



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

VIVENCIO ROALLOS y  
TRILLANES,

Petitioner,

G.R. No. 198389

Present:

SERENO, C.J.,  
Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:

DEC 11 2013

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RESOLUTION

REYES, J.:

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

<sup>1</sup> Rollo, pp. 7-98.

<sup>2</sup> Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante, concurring; id. at 215-235.

<sup>3</sup> Id. at 252-253.

<sup>4</sup> Issued by Presiding Judge Rosanna Fe Romero-Maglaya; id. at 173-186A.

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### The Facts

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

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

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

CONTRARY TO LAW.<sup>7</sup>

Upon arraignment, Roallos pleaded “not guilty” to the offense charged.<sup>8</sup> On June 24, 2002, the pre-trial conference was deemed terminated. Trial on the merits ensued thereafter.<sup>9</sup>

Roallos, a retired officer of the Armed Forces of the Philippines, was the Executive Director of the Aguinaldo Vets and Associates Credit Cooperative (AVACC). BBB, AAA’s mother, worked as the secretary and treasurer of Roallos.

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

AAA alleged that, after the two women left, Roallos went by the door of the office, looked outside to see if anybody was around, and then locked it. He then approached AAA and asked her if there was any pain bothering

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<sup>5</sup> Id. at 101-102.

<sup>6</sup> The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-11-09-SC dated September 19, 2006.

<sup>7</sup> *Rollo*, p. 101.

<sup>8</sup> Id. at 173.

<sup>9</sup> Id. at 174.

her; the latter replied that her tooth ached. Thereupon, Roallos held AAA's hand and intermittently pressed it. He then asked AAA if there is anything else aching in her body. AAA said none. Roallos then placed his left hand on the table while his right hand was on AAA's right shoulder. At this point, AAA was seated on a chair without a backrest while Roallos was standing behind her. Roallos then slid his hand towards AAA's right breast and mashed it. AAA asked Roallos why he is touching her. Roallos ignored her. He then mashed AAA's left breast. AAA shouted "*Ano ba!*," but Roallos still ignored her and, instead slid his hand towards AAA's abdomen. AAA then stomped her feet and pushed her chair towards Roallos. Roallos then left the office.

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

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

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

In his defense, Roallos denied that he molested AAA. He claimed that, on the date of the incident, he merely stayed with AAA in the AVACC office while the latter waited for her mother; that he went out of the office twice to meet clients of AVACC. Roallos further claimed that his arrest was

illegal since the same was effected *sans* any warrant of arrest. He likewise averred that he was not informed of his rights when he was arrested nor was he made to undergo any preliminary investigation.

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

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

SO ORDERED.<sup>11</sup>

Roallos' Amended Motion for Reconsideration<sup>12</sup> was denied by the RTC in its Order<sup>13</sup> dated June 30, 2008.

On appeal, the CA rendered the Decision dated April 29, 2011 which affirmed the RTC Decision dated July 26, 2007, albeit with the modification that the awards of moral damages and civil indemnity were both increased to ₱50,000.00.

Roallos sought a reconsideration of the CA Decision dated April 29, 2011,<sup>14</sup> but it was likewise denied by the CA in its Resolution<sup>15</sup> dated August 19, 2011.

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

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<sup>10</sup> Id. at 173-186A.

<sup>11</sup> Id. at 186A.

<sup>12</sup> Id. at 128-134.

<sup>13</sup> Id. at 136-139.

<sup>14</sup> Id. at 237-250.

<sup>15</sup> Id. at 252-253.

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

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

### **Issue**

Essentially, the issue presented for the Court's resolution is whether the CA erred in affirming Roallos' conviction for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610.

### **The Court's Ruling**

The petition is bereft of any merit.

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

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

In any case, “the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere

conclusions of law, but by the actual recital of the facts in the complaint or information.”<sup>16</sup>

The recital of the ultimate facts and circumstances in the Information that was filed against Roallos clearly makes out a case for the offense of sexual abuse under Section 5(b), Article III of R.A. No. 7610. The elements of sexual abuse under Section 5(b), Article III of R.A. No. 7610 are as follows:

1. The accused commits the act of sexual intercourse or **lascivious conduct**[:]
2. The [said] act is performed with a child exploited in prostitution or **subjected to other sexual abuse**[: and]
3. The child, whether male or female, is below 18 years of age.<sup>17</sup>  
(Emphasis supplied)

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

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

That Roallos did in fact commit lascivious conduct towards AAA is a finding of fact by the lower courts, which this Court cannot simply disregard. In a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.<sup>18</sup> The Court finds no reason to overturn the factual findings as the lower courts in this case.

