



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

THE PEOPLE OF THE  
PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 192327

Present:

PERLAS-BERNABE, J.,  
*Chairperson,*  
HERNANDO,  
ZALAMEDA,\*  
DELOS SANTOS, and  
GAERLAN,\* JJ.

versus

FLOR PUEYO *alias* TITO  
FLONG,  
*Accused-Appellant.*

Promulgated:

26 FEB 2020

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DECISION

**HERNANDO, J.:**

This is an appeal from the December 29, 2009 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 29263 affirming the February 22, 2005 Judgment<sup>2</sup> of the Regional Trial Court, Branch 260 of Parañaque City (RTC) in Criminal Case No. 98-1096. The said Judgment of the RTC found accused-appellant Flor Pueyo alias Tito Flong (Pueyo) guilty beyond reasonable doubt of violation of Section 10(a) of the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act* or Republic Act No. 7610 (RA 7610), as amended.

\* Designated as additional members per Raffle dated January 27, 2020 *vice* Associate Justices Andres B. Reyes, Jr. and Henri Jean Paul B. Inting, who inhibited due to prior participation in the CA proceedings.

<sup>1</sup> *Rollo*, pp. 3-18; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Ramon R. Garcia and Amy C. Lazaro-Javier (now a Member of this Court).

<sup>2</sup> *CA rollo*, pp. 21-30; penned by Pairing Judge Fortunito L. Madrona.

### The Antecedent Facts

On November 24, 1998, Pueyo was charged with the crime of violation of Section 10(a) of RA 7610 in an Information<sup>3</sup> which alleged:

That on or about November 4, 1997 [in Parañaque City],<sup>4</sup> and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously insert a welding rod into the vagina of [AAA],<sup>5</sup> then a six (6) year old minor, thereby causing her undue pain, injury, damage and prejudice.

CONTRARY TO LAW.

When arraigned, Pueyo pleaded not guilty.<sup>6</sup> Trial ensued thereafter. The prosecution presented, aside from a number of object and documentary evidence,<sup>7</sup> six (6) witnesses: victim AAA, general practitioner Dr. Corazon S. Ramos (Dr. Ramos), National Bureau of Investigation supervising agent Julma Dizon Dapilos, Philippine General Hospital (PGH) pediatrician Dr. Stella Guerrero-Manalo (Dr. Guerrero-Manalo), PGH child psychiatrist Dr. Cynthia Ramos Leynes, and BBB,<sup>8</sup> AAA's mother. The defense presented two (2) witnesses: accused Pueyo and his wife, Marietta Pueyo.

#### *Version of the Prosecution*

AAA was born on March 15, 1991. She lived in a compound in Parañaque City. One of her neighbors was accused Pueyo, whom she called "Tito Flor." AAA's father and Pueyo worked for the same employer who allowed them to reside in the said compound. In the morning of November 4, 1997, AAA was playing with her younger brother, CCC,<sup>9</sup> and two other playmates on a bulldozer parked near her residence. Pueyo, who was doing welding works nearby, got angry at the children and told them to climb down the bulldozer. All except AAA complied. She went down and sat with her legs spread apart on a pile of coconut lumber. It was then that Pueyo approached AAA and poked a welding rod onto her genital area.

AAA cried in pain and saw that her private part was bleeding. When she went home at around 9:30 in the morning, AAA did not tell her mother, BBB, about the incident. BBB, however, noticed blood in AAA's vagina when the former bathed the latter. BBB thus brought AAA to Dr. Ramos' clinic. Dr. Ramos had AAA lie down on the examination table, removed AAA's panty, and saw that AAA had a bleeding wound on her vagina. Believing that there might be other underlying problems, Dr. Ramos desisted from further examining AAA, put sterile gauze on her vagina, and instructed BBB to bring AAA to the PGH or Ospital ng Maynila. A subsequent medical examination of AAA's

<sup>3</sup> Records, p. 1.

<sup>4</sup> Geographical location blotted out per Supreme Court Amended Administrative Circular No. 83-2015 or *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances* issued on September 5, 2017.

<sup>5</sup> Name of minor victim blotted out per Supreme Court Amended Administrative Circular No. 83-2015, *id.*

<sup>6</sup> Records, p. 61.

<sup>7</sup> *Id.* at 192-204.

<sup>8</sup> Name of minor victim's parent blotted out per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 4.

<sup>9</sup> Name of minor victim's brother blotted out per Supreme Court Amended Administrative Circular No. 83-2015, *id.*

injury conducted by Dr. Guerrero-Manalo yielded the following results: hymenal laceration at 11 o'clock position; fresh hymenal laceration at 6 o'clock position extending to posterior vaginal wall; and posterior fourchette extending to perineum, bleeding from laceration sites, all "compatible with penetration injury secondary to assault as per disclosure."<sup>10</sup> The prosecution also imputed to Pueyo the expenses for medical treatment consequent to AAA's injury and job loss of AAA's father as a result of the filing of the case.

#### *Version of the Defense*

Pueyo denied the accusations against him. While admitting that he was doing welding works by the children's playing area during that fateful morning of November 4, 1997, Pueyo claimed that he never laid a hand on AAA. There was no truth to his alleged act of poking the private organ of AAA with a welding rod and that the same were mere lies concocted against him.

#### **Ruling of the RTC**

The RTC convicted Pueyo for violation of Section 10(a), RA 7610. Finding the testimony of AAA to be positive, understandable, spontaneous, credible, and in accord with normal run of things, the RTC believed the version of facts illustrated by the prosecution. It ruled that Pueyo's denial failed to overcome the clear declarations of AAA, a victim and witness at a tender age, that Pueyo inflicted physical injury upon her. The dispositive portion of the RTC Judgment dated February 22, 2005 reads as follows:

WHEREFORE, all the foregoing duly considered, the Court finds the accused Flor Pueyo @ Tito Flong GUILTY beyond reasonable doubt of Violation of Section 10 (a) of RA 7610 and hereby penalizes the said accused to suffer an indeterminate sentence of six (6) years and one (1) day to eight (8) years of prision mayor, to pay the offended party the sum of P 1,640.00 for medicines, P 4,000.00 for food and fare, and P 500,000.00 for loss of job of the father of the offended victim, [AAA].

SO ORDERED.<sup>11</sup>

Aggrieved, Pueyo appealed to the CA.

#### **Ruling of the CA**

The CA found no reason to reverse the Judgment of the RTC convicting Pueyo for AAA's injury, the fact of which was mainly supported by Dr. Guerrero-Manalo's testimony and medical certification. The appellate court was convinced that Pueyo poked AAA, then a six-year-old minor, with a metal welding rod when the latter refused to obey the former's order to stop playing on the bulldozer and on the wood pile near his workplace, causing AAA genital lacerations from the harrowing experience. In its Decision dated December 29, 2009, the CA upheld the findings of the RTC with modifications as to the penalty imposed, as well as the damages awarded, and disposed Pueyo's appeal in the following manner:

WHEREFORE, in view of the foregoing, the assailed decision of

<sup>10</sup> Records, p. 201.

<sup>11</sup> CA *rollo*, p. 30.

the Regional Trial Court of Parañaque City, Branch 260, in Criminal Case No. 98-1096, finding accused-appellant FLOR PUEYO @ TITO FLONG liable for violation of Section 10(a), Article VI of R.A. No. 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,” as amended, is hereby **AFFIRMED** with **MODIFICATIONS**. Accused-appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment of **FOUR (4) YEARS, TWO (2) MONTHS AND ONE (1) DAY** of *prision correccional*, as minimum, to **SIX (6) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY** of *prision mayor* as maximum.

In addition to paying P1,640.00 for medicines, he is also liable to pay the offended party AAA (to be identified through the Information filed with the trial court in this case) **P50,000.00 as moral damages**. The award of P4,000.00 for food and fare and the award of P500,000.00 for the lost employment of [AAA]’s father are hereby **DELETED**.

**SO ORDERED.**<sup>12</sup> (Emphasis in the original)

Now, this appeal by Pueyo before Us.

### **Error Assigned**

Pueyo elevates his case before this Court and seeks a reversal of the Decision by the CA affirming the Judgment of the RTC on the ground that his conviction is “erroneous and without basis.”<sup>13</sup>

### **The Court’s Ruling**

Pueyo contends anew that AAA had the tendency to “balucinate”<sup>14</sup> physical and sexual tendency as a nymphomaniac in her early years. He maintains that the wound on AAA’s vagina could have been caused by her own nails, and that it should be observed that she was wearing thick short pants, which could not have been easily penetrated by a welding rod. He points out certain inconsistencies between the narrations of AAA and BBB, the latter’s testimony being allegedly tainted with bias because of her relationship with the former.<sup>15</sup>

The appeal has no merit.

AAA gave a clear account of her abuse. She narrated how Pueyo inflicted bodily injury upon her on November 4, 1997 in a candid manner, with seeming unpreparedness that could only impress upon a listener that her narrative was not rehearsed. The alleged inconsistencies were but trivial matters. Case law holds with consistency that “when the victim’s testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may already be convicted solely on the basis thereof.”<sup>16</sup>

Hence, the testimony of AAA is practically unblemished. Pueyo’s petty

<sup>12</sup> *Rollo*, p. 17.

<sup>13</sup> *Id.* at 40.

<sup>14</sup> *Id.* at 41.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

insinuations of sexual and psychological issues, untruthful disposition, and inconsistent stories against AAA cannot dent the solid case erected by the prosecution against him. Similarly, his weak defense of denial crumbles before AAA's positive testimony. Jurisprudence instructs that "between a categorical statement that has the earmarks of truth on the one hand and bare denial, on the other, the former is generally held to prevail."<sup>17</sup> We find no reason to hold otherwise in this case.

Pueyo's acts, however, merit a conviction for a graver offense.

The courts below found Pueyo criminally liable under Section 10(a), RA 7610, which require the following elements: (1) AAA's minority; (2) the acts constituting physical abuse committed by Pueyo against AAA; and (3) the fact that the said acts are clearly punishable under RA 7610.<sup>18</sup> The fact of minority of AAA is long settled, her being six years old at the time of the incident and eight years old when she took the witness stand. It was likewise established that Pueyo physically abused AAA when he poked her genitals with a welding rod, an act that is plainly child abuse as contemplated under Section 3(b) of RA 7610.<sup>19</sup>

While all three requisites for violation of Section 10(a) of RA 7610 obtain against Pueyo, his greater culpability for statutory rape by sexual assault in relation to RA 7610 cannot be overlooked.

The following are the elements of statutory rape by sexual assault as defined under Article 266-A(2) of the RPC and established by jurisprudence:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
  - (a) By inserting his penis into another person's mouth or anal orifice; or
  - (b) By inserting any instrument or object into the genital or anal orifice of another person;**
- (3) That the act of sexual assault is **accomplished under any of the following circumstances:**
  - (a) By using force and intimidation;
  - (b) When the woman is deprived of reason or otherwise unconscious; or
  - (c) By means of fraudulent machination or grave abuse of authority; or

<sup>17</sup> *People v. Monroyo*, 811 Phil 802, 817 (2017) citing *People v. Bitancor*, 441 Phil. 758, 769 (2002).

<sup>18</sup> *Del Poso v. People*, 802 Phil. 713, 722 (2016).

<sup>19</sup> Section 3. Definition of Terms. –

x x x x

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

- (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment[.]

(d) **When the woman is under 12 years of age or demented.**<sup>20</sup> (Emphasis supplied.)

On the other hand, *People v. Dagsa*<sup>21</sup> sets the parameters in determining whether there is a violation of Section 5(b) of RA 7610, viz.:

The essential elements of this provision are:

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. The **child**, whether male or female, is below 18 years of age.

As to the first element, paragraph (h), Section 2 of the Implementing Rules and Regulations of RA 7610 defines *lascivious conduct* as a crime committed through the **intentional touching, either directly or through the clothing of the genitalia**, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, among others. x x x

The second element requires that the lascivious conduct be committed on a child who is either exploited in prostitution or subjected to other sexual abuse. This second element requires evidence proving that: (a) [the victim] was either exploited in prostitution or subjected to sexual abuse; and (b) [the victim] is a child as defined under RA 7610. [Emphasis and underscoring supplied.]

Successful prosecutions for statutory rape charges falling under Article 266-A(2) rely on only two requisites: (1) the victim is a child, male or female, under 12 years of age, and (2) that the accused inserted any instrument or object into the genital or anal orifice of the victim. In relation to Section 5(b) of RA 7610, the apparent circumstances fit squarely as sexual assault: AAA, 6 years young at the time of the incident, received a penetrating blow onto her vagina that almost extended to her anus by a welding rod wielded by Pueyo. The severity of the genital injury inflicted upon AAA cannot be more telling of Pueyo's abusive intent. AAA's consent to Pueyo's vile act holds no relevance here – it is settled that a child's consent is immaterial because of his or her presumed incapacity of discerning evil from good.<sup>22</sup>

All told, the acts of Pueyo have been shown to fall within the punitive purview of rape by sexual assault under Article 266-A(2) of the RPC in relation to Section 5(b) of RA 7610. The similar case of *People v. Tulagan*<sup>23</sup> dictates the indeterminate penalty of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal*, as maximum, as the correct penalty therefor.

A modification of the award of damages is in order. Still following

<sup>20</sup> *People v. Bagsic*, G.R. No. 218404, December 17, 2017, 849 SCRA 32, 49.

<sup>21</sup> G.R. No. 219889, January 29, 2018, 853 SCRA 276.

<sup>22</sup> *People v. Ronquillo*, 18 Phil. 641, 648 (2017); citing *People v. Arpon*, 678 Phil. 752 (2011) and *People v. Macafe*, 650 Phil. 580, 588 (2010).

<sup>23</sup> G.R. No. 227363, March 12, 2019.

*People v. Tulagan*,<sup>24</sup> a person found guilty of rape by sexual assault of a child less than 12 years of age must compensate the latter with civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each. This Court likewise leaves undisturbed the initial grant of actual damages for medicine expenses and moral damages and impose only the additional awards of civil indemnity and exemplary damages at ₱50,000.00 each.

Pueyo's liability for fines in view of *People v. Cadiente*,<sup>25</sup> *Olivares v. Court of Appeals*,<sup>26</sup> and *Amployo v. People*<sup>27</sup> is further increased. In the said cases, this Court affirmed the trial court's imposition of the discretionary fine provided under Section 31(f), Article XII of RA 7610 against offenders under Section 5(b) of the same law for the rehabilitation of the child victims.<sup>28</sup> The gravity of the case at hand cannot be discounted. AAA's potential trauma from her genital damage, as indiscriminately inflicted upon her by Pueyo when she was only six years old, is a burden that AAA may likely suffer throughout her formative years or even for the rest of her life. We hold that Pueyo be made liable for the additional fine of Fifteen Thousand Pesos (₱15,000.00) pursuant to Section 31(f), Article XII of RA 7610.

All amounts due shall further earn legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment, following *Nacar v. Gallery Frames*.<sup>29</sup>

**WHEREFORE**, the appeal is **DISMISSED**. The December 29, 2009 Decision of the Court of Appeals in CA-G.R. CR No. 29263 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Accused-appellant Flor Pueyo is hereby found **GUILTY** of the crime of Sexual Assault defined and penalized under Article 266-A(2) of the Revised Penal Code, as amended, in relation to Section 5(b) of Republic Act No. 7610;

(2) Pueyo is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months, and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal*, as maximum;

(3) In addition to the amounts of ₱1,640.00 for medicines and ₱50,000.00 as moral damages, victim AAA is awarded the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as exemplary damages; and

(4) Pueyo shall further pay a fine of ₱15,000.00 under Section 31(f) of RA 7610, with interest on the damages awarded at the rate of 6% per *annum* from the date of finality of this Decision until the same have been fully paid.

<sup>24</sup> *Id.*

<sup>25</sup> G.R. No. 229835, January 31, 2018.

<sup>26</sup> 503 Phil. 421 (2005).

<sup>27</sup> 496 Phil. 747 (2005).

<sup>28</sup> The said provision states:

Article XII – Common Penal Provisions

Sec. 31. *Common Penal Provisions.* –

x x x x

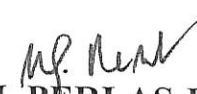
(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offence.

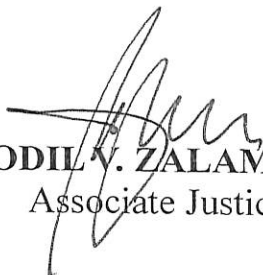
<sup>29</sup> 716 Phil. 267, 283 (2013).

**SO ORDERED.**

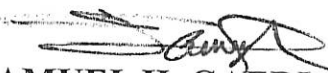
  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

  
**RODIL V. ZALAMEDA**  
Associate Justice


  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice



**ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Chief Justice