COURT
 Baguio City

EN BANC

EDUARDO QUIMVEL y BRAGA,
 Petitioner,

G.R. No. 214497

Present:

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

SERENO, *C.J.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,*
 CAGUIOA,
 MARTIRES, and
 TIJAM, *JJ.*

Promulgated:

April 18, 2017

X-----*[Signature]*-----X

DECISION

VELASCO, JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the May 29, 2014 Decision¹ and September 15, 2014 Resolution² of the Court of Appeals (CA) in CA-G.R. CR No. 35509.³ The challenged rulings sustained the petitioner's conviction⁴ of the crime of

* No part.

¹ *Rollo*, pp. 29-40. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Elihu A. Ybañez and Carmelita S. Manahan.

² *Id.* at 42-43.

³ Entitled *People of the Philippines v. Eduardo Quimvel y Braga a.k.a. Eduardo/ Edward Quimuel y Braga*.

⁴ With modification as to the amount of damages.

Acts of Lasciviousness in relation to Sec. 5(b), Article III of Republic Act No. (RA) 7610.⁵

The Information reads:⁶

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMUEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA],⁷ a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

The Facts

The facts of the case, as can be gleaned from the Decision of the CA, are as follows:⁸

AAA, who was seven years old at the time of the incident, is the oldest among the children of XXX and YYY. XXX worked as a household helper in Batangas while YYY was a *Barangay Tanod* who derived income from selling vegetables. AAA and her siblings, BBB and CCC, were then staying with YYY in Palapas, Ligao City.

On the other hand, Quimvel, at that time, was the caretaker of the ducks of AAA's grandfather. He lived with AAA's grandparents whose house was just a few meters away from YYY's house.

At around 8 o'clock in the evening of [July 18,] 2007, YYY went out of the house to buy kerosene since there was no electricity. While YYY was away, Quimvel arrived bringing a vegetable viand from AAA's grandfather. AAA requested Quimvel to stay with them as she and her

⁵ AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES.

⁶ *Rollo*, p. 65.

⁷ Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

⁸ *Rollo*, pp. 30-31.



siblings were afraid. He agreed and accompanied them. AAA and her siblings then went to sleep. However, she was awakened when she felt Quimvel's right leg on top of her body. She likewise sensed Quimvel inserting his right hand inside her panty. In a trice, she felt Quimvel caressing her private part. She removed his hand.

Quimvel was about to leave when YYY arrived. She asked him what he was doing in his house. Quimvel replied that he was just accompanying the children. After he left, YYY and his children went back to sleep.

On [July 29,] 2007, XXX arrived from Batangas. Later in the evening while XXX was lying down with her children, she asked them what they were doing while she was away. BBB told her that Quimvel touched her *Ate*. When XXX asked AAA what Quimvel did to her, she recounted that Quimvel laid down beside her and touched her vagina.

Upon hearing this, XXX and YYY went to the Office of the *Barangay Tanod* and thereafter to the police station to report the incident. Afterwards, they brought AAA to a doctor for medical examination.

As expected, Quimvel denied the imputation hurled against him. He maintained that he brought the ducks of AAA's grandmother to the river at 7 o'clock in the morning, fetched it and brought it back at AAA's grandmother's place at 4 o'clock in the afternoon of [July 18,] 2007. After that, he rested. He said that he never went to AAA's house that evening. When YYY confronted and accused him of touching AAA, he was totally surprised. Even if he denied committing the crime, he was still detained at the *Barangay Hall*. He was then brought to the police station for interrogation. Eventually, he was allowed to go home. He did not return to the house of AAA's grandmother to avoid any untoward incidents.

Ruling of the Trial Court

Lending credence to AAA's straightforward and categorical testimony, the Regional Trial Court (RTC), Branch 11 in Ligao City, Albay, on January 23, 2013, rendered its Judgment⁹ finding petitioner guilty beyond reasonable doubt of the crime charged. The dispositive portion of the judgment reads:¹⁰

WHEREFORE, in the light of the foregoing, judgment is hereby rendered:

1. Finding the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMUEL Y BRAGA, GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness in relation to Section 5 (b), Article III of R.A. 7610 and thereby sentenced him to suffer the penalty of imprisonment from FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal in its medium period as minimum to FIFTEEN (15) YEARS, SIX (6) MONTHS and NINETEEN (19) DAYS of Reclusion Temporal in its medium period as maximum; and

⁹ Id. at 65-73. Penned by Judge Amy Ana L. De Villa-Rosero.

¹⁰ Id. at 73.



2. ORDERING the accused, EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMUEL Y BRAGA, to pay the victim the amount of P30,000.00 as moral damages and to pay a fine in the amount of P30,000.00.

In the service of his sentence, accused EDUARDO QUIMVEL Y BRAGA a.k.a. EDWARD/ EDUARDO QUIMVEL Y BRAGA shall be credited with the period of his preventive detention pursuant to Article 29 of the Revised Penal Code.

No costs.

SO ORDERED.

Ruling of the Appellate Court

Thereafter, petitioner lodged an appeal with the CA but to no avail. For on May 29, 2014, the CA rendered its assailed Decision affirming, with modification, the Judgment of the trial court. The dispositive portion of the Decision provides:¹¹

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby MODIFIED in that accused-appellant EDUARDO QUIMVEL y BRAGA also known as EDUARDO/ EDWARD QUIMUEL y BRAGA is ORDERED to pay the victim, AAA moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.

The Issues

Aggrieved, Quimvel elevated his case to this Court and raised the following issues for resolution:

I.

The CA erred in affirming the decision of the trial court as the prosecution was not able to prove that he is guilty of the crime charged beyond reasonable doubt.

II.

Assuming without admitting that he is guilty hereof, he may be convicted only of acts of lasciviousness under Art. 336 of the Revised Penal Code (RPC) and not in relation to Sec. 5(b) of RA 7610.

¹¹ Id. at 39-40.



The Court's Ruling

We affirm the CA's Decision finding petitioner guilty beyond reasonable doubt of the crime of Acts of Lasciviousness as penalized under Sec. 5(b) of RA 7610.

The Information charged the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610

Petitioner contends that, granting without admitting that he is guilty of Acts of Lasciviousness, he should only be held liable for the crime as penalized under the RPC and not under RA 7610. According to him, to be held liable under the latter law, it is necessary that the victim is involved in or subjected to prostitution or other sexual abuse, and that the failure to allege such element constituted a violation of his constitutional right to be informed of the nature and the cause of accusation against him.¹²

His argument fails to persuade.

i. The acts constituting the offense must be alleged in the Information

It is fundamental that, in criminal prosecutions, every element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged. This is to apprise the accused of the nature of the accusation against him, which is part and parcel of the rights accorded to an accused enshrined in Article III, Section 14(2) of the 1987 Constitution.¹³ Sections 6, Rule 110 of the Rules of Court, in turn, pertinently provides:

Section 6. Sufficiency of complaint or information.—A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. (emphasis added)

Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the

¹² Id. at 20-21. *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

¹³ Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, **to be informed of the nature and cause of the accusation against him**, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (emphasis added)

elements of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.¹⁴

The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived.¹⁵ As further explained in *Andaya v. People*:¹⁶

No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. **The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.** (emphasis added)

Indeed, the Court has consistently put more premium on the facts embodied in the Information as constituting the offense rather than on the designation of the offense in the caption. In fact, an investigating prosecutor is not required to be absolutely accurate in designating the offense by its formal name in the law. What determines the real nature and cause of the accusation against an accused is the actual recital of facts stated in the Information or Complaint, not the caption or preamble thereof nor the specification of the provision of law alleged to have been violated, being conclusions of law.¹⁷ It then behooves this Court to place the text of the Information under scrutiny.

ii. The elements of the offense penalized under Sec. 5(b) of RA 7610 were sufficiently alleged in the Information

In the case at bar, petitioner contends that the Information is deficient for failure to allege all the elements necessary in committing Acts of Lasciviousness under Sec. 5(b) of RA 9160.

His theory is that the Information only charges him of the crime as punished under Art. 336 of the RPC, which pertinently reads:

Art. 336. *Acts of lasciviousness.*—Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the

¹⁴ *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 522 (2003).

¹⁵ *Andaya v. People*, 526 Phil. 480 (2006).

¹⁶ *Id.* at 497.

¹⁷ *Espino v. People*, 713 Phil. 377 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

circumstances mentioned on the preceding article, shall be punished by *prision correccional*.

Conviction thereunder requires that the prosecution establish the following elements:

1. That the offender commits any act of lasciviousness or lewdness;
2. That it is done under any of the following circumstances:¹⁸
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;
 - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and
3. That the offended party is another person of either sex.

On the other hand, the prosecution endeavored to prove petitioner's guilt beyond reasonable doubt for child abuse under Sec. 5(b) of RA 7610, which provides:

Section 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:

x x x x

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

Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b) of RA 7610, the requisites of Acts of Lasciviousness as penalized under Art. 336 of the RPC earlier enumerated must be met in addition to the requisites for sexual abuse under Sec. 5(b) of RA 7610, which are as follows:¹⁹

¹⁸ The circumstances under which rape can be committed under Art. 335 of the Revised Penal Code have been modified by Republic Act No. 8353, otherwise known as the Anti-Rape Law.

¹⁹ *Cabila v. People*, G.R. No. 173491, November 23, 2007, 538 SCRA 695.



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.**
3. That child, whether male or female, is below 18 years of age.²⁰ (emphasis supplied)

Hypothetically admitting the elements of Art. 336 of the RPC, as well as the first and third elements under RA 7610 -that a lascivious act was committed against AAA who at that time was below twelve (12) years old -petitioner nevertheless contends that the second additional element, requiring that the victim is a child "*exploited in prostitution or subjected to other sexual abuse,*" is absent in this case.

The fault in petitioner's logic lies in his misapprehension of how the element that the victim is "*exploited in prostitution or subjected to other sexual abuse*" should be alleged in the Information.

Guilty of reiteration, the accusatory portion of the Information reads:

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/EDUARDO QUIMUEL y BRAGA of the crime of **Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610**, committed as follows:

That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, **through force and intimidation**, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA],²¹ a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.²² (emphasis added)

To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse.*" This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious

²⁰ *Ebalada v. People*, G.R. No. 157718, April 26, 2005, 457 SCRA 282.

²¹ Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to RA 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

²² *Rollo*, p. 65.

conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.²³

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.²⁴ Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. This is even made clearer by the deliberations of the Senate, as cited in the landmark ruling of *People v. Larin*:²⁵

Senator Angara. I refer to line 9, '**who for money or profit.**' I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is **limited only to the child being abused or misused for sexual purposes, only for money or profit.**

I am contending, Mr. President, that **there may be situations where the child may not have been used for profit** or...

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. **Maybe the heading ought to be expanded.** But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR

²³ *People v. Larin*, 357 Phil. 987 (1998).

²⁴ *Malto v. People*, 560 Phil. 119 (2007).

²⁵ *Supra* note 23, at 998-999.

MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, ‘Child Prostitution,’ shall we change that too?

Senator Angara. **Yes, Mr. President, to cover the expanded scope.**

The President Pro Tempore. Is that not what we would call probable ‘child abuse’?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved.

Clear from the records of the deliberation is that the original wording of Sec. 5 of RA 7610 has been expanded so as to cover abuses that are not characterized by gain, monetary or otherwise. In the case at bar, the abuse suffered by AAA squarely falls under this expanded scope as there was no allegation of consideration or profit in exchange for sexual favor. As stated in the Information, petitioner committed lascivious conduct through the use of “force” and “intimidation.”

iii. *“Force and intimidation” is subsumed under “coercion and influence”*

The term “coercion and influence” as appearing in the law is broad enough to cover “force and intimidation” as used in the Information. To be sure, Black’s Law Dictionary defines “coercion” as “compulsion; force; duress”²⁶ while “[undue] influence” is defined as “persuasion carried to the point of overpowering the will.”²⁷ On the other hand, “force” refers to “constraining power, compulsion; strength directed to an end”²⁸ while jurisprudence defines “intimidation” as “unlawful coercion; extortion; duress; putting in fear.”²⁹ As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different. And to dispel any remaining lingering doubt as to their interchangeability, the Court enunciated in *Caballo v. People*³⁰ that:

²⁶ <<http://thelawdictionary.org/coercion/>> last accessed on March 3, 2017.

²⁷ <<http://thelawdictionary.org/undue-influence/>> last accessed on March 3, 2017.

²⁸ <<http://thelawdictionary.org/force/>> last accessed on March 4, 2017.

²⁹ *Sazon v. Sandiganbayan*, 598 Phil. 35 (2009).

³⁰ 710 Phil. 792, 805-806 (2013).

x x x sexual intercourse or lascivious conduct under the **coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.** Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:

The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

To note, the term “influence” means the “improper use of power or trust in any way that deprives a person of free will and substitutes another's objective.” Meanwhile, “coercion” is the “improper use of x x x power to compel another to submit to the wishes of one who wields it.” (emphasis added)

With the foregoing, the Court need not burden itself with nitpicking and splitting hairs by making a distinction between these similar, if not identical, words employed, and make a mountain out of a mole hill.

It is not necessary that the description of the crime, as worded in the penal provision allegedly violated, be reproduced *verbatim* in the accusatory portion of the Information before the accused can be convicted thereunder. Sec. 9, Rule 110 of the Rules of Court is relevant on this point:

Section 9. Cause of the accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The Court has held in a catena of cases³¹ that the rule is satisfied when the crime “*is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.*” Furthermore, “[t]he use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.” Hence, the exact phrase “*exploited in prostitution or subjected to other abuse*” need not be mentioned in the Information. Even the words “*coercion or influence*” need not specifically appear.

Thus, the Court, in *Olivarez v. Court of Appeals*,³² has similarly sustained the conviction of therein petitioner Isidro Olivarez (Olivarez) for violating Sec. 5, RA 7610. The Information indicting Olivarez of the offense read:

³¹ *Lazarte, Jr. v. Sandiganbayan*, 600 Phil. 475 (2009); *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 522 (2003).

³² *Supra* note 12.

The undersigned 4th Assistant Provincial Prosecution (*sic*) of Laguna upon a sworn complaint filed by the private complainant, [AAA], hereby accuses ISIDRO OLIVAREZ of the crime of VIOLATION OF RA 7610, committed as follows:

That on or about July 20, 1997, in the Municipality of San Pedro, Province of Laguna, within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously by means of **force and intimidation** commit acts of lasciviousness on the person of one [AAA], by touching her breasts and kissing her lips, against her will, to her damage and prejudice.

CONTRARY TO LAW. (emphasis added)

Conspicuously enough, the Information in *Olivarez* is couched in a similar fashion as the Information in the extant case. The absence of the phrase “*exploited in prostitution or subject to other sexual abuse*” or even the specific mention of “*coercion*” or “*influence*” was never a bar for the Court to uphold the finding of guilt against an accused for violation of RA 7610. Just as the Court held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of “*force and intimidation*,” the Court must also rule that the Information in the case at bench does not suffer from the alleged infirmity.

So too did the Court find no impediment in *People v. Abadies*,³³ *Malto v. People*,³⁴ *People v. Ching*,³⁵ *People v. Bonaagua*,³⁶ and *Caballo v.*

³³ 433 Phil. 814, 818 (2002); the Information reads:

That on or about July 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously, **with force and intimidation** commit acts of lasciviousness upon the person of his 17-year old daughter [AAA] by kissing, massaging her breast and touching her private parts against her will and consent.

CONTRARY TO LAW.

³⁴ Supra note 24, at 126; the Information reads:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(b), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **induce and/or seduce** his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse for several times with him as in fact said accused had carnal knowledge.

Contrary to law.

³⁵ 563 Phil. 433, 436 (2007); the Information reads:

CRIMINAL CASE NO. Q-99-87053

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-87054

That in or about the month of May, 1998, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own

*People*³⁷ to convict the accused therein for violation of Sec. 5, RA 7610 notwithstanding the non-mention in the Information of “coercion,” “influence,” or “exploited in prostitution or subject to other abuse.”

The offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged. Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of the opportunity to prepare his defense accordingly.³⁸ Its import is underscored in this case where the preamble states that the crime charged is of “*Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610.*”

In *Malto v. People*,³⁹ therein accused Michael John Z. Malto (Malto) was charged for violation of RA 7610 in the following wise:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5[b], ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

CRIMINAL CASE NO. Q-99-87055

That in or about the year of 1996, in XXX, Philippines, the said accused by means of **force and intimidation**, to wit: by then and there, willfully, unlawfully and feloniously drag said AAA, his own daughter, 12 years of age, minor, inside a bedroom and undressed her and put himself on top of her and thereafter have carnal knowledge with said AAA against her will and without her consent.

³⁶ 665 Phil. 750, 755-756 (2011); the information reads:

That on or about the month of December 1998 in the City of Las Piñas and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of influence and moral ascendancy, **by means of force, threat and intimidation**, did then and there willfully, unlawfully and feloniously insert his tongue and finger into the genital of his daughter, [AAA], a minor then eight (8) years of age, against her will and consent.

CONTRARY TO LAW and with the special aggravating/qualifying circumstance of minority of the private offended party, [AAA], being then only eight (8) years of age and relationship of the said private offended party with the accused, Ireneo Bonaagua y Berce, the latter being the biological father of the former.

³⁷ Supra note 30, at 796-797; the Information reads:

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, until June 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23-year-old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of worldly experience of AAA who was only 17 years old at that time, having been born on November 3, 1980, did then and there willfully, unlawfully and feloniously commit sexual abuse upon said AAA, **by persuading and inducing** the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy and delivery of a baby on March 8, 1999, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

³⁸ *Malto v. People*, supra note 24.

³⁹ *Id.* at 126.

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John Z. Malto, a professor, did then and there willfully, unlawfully and feloniously **take advantage and exert influence**, relationship and moral ascendancy and induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, **to indulge in sexual intercourse** and lascivious conduct for several times with him as in fact said accused has carnal knowledge.

Contrary to law. (emphasis and words in brackets added)

Interestingly, the acts constitutive of the offense, as alleged in the Information, could make out a case for violation of either Sec. 5(b) of RA 7610 or Rape under the RPC.⁴⁰ Nevertheless, the Court affirmed the finding that Malto is criminally liable for violation of RA 7610, and not for Rape.

The Court is not unmindful of its pronouncements in *People v. Abello (Abello)*⁴¹ and *Cabila v. People (Cabila)*⁴² that the second element must specifically be alleged in the Information and thereafter proved. However, these rulings cannot support petitioner's prayer that he be convicted under Art. 336 of the RPC instead of under Sec. 5(b) of RA 7610.

To begin with, the factual milieu of *Abello* significantly differs with that in the case at bar. Our refusal to convict therein accused Heracleo Abello was premised on the fact that his victim cannot be considered as a "child" within the purview of RA 7610.⁴³ The victim in *Abello*, was 21 years of age when the offense was committed. Although she had polio, the prosecution failed to substantiate through evidence that the victim's physical condition rendered her incapable of fully taking care of herself or of protecting herself against sexual abuse.⁴⁴ Hence, *Abello* was only convicted of Acts of Lasciviousness under Art. 336 of the RPC.

Cabila, on the other hand, is a stray division case that has seemingly been overturned by the Court's recent *en banc* ruling in *Dimakuta v. People (Dimakuta)*.⁴⁵ The latter case attempted to punctuate the discussion on the issue at hand, but fell short as the conviction therein for violation of Art. 336 of the RPC had already attained finality. Instead, what the Court *en banc* was confronted with in *Dimakuta*, the bone of contention that remained, was whether or not an accused is disqualified to apply for probation even if such appeal resulted in the reduction of the non-probationable penalty imposed to a probationable one. The Court, therefore, deems it more appropriate *here* to categorically abandon our ruling in *Cabila*.

⁴⁰ Rape was still classified as a crime against chastity under the RPC at the time the offense was committed.

⁴¹ 601 Phil. 373 (2009).

⁴² *Supra* note 19.

⁴³ **Section 3. Definition of Terms.** – (a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

⁴⁴ *Supra* note 41.

⁴⁵ G.R. No. 206513, October 20, 2015, 773 SCRA 228.

Neither can petitioner buttress his claim by citing the dissent in the 2005 case of *Olivarez v. CA*⁴⁶ wherein it was expounded thus:

The first element refers to the acts of lasciviousness that the accused performs on the child. The second element refers to the special circumstance that the child (is) exploited in prostitution or subjected to other sexual abuse. This special circumstance already exists when the accused performs acts of lasciviousness on the child. In short, the acts of lasciviousness that the accused performs on the child are separate and different from the child's exploitation in prostitution or subjection to "**other sexual abuse.**"

Under Article 336 of the RPC, the accused performs the acts of lasciviousness on a child who is neither exploited in prostitution nor subjected to "**other sexual abuse.**" In contrast, under Section 5 of RA 7610, the accused performs the acts of lasciviousness on a child who is either exploited in prostitution or subjected to "**other sexual abuse.**"

Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to "**other sexual abuse.**" Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance that the child is either exploited in prostitution or subjected to "**other sexual abuse.**" (emphasis supplied)

Contrary to the exposition, the very definition of "child abuse" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.

*iv. There need not be a third person
subjecting the exploited child to other
abuse*

The intervention by a third person is not necessary to convict an accused under Sec. 5 of RA 7610. As regards paragraph (a), a child may engage in sexual intercourse or lascivious conduct regardless of whether or not a "*bugaw*" is present. Although the presence of an offeror or a pimp is the typical set up in prostitution rings, this does not foreclose the possibility of a child voluntarily submitting himself or herself to another's lewd design for consideration, monetary or otherwise, without third person intervention. Needless to say, the child, would still be under the protection of the law, and the offender, in such a situation, could still be held criminally liable for violation of Sec. 5(a) of RA 7610.

The Senate deliberations made clear, though, that other forms of sexual abuse, not just prostitution, are within the extended coverage of RA

⁴⁶ Supra note 12, at 444-445.



7610. The offense is even penalized under the same provision as prostitution—Sec. 5 of the law. Both offenses must then be dealt with under the same parameters, in spite of the differences in their elements. Thus, concomitant with the earlier postulation, just as the participation of a third person is not necessary to commit the crime of prostitution, so too is the circumstance unessential in charging one for other sexual abuse.

It is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). Sec. 5 of RA 7610 even provides that the offense can be committed by “*any adult, syndicate or group,*” without qualification.⁴⁷ The clear language of the special law, therefore, does not preclude the prosecution of lascivious conduct performed by the same person who subdued the child through coercion or influence. This is, in fact, the more common scenario of abuse that reaches this Court and it would be an embarrassment for us to rule that such instances are outside the ambit Sec. 5(b) of RA 7610.

It is as my esteemed colleagues Associate Justices Diosdado M. Peralta and Estela M. Perlas-Bernabe reminded the Court. *Ratio legis est anima*. The reason of the law is the soul of the law. In this case, the law would have miserably failed in fulfilling its lofty purpose⁴⁸ of providing special protection to children **from all forms of abuse** if the Court were to interpret its penal provisions so as to require the additional element of a prior or contemporaneous abuse that is different from what is complained of, and if the Court were to require that a third person act in concert with the accused.

The RTC and CA did not err in finding petitioner guilty beyond reasonable doubt

Well-settled is the rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.⁴⁹ This is so because the observance of the deportment and demeanor of witnesses are within the exclusive domain of the trial courts. Thus, considering their unique vantage point, trial courts are

⁴⁷ Section 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.

⁴⁸ RA 7610, Section 2. *Declaration of State Policy and Principles*. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions, prejudicial their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

⁴⁹ *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688.



in the best position to assess and evaluate the credibility and truthfulness of witnesses and their testimonies.⁵⁰

In the case at bar, the RTC held that the prosecution duly established petitioner's guilt beyond reasonable doubt through AAA's straightforward testimony. The trial court observed that when AAA testified, she was able to steadily recount Quimvel's immodest acts, as follows:

- Q Okay. On the same date, where was your mother, if you know?
A During that time, my mother was in Batangas, she being a household helper.
- Q Alright. How about your father, where was he on July 18, 2007, at more or less 8:00 o'clock in the evening?
A He was on duty at Palapas, Ligao City.
- Q Okay. What was your father's job?
A He was on duty, since he was a Barangay Tanod.
- Q Okay. Now, on that date and time, where were you, if you recall?
A I was in our house.
- Q Who were with you inside your house?
A I was with my two (2) siblings.
- Q Okay. Now, what happened while you and your siblings were there inside your house on that date and time?
A Eduardo went to our house with a viand vegetable for us.
- Q Okay. Who is this Eduardo that you are referring to?
A He is the helper of my grandfather.
- Q Okay. If you know, why was he bringing you then a viand?
A He was sent by our Lolo to bring the viand for us.
- Q Alright. When he brought the viand to you, what did you say, if any?
A I told him to accompany us in our house because we are afraid.
- Q Okay. What did he say, if any, when you told him that?
A He told me, it's alright.
- Q Okay. So, what did you do after he told you that?
A After that, I went to sleep.
- Q How about your brother or sister, what did they do also?
A They too went to sleep.
- Q And then what happened, if you recall?
A Since his leg was placed over my body. I was awaken[ed] because from that, he was also inserting his hand inside my panty.
- Q Alright. Now, could you tell us which leg was it that he placed on top of your body?
A His right leg(,) ma'am.
- Q Okay. Now, you've mentioned that he inserted his hand inside your panty, do you recall what you were wearing at that time?
A I was wearing shorts and panty.
- Q Alright. How about on the upper portion of your body, what were you wearing then?
A I was wearing a blouse, like what I am wearing now. (Witness pointing to her blouse)
- Q Alright. And you mentioned that he inserted his hand on your panty, which hand did he use?
A His right hand.
- Q Alright. And after inserting his hand inside your panty, what did he do with it?

⁵⁰ *People v. Pareja*, 724 Phil. 759 (2014).

- A After inserting his hand inside my panty, he rubbed my vagina. (Witness is demonstrating by rubbing her left hand with her right hand.)
- Q Now, could you tell us for how long did Eduardo rubbed or caressed your vagina? (sic)
- A Maybe it took for about five (5) minutes.
- Q Do you know how long is a minute?
- A I do not know(,) ma'am.
- Q Now, if you are going to count one (1) to ten (10), each count would be equivalent to one (1) second and if you have counted for ten (10), on what number would you reach to approximate the time wherein Eduardo caressed your vagina?
- A It could be thirty (30) minutes.

COURT

Maybe she did not understand it.

PROS. CRUZ

- Q Alright. Now, he (sic) took a long time for the accused to caress your vagina, is that what you are trying to tell this Honorable Court?
- A Yes(,) ma'am.
- Q And what did you do when he was caressing your vagina for that long?
- A I removed his hand from inside my panty.⁵¹

The foregoing testimonial account demonstrates that all the elements of the crime of Acts of Lasciviousness under Sec. 5(b) of RA 7610, as earlier enumerated, are present.

Let us not forget the circumstances of this case, not only was the offense committed against a child under twelve (12) years of age, it was committed when the victim was unconscious, fast asleep in the dead of the night. AAA, then a minor of seven (7) years, was awoken by the weight of petitioner's leg on top of her and of his hand sliding inside her undergarment. His hand proceeded to caress her womanhood, which harrowing experience of a traumatic torment only came to a halt when she managed to prevent his hand from further touching her private parts.

As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult.⁵² Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party.⁵³ The law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient.⁵⁴

The petitioner's proposition—that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed

⁵¹ TSN, June 23, 2011, pp. 6-9.

⁵² *Garingarao v. People*, 669 Phil. 512 (2011).

⁵³ *Caballo v. People*, supra note 30.

⁵⁴ *Dimakuta v. People*, supra note 45.

and, hence, he cannot be prosecuted under RA 7610—is bereft of merit. When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice.

Here, AAA was a child at the tender age of seven (7) when the offense was committed. She was residing with her father in Palagas, Ligao City, Albay while her mother works as a household helper in Batangas. Her father, however, is out of the house most of the time, working two jobs as a vendor and *barangay tanod*. Petitioner, on the other hand, was known to the victim and her siblings as the caretaker of their grandmother's ducks. Thus, when petitioner brought some vegetable viand to the victim's house at the day the crime was committed, he was requested by the children to stay with them because they were afraid. AAA entrusted to petitioner her safety and that of her siblings, only to be betrayed. In this situation, the Court finds that because of the relative seniority of petitioner and the trust reposed in him, petitioner abused the full reliance of AAA and misused his ascendancy over the victim. These circumstances can be equated with "intimidation" or "influence" exerted by an adult, covered by Sec. 5(b) of RA 7610. Ergo, the element of being subjected to sexual abuse is met.

That AAA is a child of tender years does not detract from the weight and credibility of her testimony. On the contrary, even more credence is given to witnesses who were able to candidly relay their testimony before the trial courts under such circumstance. The child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint.⁵⁵

In stark contrast, Quimvel's defense—that he did not go to AAA's house on the alleged time of the incident as he was busy watching over the ducks of AAA's grandmother at the latter's house⁵⁶—deserves scant consideration. Jurisprudence is replete of cases holding that denial and alibi are weak defenses, which cannot prevail against positive identification.⁵⁷ A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.⁵⁸

For his alibi to prosper, it was incumbent upon petitioner to prove that he was somewhere else when the offense was committed, and that he was so far away it would have been impossible for him to be physically present at the place of the crime or at its immediate vicinity at the time of the commission.⁵⁹ But in his version of the events, petitioner failed to prove the

⁵⁵ *Navarrete v. People*, G.R. No. 147913, January 31, 2007, 513 SCRA 509.

⁵⁶ *Rollo*, p. 67.

⁵⁷ *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842.

⁵⁸ *People v. Gani*, G.R. No. 195523, June 5, 2013, 697 SCRA 530.

⁵⁹ *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587.



element of physical impossibility since the house of AAA's grandmother, where he claimed to be at that time, is only 150 meters, more or less, from AAA's house. His alibi, therefore, cannot be considered exculpatory.

Article 336 of the RPC was never repealed by RA 8353

Associate Justice Marvic M.V.F. Leonen (Justice Leonen) posits that Art. 336 of the RPC has allegedly been rendered incomplete and ineffective by RA 8353, otherwise known as the Anti-Rape law. The good justice brings our attention to Sec. 4⁶⁰ of the special law, which clause expressly repealed Art. 335 of the RPC. And since the second element of Acts of Lasciviousness under Art. 336 of the RPC is sourced from Art. 335 of the same code,⁶¹ it is then Justice Leonen's theory that Acts of Lasciviousness ceased to be a crime under the RPC following Art. 335's express repeal.

We respectfully disagree.

Sec. 4 of RA 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. Rather, the phrase in Sec. 4 states: "*deemed amended, modified, or repealed accordingly*" qualifies "*Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353].*"

As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC,⁶² which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A.⁶³ Thus, the reference by Art. 336 of the RPC to any

⁶⁰ **Section 4. Repealing Clause.** - Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

⁶¹ Under Art. 336, the lascivious conduct must be performed under any of the circumstances mentioned on its "*preceding article,*" referring to the previous law penalizing rape. Prior to its repeal, Art. 335 of the RPC provides that rape may be committed a) by using force or intimidation; b) when the offended party is deprived of reason or otherwise unconscious; or c) when the offended party is under 12 years of age.

⁶² **Article 335. When and how rape is committed.** - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

⁶³ **Article 266-A. Rape: When And How Committed.** - Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and

of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the circumstances covered by Art. 266-A as introduced by the Anti-Rape Law.

We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.⁶⁴ Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. And as demonstrated, the Anti-Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase "*preceding article*" is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

It is likewise incorrect to claim that Art. 336 had been rendered inoperative by the Anti-Rape Law and argue in the same breath the applicability of Sec. 5(b) of RA 7610. The latter provision reads:

Section 5. *Child Prostitution and Other Sexual Abuse.* – x x x

x x x x

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

If Art. 336 then ceased to be a penal provision in view of its alleged incompleteness, then so too would Sec. 5(b) of RA 7610 be ineffective since it defines and punishes the prohibited act by way of reference to the RPC provision.

The decriminalization of Acts of Lasciviousness under the RPC, as per Justice Leonen's theory, would not sufficiently be supplanted by RA 7610 and RA 9262,⁶⁵ otherwise known as the Anti-Violence Against

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (as amended by RA 8353, Sec. 2)

⁶⁴ *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 183517, June 22, 2010, 621 SCRA 461.

⁶⁵ AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES.

Women and their Children Law (Anti-VAWC Law). Under RA 7610, only minors can be considered victims of the enumerated forms of abuses therein. Meanwhile, the Anti-VAWC law limits the victims of sexual abuses covered by the RA to a wife, former wife, or any women with whom the offender has had a dating or sexual relationship, or against her child.⁶⁶ Clearly, these laws do not provide ample protection against sexual offenders who do not discriminate in selecting their victims. One does not have to be a child before he or she can be victimized by acts of lasciviousness. Nor does one have to be a woman with an existing or prior relationship with the offender to fall prey. Anyone can be a victim of another's lewd design. And if the Court will subscribe to Justice Leonen's position, it will render a large portion of our demographics (*i.e.* adult females who had no prior relationship to the offender, and adult males) vulnerable to sexual abuses.

The RTC and the CA imposed the proper prison term

Anent the proper penalty to be imposed, Sec. 5 of RA 7610 provides that the penalty for lascivious conduct, when the victim is under twelve (12) years of age, shall be *reclusion temporal* in its medium period, which ranges from 14 years, 8 months and 1 day to 17 years and 4 months.⁶⁷

Meanwhile, Sec. 1 of Act No. 4103,⁶⁸ otherwise known as the Indeterminate Sentence Law (ISL), provides that if the offense is ostensibly punished under a special law, the minimum and maximum prison term of the indeterminate sentence shall not be beyond what the special law prescribed.⁶⁹ Be that as it may, the Court had clarified in the landmark ruling of *People v. Simon*⁷⁰ that the situation is different where although the offense is defined in a special law, the penalty therefor is taken from the technical nomenclature in the RPC. Under such circumstance, the legal effects under the system of penalties native to the Code would also necessarily apply to the special law.

Thus, in *People v. Santos (Santos)*,⁷¹ which similarly involved charges for Acts of Lasciviousness under Sec. 5(b) of RA 7610, the Court applied the ISL and adjusted the prison term meted to the accused-appellant therein.

⁶⁶ RA 9262, Sec. 3(a).

⁶⁷ REVISED PENAL CODE, Art. 76.

⁶⁸ AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

⁶⁹ Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (emphasis added)

⁷⁰ G.R. No. 93028, July 29, 1994, 234 SCRA 555.

⁷¹ G.R. No. 205308, February 11, 2015, 750 SCRA 471.

In the absence of mitigating or aggravating circumstances, the Court held that the maximum term of the sentence to be imposed shall be taken from the medium period of *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty-one (21) days to sixteen (16) years, five (5) months and nine (9) days. On the other hand the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

From the foregoing, it becomes clear that the prison term meted to petitioner (*i.e.* fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period as minimum to fifteen (15) years, six (6) months and nineteen (19) days of *reclusion temporal* in its medium period) must be modified to be in consonance with the Court's ruling in *Santos*. Accordingly, the minimum prison term shall be reduced to twelve (12) years and one (1) day, while the maximum term shall be adjusted to fifteen (15) years, six (6) months and twenty-one (21) days.

WHEREFORE, the instant petition is hereby **DENIED**. The Court of Appeals Decision in CA-G.R. CR No. 35509 finding petitioner Eduardo Quimvel y Braga also known as Eduardo/Edward Quimuel y Braga guilty beyond reasonable doubt of acts of lasciviousness is hereby **AFFIRMED** with **MODIFICATION** as follows:

WHEREFORE, the Decision dated 23 January 2013 of the Regional Trial Court, Fifth Judicial Region, Ligao City Branch 11, in Criminal Case No. 5530, is hereby **MODIFIED** in that accused-appellant **EDUARDO QUIMVEL y BRAGA** also known as **EDUARDO/EDWARD QUIMUEL y BRAGA** is SENTENCED to suffer the indeterminate imprisonment of twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum to fifteen (15) years, six (6) months, and twenty-one(21) days of *reclusion temporal* in its medium period as maximum. He is further ORDERED to pay the victim, AAA, moral damages, exemplary damages and fine in the amount of P15,000.00 each as well as P20,000.00 as civil indemnity. All damages shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

Maria Lourdes P. A. Sereno

MARIA LOURDES P. A. SERENO
Chief Justice

See Dissenting Opinion

Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Teresito Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO

Associate Justice

See separate opinion

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

See also J. Carpio's and J. Caguioa's dissenting opinion

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Please see Concurring Opinion
Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

See separate opinion

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

See Dissenting Opinion

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Samuel R. Matres
SAMUEL R. MATRES
Associate Justice

Noel G. Tijam
NOEL G. TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:


FELIPA B. ANANIA
CLERK OF COURT, EN BANC
SUPREME COURT