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<sup>16</sup> See *People v. Valdez*, G.R. No. 175602, January 18, 2012, 663 SCRA 272, 287, citing *Lacson v. The Executive Secretary*, 361 Phil. 251, 279 (1999).

<sup>17</sup> *Navarrete v. People*, 542 Phil. 496, 510 (2007), citing *People v. Jalosjos*, 421 Phil. 43, 90 (2001).

<sup>18</sup> *Seguritan v. People*, G.R. No. 172896, April 19, 2010, 618 SCRA 406, 418.

Roallos' assertion that he is not liable for sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is not a child engaged in prostitution is plainly without merit. "[T]he law covers not only a situation in which a child is abused for profit but also one in which a child, through coercion or intimidation, engages in any lascivious conduct. The very title of Section 5, Article III (Child Prostitution and Other Sexual Abuse) of R.A. No. 7610 shows that it applies not only to a child subjected to prostitution but also to a child subjected to other sexual abuse. A child is deemed subjected to "other sexual abuse" when he or she indulges in lascivious conduct under the coercion or influence of any adult."<sup>19</sup>

*Second*, Roallos' claim that he was denied due process since he was arrested without any warrant of arrest and that he was not afforded a preliminary investigation is likewise untenable. In *Miclat, Jr. v. People*,<sup>20</sup> the Court emphasized that the accused is estopped from assailing any irregularity attending his arrest should he fail to move for the quashal of the information against him on this ground prior to arraignment, *viz*:

At the outset, it is apparent that petitioner **raised no objection to the irregularity of his arrest before his arraignment. Considering this and his active participation in the trial of the case, jurisprudence dictates that petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.** An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.<sup>21</sup> (Citations omitted and emphasis ours)

Similarly, in *Villarin v. People*,<sup>22</sup> the Court stressed that the absence of a proper preliminary investigation must be timely raised. The accused is deemed to have waived his right to a preliminary investigation by entering his plea and actively participating in the trial without raising the lack of a preliminary investigation. Thus:

**Moreover, the absence of a proper preliminary investigation must be timely raised and must not have been waived.** This is to allow the trial court to hold the case in abeyance and conduct its own investigation or require the prosecutor to hold a reinvestigation, which, necessarily "involves a re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the

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<sup>19</sup> See *Navarrete v. People*, supra note 17, at 511, citing *People v. Larin*, 357 Phil. 987, 998 (1998) and *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

<sup>20</sup> G.R. No. 176077, August 31, 2011, 656 SCRA 539.

<sup>21</sup> Id. at 549.

<sup>22</sup> G.R. No. 175289, August 31, 2011, 656 SCRA 500.

initial finding of probable cause which led to the filing of the Informations after the requisite preliminary investigation.”

Here, it is conceded that Villarin raised the issue of lack of a preliminary investigation in his Motion for Reinvestigation. However, when the Ombudsman denied the motion, he never raised this issue again. He accepted the Ombudsman’s verdict, entered a plea of not guilty during his arraignment and actively participated in the trial on the merits by attending the scheduled hearings, conducting cross-examinations and testifying on his own behalf. It was only after the trial court rendered judgment against him that he once again assailed the conduct of the preliminary investigation in the Motion for Reconsideration. Whatever argument Villarin may have regarding the alleged absence of a preliminary investigation has therefore been mooted. **By entering his plea, and actively participating in the trial, he is deemed to have waived his right to preliminary investigation.**<sup>23</sup> (Citations omitted and emphases ours)

It is undisputed that, at the time of his arraignment, Roallos did not raise any objection to the supposed illegality of his arrest and the lack of a proper preliminary investigation. Indeed, he actively participated in the proceedings before the RTC. Thus, he is deemed to have waived any perceived irregularity in his arrest and has effectively submitted himself to the jurisdiction of the RTC. He is likewise deemed to have waived his right to preliminary investigation.

*Third*, Roallos failed to substantiate his claim that his right to speedy trial was violated. The right to speedy trial is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance.<sup>24</sup> In order for the government to sustain its right to try the accused despite a delay, it must show two things: *first*, that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and *second*, that there was no more delay that is reasonably attributable to the ordinary processes of justice.<sup>25</sup>

As aptly ruled by the CA, Roallos failed to show that the proceedings below were attended by vexatious, capricious, and oppressive delays. The postponements sought for by the prosecution did not, in any way, seriously

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<sup>23</sup> Id. at 514.

