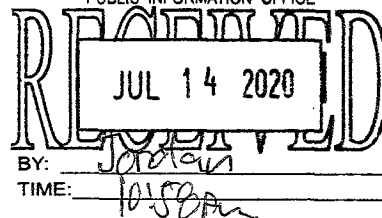




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2020** which reads as follows:*

**“G.R. No. 249869 – DOMINIC GOGORZA ROCO, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.**

After reviewing the Petition<sup>1</sup> and its annexes, inclusive of the Decision<sup>2</sup> dated June 28, 2019 and Resolution<sup>3</sup> dated October 9, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40231 and the Decision<sup>4</sup> dated March 28, 2017 of the Regional Trial Court, 4<sup>th</sup> Judicial Region, Branch 36, Calamba City, Laguna (RTC) in Criminal Case Nos. 25159-2015-C, 25160-2015-C and 25161-2015-C, the Court resolves to **DENY** the Petition for failure of petitioner to sufficiently show that the CA committed any reversible error in the challenged Decision and Resolution as to warrant the exercise of this Court’s discretionary appellate jurisdiction...

Based on prevailing jurisprudence, when the victim of lascivious conduct is under twelve (12) years of age, the perpetrator shall be prosecuted under Article 336 of the Revised Penal Code (RPC), and the penalty shall be *reclusion temporal* in its medium period.<sup>5</sup>

- over – four (4) pages ...

129

<sup>1</sup> Rollo, pp. 11-34.

<sup>2</sup> Id. at 39-63. Penned by Associate Justice Samuel H. Gaerlan (now a member of this Court) with Associate Justices Celia C. Librea-Leagogo and Ronaldo Roberto B. Martin, concurring.

<sup>3</sup> Id. at 36-37.

<sup>4</sup> Id. at 82-92. Penned by Presiding Judge Glenda R. Mendoza-Ramos.

<sup>5</sup> See *XXX v. People*, G.R. No. 243151, September 2, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65652>>, citing *People v. Tulagan*, G.R. No. 227363, March 12, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65020>>.

In this case, AAA<sup>6</sup> positively identified petitioner as the one who touched her legs and vagina on three separate occasions. Also, AAA's Certificate of Live Birth proved that she was only ten (10) years old at the time of the incidents. Thus, both the RTC and CA properly convicted petitioner of three (3) counts of Acts of Lasciviousness under Article 336 of the RPC in relation to Republic Act (RA) No. 7610. While petitioner was charged with Sexual Assault under paragraph 2 of Article 266-A of the RPC in Criminal Case No. 25161-2015-C, he can only be held guilty of the offense proved, Acts of Lasciviousness, which is necessarily included in the offense charged, Rape by Sexual Assault.<sup>7</sup>

To exculpate himself from liability, petitioner raises anew his alibi that he was not at the crime scene at that time of the incidents.

For the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.<sup>8</sup> In this case, petitioner failed to discharge his burden. Not only did petitioner himself admit that his house is only three (3) corners or three-minute walk from the barangay hall where he was allegedly on duty as a marshal on the dates of the subject incidents; he also failed to present any evidence or witness to corroborate his alibi.

Petitioner also claims that during the first incident, AAA never saw him touch her private part because the latter was asleep. Thus, there is no proof that he was the one who committed the alleged lascivious act against AAA.

- over -

129

<sup>6</sup> The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act (RA) No. 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA No. 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017); *People v. XXX*, G.R. No. 235652, July 9, 2018, 871 SCRA 424.

<sup>7</sup> See *People v. Eulalio*, G.R. No. 214882, October 16, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65784>>.

<sup>8</sup> *People v. Nievera*, G.R. No. 242830, August 28, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65667>>.

The Court is not persuaded.

While in the first incident AAA did not actually see petitioner touching her vagina, the circumstances sufficiently establish, beyond reasonable doubt, that petitioner was the one who committed such lascivious act, to wit: (1) AAA and her younger brother went to the house of their Aunt BBB for a sleep-over because their parents were in Manila; (2) When BBB started to nag them why their father left them without any companion, petitioner, offered them to sleep at his house instead; (3) Together with her brother, AAA went with petitioner who lives at the back of BBB's house; (4) AAA, her younger brother, and petitioner slept at the sala of the latter's house; (5) At around 1 o'clock in the morning, she felt someone was touching her vagina; and (6) When AAA opened her eyes, she saw petitioner who suddenly turned his back. Indeed, proof of the commission of the crime need not always be by direct evidence, for circumstantial evidence could also sufficiently and competently establish the crime beyond reasonable doubt.<sup>9</sup>

With regard to the penalty, the CA properly modified the same to twelve (12) years, ten (10) months and twenty (20) days of *reclusion temporal* as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum, for each count, applying the Indeterminate Sentence Law and in the absence of mitigating or aggravating circumstances.<sup>10</sup>

However, following the Court's pronouncement in *People v. Tulagan*,<sup>11</sup> the civil indemnity, moral damages and exemplary damages awarded in favor of AAA should be increased to Fifty Thousand Pesos (P50,000.00) for each count.

**WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the June 28, 2019 Decision and October 9, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 40231 and **AFFIRMS with MODIFICATION** the assailed Decision and Resolution. Petitioner Dominic Gogorza Roco is held **GUILTY** of three (3) counts of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610 and is hereby sentenced to suffer the penalty of imprisonment for twelve (12) years, ten (10) months and twenty (20) days of *reclusion temporal* as minimum, to fifteen (15) years, six (6) months

- over -

129

<sup>9</sup> *People v. Polonio*, 786 Phil. 825, 839 (2016).

<sup>10</sup> See *People v. Eulalio*, supra note 7.

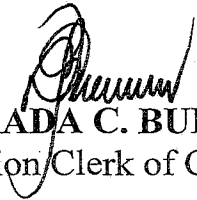
<sup>11</sup> Supra note 5.

and twenty (20) days of *reclusion temporal* as maximum for each count. Petitioner is likewise **ORDERED** to pay the victim AAA, the following amounts, to wit: (i) Fifty Thousand Pesos (₱50,000.00) as civil indemnity; (ii) Fifty Thousand Pesos (₱50,000.00) as moral damages; (iii) Fifty Thousand Pesos (₱50,000.00) as exemplary damages; and (iv) Fifteen Thousand Pesos (₱15,000.00) as fine.

The civil indemnity and damages shall earn legal interest of six percent (6%) per annum from the date of finality of this Resolution until full payment.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
**129**

PUBLIC ATTORNEY'S OFFICE  
Special and Appealed Cases Service  
Counsel for Petitioner  
DOJ Agencies Building  
Diliman, 1101 Quezon City

Court of Appeals (x)  
Manila  
(CA-G.R. CR No. 40231)

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
1229 Makati City

The Hon. Presiding Judge  
Regional Trial Court, Branch 36  
Calamba City, 4027 Laguna  
(Crim. Case Nos. 25159-2015-C to  
25161-2015-C)

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court

UR

NBF