<sup>24</sup> *Mendoza-Ong v. Sandiganbayan*, 483 Phil. 451, 454 (2004), citing *Dimayacyac v. CA*, G.R. No. 136264, May 28, 2004, 430 SCRA 121, *Rodriguez v. Sandiganbayan*, 468 Phil. 374 (2004), and *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 950-951 (2002).

<sup>25</sup> *Corpuz v. Sandiganbayan*, 484 Phil. 899, 922 (2004).



prejudice Roallos. If at all, the delay in the proceedings below is only attributable to the ordinary processes of justice.

*Lastly*, that neither AAA nor BBB signed the Information filed against Roallos would not render the charge against the latter defective; it does not signify that they did not conform to the filing of the Information against Roallos. AAA and BBB vigorously pursued the indictment against Roallos. Likewise, contrary to Roallos' claim, AAA executed a complaint-affidavit for the indictment of Roallos.<sup>26</sup> The foregoing circumstances clearly indicate the conformity of both AAA and BBB to the charge against Roallos.

For acts of lasciviousness performed on a child under Section 5(b), Article III of R.A. No. 7610, the penalty prescribed is *reclusion temporal* in its medium period to *reclusion perpetua*. Notwithstanding that R.A. No. 7610 is a special law, Roallos may enjoy the benefits of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law, Roallos shall be entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by R.A. No. 7610. The penalty next lower in degree is *prision mayor* medium to *reclusion temporal* minimum, the range of which is from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum term of the penalty should be taken from the penalty prescribed under Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period to *reclusion perpetua*, the range of which is from fourteen (14) years, eight (8) months and one (1) day to *reclusion perpetua*. The minimum, medium and maximum term of the same is as follows: minimum – fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months; medium – seventeen (17) years, four (4) months and one (1) day to twenty (20) years; and maximum – *reclusion perpetua*.<sup>27</sup>

Considering that there are neither aggravating nor mitigating circumstances extant in this case, both the RTC and the CA correctly imposed on Roallos the indeterminate penalty of eight (8) years and one (1) day of *prision mayor* medium as the minimum term to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as the maximum term. The Court likewise upholds the fine imposed by the lower courts in the amount of ₱15,000.00.

Nevertheless, the Court hereby modifies the amount of moral damages and civil indemnity awarded by the CA. The RTC directed Roallos to pay AAA moral damages in the amount of ₱20,000.00. The CA increased the amount of moral damages awarded by the RTC to ₱50,000.00 and imposed an additional award for civil indemnity in the amount of ₱50,000.00. In line

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<sup>26</sup> *Rollo*, p. 16.


<sup>27</sup> *See People v. Leonardo*, G.R. No. 181036, July 6, 2010, 624 SCRA 166, 203.

with recent jurisprudence,<sup>28</sup> the Court deems it proper to reduce the award of moral damages from ₱50,000.00 to ₱15,000.00, as well as the award of civil indemnity from ₱50,000.00 to ₱20,000.00.

In addition, and in conformity with current policy, the Court imposes interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.<sup>29</sup>

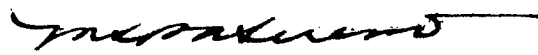
**WHEREFORE**, in consideration of the foregoing disquisitions, the petition is **DENIED**. The Decision dated April 29, 2011 and the Resolution dated August 19, 2011 of the Court of Appeals in CA-G.R. CR No. 32192 are hereby **AFFIRMED WITH MODIFICATION** in that Vivencio Roallos y Trillanes is ordered to pay ₱15,000.00 as moral damages and ₱20,000.00 as civil indemnity. He is likewise ordered to pay interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully satisfied.

**SO ORDERED.**



**BIENVENIDO L. REYES**  
Associate Justice

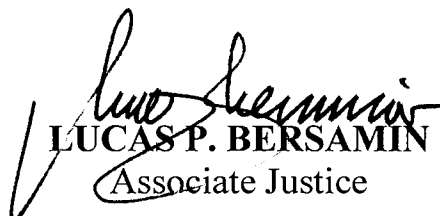
**WE CONCUR:**



**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice

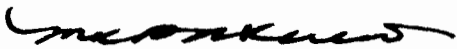
<sup>28</sup> *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243; *People v. Fragante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566.

<sup>29</sup> *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

## **C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice