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of the trial court null and void for want of authority to act, not only as to the absent parties but even as to those present.[15] Thus, when indispensable parties are not before the court, the action should be dismissed.[16]

WHEREFORE, in view of the foregoing, the consolidated petitions are hereby *DENIED*.

SO ORDERED.

Regalado, Acting C.J. (Chairman) and *Mendoza, J.*, concur.

Melo, J., no part, member of club.

Puno, J., no part due to close association.

FIRST DIVISION

[G.R. No. 128777. October 7, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERNESTO LARIN *y* BONDAD,** *accused-appellant.*

SYNOPSIS

Republic Act No. 7610 penalizes child prostitution and other sexual abuses. The Court thus applied this law to the present case and granted the victim the full vindication and protection that R.A. 7610 accords to this helpless sector of society. Ernesto Larin seeks reversal of the decision of the Regional Trial Court, which found him guilty of violating Section 5(b) of R.A. 7610. The trial court sentenced him to suffer the penalty of *reclusion perpetua* with all its entire attendant accessory penalty and to indemnify the victim in the sum of one hundred thousand

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[15] *Lim Tanhu v. Ramolete*, 66 SCRA 425.

[16] *People v. Rodriguez*, 106 Phil. 325.

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pesos as moral damages. Larin, who was a public employee of the U.P. Los Baños, was accused of taking advantage of his authority, influence and moral ascendancy as trainor/swimming instructor of the minor victim, and through moral compulsion committed lascivious conduct against the person of the said minor. When arraigned, the appellant entered a plea of not guilty and thereafter waived the pretrial proceedings. After trial, the court *a quo* rendered its assailed decision. Hence, this appeal.

The Supreme Court ruled that different people react differently to a given situation or type of situation. One cannot reasonably expect uniform reactions from victims of sexual assault. The victim's submissiveness to the accused's lascivious conduct does not exonerate him from criminal liability, as the law does not require physical violence on the person of the victim. Moral coercion or ascendancy is sufficient. The appeal of the accused was denied and the assailed decision was affirmed, but the award of moral damages was reduced to ₱50,000.00.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF THE VICTIM; CREDIBILITY; EVALUATION OF THE TRIAL COURT IS ENTITLED TO THE HIGHEST DEGREE OF RESPECT; CASE AT BAR.**— Well-entrenched is the rule that the trial court's evaluation of the credibility of a witness and his or her testimony is entitled to the highest degree of respect. Unlike appellate magistrates, a trial judge can observe the demeanor of a witness on the stand and is, thus, in a better position to assess the truthfulness of the testimony. In the absence of any clear showing that the trial judge had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this Court will not disturb such finding. The defense failed to present any convincing argument to justify a deviation from this rule. The victim's testimony, given in a categorical, straightforward, spontaneous and candid manner, is worthy of faith and belief. No proof of ill-motive on her part to falsely accuse and testify against appellant has been offered. We stress that no young and decent girl like Carla would fabricate a story of sexual abuse, subject herself to medical examination and

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undergo public trial, with concomitant ridicule and humiliation, if she is not motivated by a sincere desire to put behind bars the person who assaulted her.

2. CRIMINAL LAW; SEXUAL ABUSE UNDER RA 7610; WHEN COMMITTED; ELEMENTS.— Section 5, Article III of RA 7610, states: "SEC. 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse. "The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following: xxx "(b) Those who commit the act of sexual intercourse or *lascivious conduct* with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; xxx." The elements of the offense penalized under this provision 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. 3. The child, whether male or female, is below 18 years of age. A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Under RA 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition." It must be noted that the 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. Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children.

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3. ID.; ID.; ACTS THAT CONSTITUTE LASCIVIOUS CONDUCT; CASE AT BAR. — Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, defines lascivious conduct as follows: "[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person." In this case, appellant shaved the pubic hair of the victim, performed cunnilingus on her, licked her breast, touched her genitalia, and forced her to hold his sexual organ. These actions cannot be brushed aside as innocent; rather, they manifest sexual perversity and lewd intentions. Larin was the swimming instructor or trainor of Carla, a mere child. The Court finds no justification for Larin's conduct. It is an accepted rule that different people react differently to a given situation or type of situation. One cannot reasonably expect uniform reactions from victims of sexual assault. Carla's submissiveness to Larin's lascivious conduct does not exonerate him from criminal liability, as the law does not require physical violence on the person of the victim. Moral coercion or ascendancy is sufficient.

4. ID.; ID.; IMPOSABLE PENALTY; CASE AT BAR.— The penalty of *reclusion temporal*, in its medium period, to *reclusion perpetua*, is imposed by RA 7610 on those who perform sexual intercourse with or lascivious conduct on a *child* exploited in prostitution or subjected to any other form of sexual abuse. As earlier stated, RA 7610 defines *child* as a person below eighteen (18) years of age, or one who is unable to fully take care of or protect from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. Contrary to appellant's interpretation, the law does not confine its protective mantle only to children under twelve (12) years of age. Carla, who was fourteen (14) years of age when the crime was committed, is considered a child for purposes of RA 7610. Her molester, therefore, may be punished with imprisonment of *reclusion temporal*, in its medium period, to *reclusion perpetua*. The law, however, mandates that the "penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer." Larin's employment

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at UPLB as swimming instructor or, as he insists, a lifeguard makes him a part of the civil service and a public officer. Thus, we affirm the ruling of the trial court imposing upon him the maximum penalty of *reclusion perpetua*. Consistent with the express provision of RA 7610, the penalty of perpetual absolute disqualification is likewise meted upon appellant.

5. ID.; ID.; AWARD OF MORAL DAMAGES, REDUCED; CASE AT BAR; RATIONALE.— The trial court ordered the appellant to pay the victim the sum of ₱100,000 as moral damages. Carla Calumpang testified that she "was confused, bothered and terribly upset about what had happened." In fact, the incident affected her profoundly that she suffered nightmares and eventually decided to quit swimming. While the award of moral damages is clearly justified, this Court deems it proper to reduce the amount to ₱50,000, in view of prevailing jurisprudence.

APPEARANCES OF COUNSEL

Atty. Rogelio R. Udarbe for accused-appellant.

D E C I S I O N

PANGANIBAN, *J.*:

Republic Act No. 7610 penalizes child prostitution and other sexual abuses. It was enacted in consonance with the policy of the State to "provide special protection to children from all forms of abuse." The Court thus applies this law to the present case and grants the victim the full vindication and protection that RA 7610 accords to this helpless sector of society.

Statement of the Case

Ernesto Larin seeks reversal of the Decision[1] of the Regional Trial Court of Calamba, Laguna, Branch 34, which found him guilty of violating Section 5(b) of RA 7610.[2] The decretal portion of the appealed Decision reads:

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[1] Penned by Judge Antonio M. Eugenio, Jr.

[2] Known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act."

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"ACCORDINGLY, this Court finds accused Ernesto Larin y Bondad GUILTY beyond reasonable doubt of the crime of violation of Section 5(b) of Republic Act No. 7610 and hereby sentences him to suffer the penalty of *[r]eclusion [p]erpetua* with all its attendant accessory penalty and to indemnify Carla Lenore Calumpang [in] the sum of ONE HUNDRED THOUSAND (₱100,000.00) PESOS as moral damages.

"Pursuant to Supreme Court Administrative Circular No. 2-92 dated January 20, 1992, the bail bond posted by the accused for his provisional liberty is hereby cancelled and accused is ordered confined at the National Penitentiary pending resolution of his appeal."

State Prosecutor Lilian Doris S. Alejo accused herein appellant of violating Section 5(b), in relation to Section 31(e) of RA 7610, in the following Information[3] dated May 27, 1996:

"The undersigned, upon the prior sworn complaint of the offended party, fourteen (14) year old Carla Lenore Calumpang, assisted by her parents Spouses Rene and Susan Calumpang, accuses ERNESTO LARIN Y BONDAD of violation of Sec. 5(b) in relation to Sec. 31(e) of RA 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes) committed as follows:

"That on or about April 17, 1996, inside the ladies' shower room located at the Baker's Hall, UP Los Baños, Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, who is a public employee of the U.P. Los Baños, by taking advantage of his authority, influence and moral ascendancy as trainor/swimming instructor of minor CARLA LENORE CALUMPANG, and through moral compulsion, did then and there, willfully, unlawfully and feloniously, commit lascivious conduct on the person of said minor Carla Lenore Calumpang by shaving her pubic hair, performing the lewd act of cunnilingus on her, licking her breasts, forcing her to hold and squeeze his penis; and forcibly kissing her on the cheeks and lips the day after, against her will and consent, to her damage and prejudice."[4]

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[3] *Rollo*, pp. 11-12.

[4] Information, pp. 1-2; *rollo*, pp. 11-12.

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When arraigned on July 17, 1996,[5] the appellant, with the assistance of Counsel *de Parte* Cayetano T. Santos, entered a plea of not guilty and thereafter waived the pretrial proceedings. After trial in due course, the court *a quo* rendered its assailed Decision.

Hence, this appeal.[6]

Statement of Facts
Version of the Prosecution

The prosecution presented (1) Carla Lenore Calumpang, the complainant herself; (2) Dr. Nectarina Rabor-Fellizar, who examined and determined that Carla had not been raped, though her pubic hair was partially shaved; (3) Susan Calumpang, the victim's mother; and (4) Elizabeth Ventura, a practicing clinical child psychologist. Their testimonies were summarized by the trial court as follows:

"On April 17, 1996, at around 4:00 o'clock in the afternoon, after a practice swim at the university pool in Baker's Hall, U.P. Los Baños, [private complainant] proceeded to the bath house to shower and dress up; unknown to her, accused followed and then instructed her to remove the towel wrapped around her; clad in her swimsuit, accused again ordered her to undress to allow him to shave her pubic hair which he allegedly noticed was visible [sic]; accused then went outside while she undressed and wrapped a towel around her body; when the accused came back, he asked her to sit down while he took a squatting position in front of her holding on to a shaving instrument; but instead of shaving her pubic hair as he committed to do, accused performed the act of cunnilingus; she backed away saying 'Nandidiri ako' but accused kept on saying 'Huwag mong lagyan ng malisya'; accused then asked her to stand up and told her to simply pretend that he was her boyfriend and thereupon accused removed the right cap of her brassiere and licked her right breast while touching her vagina at the same time; she was then told to lie down but she sat

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[5] Records, p. 66.

[6] This case was deemed submitted for resolution on July 28, 1998, the date the Court received the Brief for Appellee. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

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down instead and again accused performed the act of cunnilingus on her as she repeatedly said 'Nandidiri ako.'; accused then told her to stand up as he pulled down his shorts and forced her to hold and squeeze his penis saying "if your boyfriend will do this, just tell him, 'huwag mo itong ipapasok sa katawan ko'"; thereafter, accused left after instructing her to shave her pubic hair; the next day, she went to see the accused to return a book and there she told him that she was confused, bothered and terribly upset with what happened and accused replied 'Ako rin. Hindi ako nakatulog kagabi at para mawala ang kaba mo, halik lang ang kailangan.' and forced her to kiss him on the right cheek and on the lips; that on the night after the incident, she experienced a nightmare about rape and she then decided to quit swimming; she told her mother about her decision as she narrated what the accused actually did to her; she was then brought to Dr. Nectarina Rabor-Fellizar and thereafter in [the] company of her parents, went to the National Bureau of Investigation where she filed her complaint."[7]

Version of the Defense

During the trial, appellant denied committing the alleged acts. He added that he was only a lifeguard at the University pool, and not a swimming instructor or trainor of the victim. The defense also presented the following witnesses: (1) Patricio Laurel,[8] lifeguard at UPLB (University of the Philippines, Los Baños); (2) Veneranda Genio,[9] chairman of the UPLB PE Department; (3) Elmer Suñaz,[10] a student; and (4) Prof. Almond Oquendo,[11] PE 1 instructor at UPLB who testified as a rebuttal witness. The facts, as concisely narrated in the Appellant's Brief,[12] are as follows:

"x x x [T]hat on the day in question, there were around seven (7) people in the pool and that Carla was not alone as she was with a

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[7] RTC Decision, pp. 2-3; *rollo*, pp. 26-27.

[8] TSN, August 30, 1996, pp. 2-32.

[9] TSN, September 2, 1996, pp. 2-29.

[10] TSN, October 4, 1996, pp. 2-23.

[11] TSN, January 22, 1997, pp. 2-13.

[12] Signed by Atty. Rogelio R. Udarbe.

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classmate until 5:45 p.m. when they dressed up. When the classmate left, [the appellant] even accompanied Carla to the boarding area in the company of two (2) other girls and a security guard' (*Ibid.*, p. 4)."[13]

Finding the above abbreviated narration insufficient, we hereby reproduce the trial court's digest of the testimonies of the defense witnesses:[14]

"PATRICIO LAUREL, a lifeguard at UPLB who testified that he ha[d] known the accused since 1992 and that by virtue of a university memorandum, they [were] prohibited from conducting swimming lessons to high school students. He further averred that on the day in question, he saw Carla and a companion still swimming in the pool with another individual by the time he left the area, but that he ha[d] no knowledge as to what transpired inside the premises of the bathhouse.

"VENERANDA L. GENIO, Chairman of the P.E. Department of UPLB with the rank of Associate Professor, attested to the appointment of accused as a lifeguard in the P.E. Department but belied the prosecution's claim that accused was a swimming instructor.

"ELMER SUÑAZ, a fourth year high school student at UP Rural High School, was at Baker's Hall on April 17, 1996, and took a dip at the pool for about five minutes; that he saw Carla in the pool talking to the accused but that he never saw Carla enter the bathroom during the time that he was there and when he left, Carla was all alone in the pool.

"ERNESTO LARIN, the accused himself, who vehemently denied the charge and maintained that he was only a lifeguard and never a trainer of the victim in swimming. Accused averred that on the day in question, there were around seven (7) people swimming in the pool and that Carla was not alone as she was with a classmate until 5:45 p.m. when they dressed up. When the classmate left, he even accompanied Carla to the boarding area in the company of two other girls and a security guard.

"On rebuttal, the prosecution called to the witness stand defense witness Professor Genio and Tony Ann A. Cortez, a college sophomore

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[13] Brief for the Appellant, p. 2; *rollo*, p. 78.

[14] RTC Decision, pp. 4-5; *rollo*, pp. 28-29.

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at UPLB, who averred that while still in first year high, she tried out for the freshmen swimming team and singled out the accused as her trainer; that for accused's efforts, their batch paid him ₱500.00 during the summer and ₱70.00 each during the semestral break.

"By way of sur-rebuttal, defense presented Almond Oquendo, swimming instructor at UP Rural High who disclaimed the testimony of Tony Ann Cortez [o]n the matter of her training by the accused and the amount of remuneration paid to the latter."

The Trial Court's Ruling

The court *a quo* found the testimony of Carla Lenore Calumpang worthy of full faith and credence. It reasoned that, unless motivated by a genuine desire to seek justice, a young girl like her will not fabricate a story, undergo medical examination, appear in court and announce to the whole world that she was sexually abused. The trial court also found that the defense failed to prove ill-motive on the part of the private complainant and to overcome the evidence adduced by the prosecution. Thus, it imposed upon appellant the penalty of *reclusion perpetua* and ordered him to pay the sum of ₱100,000 as moral damages.

Assignment of Errors

In support of his appeal, appellant alleges:

"A. That the lower court erred in finding the accused-appellant guilty of a violation of Sec. 5 (b) of R.A. No. 7610.

"B. That the lower court erred in giving weight to the highly incredible and unnatural testimony of the offended party as the lone eyewitness for the prosecution.

"C. That, assuming the accused-appellant to be guilty, the lower court erred in imposing the penalty of *reclusion perpetua*."[15]

In fine, appellant assails the sufficiency of the evidence adduced against him.

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[15] Appellant's Brief, p. 3; *rollo*, p. 79.

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This Court's Ruling

The appeal is unmeritorious.

First Issue:
Sexual Abuse Under RA 7610

Section 5, Article III[16] of RA 7610, states:

"SEC. 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or *due to the coercion or influence of any adult*, syndicate or group, indulge in sexual intercourse or *lascivious conduct*, are deemed to be children exploited in prostitution and other sexual abuse.

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

x x 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 subjected to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x." (Italics supplied.)

The elements of the offense penalized under this provision 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.
3. The child, whether male or female, is below 18 years of age.

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[16] Re "Child Prostitution and Other Sexual Abuse."

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A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group. Under RA 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition."[17]

It must be noted that the 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. Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. This is clear from the deliberations of the Senate:[18]

"*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.

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[17] Section 3 (a), RA 7610.

[18] Record of the Senate, Vol. 1, No. 7, pp. 261-263.

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"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 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. x x x' (Italicization supplied.)

The defense argues that "there is no proof or allegation that complainant 'indulged in lascivious conduct' with the accused-appellant 'for money, profit or any other consideration'"; or "that she was 'coerced or influenced' by accused-appellant 'to indulge in lascivious conduct.'"[19]

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[19] Brief for Appellant, p. 5; *rollo*, p. 81.

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The argument is untenable. That appellant sexually abused Carla Lenore Calumpang, in violation of RA 7610, was duly alleged in the Information and proven during the trial.

The Information clearly states: "x x x [T]he above-named accused, x x x, by taking advantage of his authority, *influence* and *moral ascendancy* as trainor/swimming instructor of minor CARLA LENORE CALUMPANG, and *through moral compulsion*, did then and there, willfully, unlawfully and feloniously, *commit lascivious conduct* against the person of said minor Carla Lenore Calumpang by *shaving her pubic hair, performing the lewd act of cunnilingus on her, licking her breasts, forcing her to hold and squeeze his penis; and forcibly kissing her on the cheeks and lips* x x x."[20] (Italics supplied.)

During the trial, the allegations in the Information were proved and established by the victim,[21] who testified:

"Q Carla where were you on April 17, 1996?

A We went to Baker Hall at the UPLB campus to practice swimming.

Q Were you able to practice swimming?

A Yes, ma'am.

Q After practicing what did you do next if any?

A I went to the bath house or the lady shower room to shower and dress-up.

Q What happened next, if any, when you were there in the shower room?

A Mr. Larin followed me to the shower room.

Q Who is this Mr. Larin?

A He is Mr. Ernesto Larin, my swimming trainor for two years since 1994 when I was still a freshman.

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[20] *Rollo*, pp. 11-12.

[21] She was 14 years old at the time of the incident. (*See* Birth Certificate, marked Exhibits "C" to "C-2"; records, p. 131.)

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Q Is he inside the chambers now? Will you point him out or describe him to this Honorable Court?

A That man (witness pointed to a man who when asked gave his name as Ernesto Larin *alias* Erning).

Q Mr. Larin followed you inside the shower room[;] what happened next, if any?

A He ordered me to remove the towel around my body.

Q And did you remove the towel around your body or did you not?

A I did.

Q What happened next, if any?

A He ordered me to remove the swimsuit so that he could shave the pubic hair which he noticed was showing out of my swimsuit.

Q What happened next, if any?

A He went out of the bath house and then I decided to remove my swimsuit.

Q What happened next, if any?

A He came back when I ha[d] a towel around my body.

Q After he actually came back, what did he do, if any?

A He made [me] sit down and then he squatted in front of me with the shaving instrument.

Q Did he do anything if any?

A Yes, ma'am.

Fiscal ALEJO: Your Honor may we make of record that the witness is sobbing.

A Instead of shaving, he licked my vagina.

Q What did you do, if any, when he licked your vagina?

A I backed out, telling him "*nandidiri ako*" but he kept on saying "*huwag mong lagyan ng malisya.*"

Q After that what happened next, if any?

A He made me stand up.

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Q And then?

A As I stood up he said "boyfriends and girlfriends in college indulge in [an] act like this" so he told me to pretend that he was my boyfriend.

Q After that what else did he do, if there [was] anything else that he did?

A He said that guys do like this and he attempted to remove the towel around my body.

Q And was he able to remove the towel around your body?

A Yes, ma'am.

Q After that what did he do next if there is anything else that he did?

A He removed the right cap of my brassiere.

Q What did he do, if any?

A He licked my right breast and at the same time he touched my vagina.

Q And then what happened?

A He told me to lie down on the bench.

Q Did you lie down on the bench?

A No, I did not.

Q What happened when you did not lie down?

A Since I did not lie down I sat down on the bench.

Q And then what happened?

A And then he licked my vagina again.

Q What did you do, if any, when he was licking your vagina?

A I kept on telling him "*nandidiri ako.*"

Q What did he do when you told him "*nandidiri ka?*"

A He stood up and ordered me to stand up.

Q What happened next, if any?

A He pulled down his shorts and he forced me to hold and squeeze his penis pretending that he was my boyfriend.

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Q Pretending or asking or telling you?

A Telling me to pretend that he was my boyfriend.

Q What else did he tell you, if any?

A He said that if your boyfriend will do this just tell him "*huwag mo itong ipasok sa katawan ko.*"

Q Thereafter, what else happened?

A He told me to shave my public hair and he went out.

Q And then after he left, was there anything else that happened?

A I changed then and went out.

Q Was there any other incident if any?

A Then he said the reason why he let me [touch] his penis was to let me know how it [felt].

Q After that is there any other incident?

A I went home already.

Q After you went home what happened next?

Did you report back to school the next day or not?

A No I ha[d] to return the book.

Q So you returned the book, to whom?

A To Mr. Larin.

Q What happened when you returned the book to Mr. Larin, if any?

A I told him that "*nakukunsensya ako*" and he replied that "*ako rin hindi ako makatulog kagabi.*"

Q By words "*nakukunsensya ako,*" what exactly d[id] you mean?

A I was confused, bothered and terribly upset about what had happened.

Q Why then did you say that "*nakukunsensya ka*" when what you really mean[t] was you were bothered, confused and terribly upset?

A I'm not good [at] expressing myself in *Tagalog.*

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Q After telling him "*na nakukunsensya ka*" and [his] telling you *na* "*hindi siya nakatulog kagabi*" what else happened?

A He told me *na "para mawala ang kaba mo, halik lang ang kailangan.*"

Q What happened, if any?

A He forced me to kiss him at the right cheek and on the lips.

Q And after that what happened next, if there is any?

A I went home already.

Q Incidentally Carla on April 17, 1996 when you narrated [t]his incident which you just said [sic] a while ago were there any other person inside the bath room?

A There was nobody inside the bath room.

Q You said that you went home already[;] at home was there any unusual incident that occurred?

A I had a nightmare about rape and then I decided the next day to quit swimming.

Q When you decided to quit swimming, what happened?

A I told my mother about my decision and after that she found out about what Mr. Larin did to me."[22]

Second Issue:
Credibility of the Offended Party

Appellant disputes the credibility of the victim, contending that it was unnatural for her to "mechanically submi[t]" to his "lascivious suggestions and advances," to remove her swimsuit, allow appellant to shave her pubic hair and simply utter "*nandidiri ako*" in feeble protest while appellant performed cunnilingus on her.

We do not agree. Well-entrenched is the rule that the trial court's evaluation of the credibility of a witness and his or her testimony is entitled to the highest degree of respect. Unlike appellate magistrates, a trial judge can observe the demeanor of a witness on the stand and is, thus, in a better position to

[22] TSN, August 14, 1996, pp. 3-9.

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assess the truthfulness of the testimony.[23] In the absence of any clear showing that the trial judge had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this Court will not disturb such finding.[24] The defense failed to present any convincing argument to justify a deviation from this rule.

The victim's testimony, given in a categorical, straightforward, spontaneous and candid manner, is worthy of faith and belief.[25] No proof of ill-motive on her part to falsely accuse and testify against appellant has been offered. We stress that no young and decent girl like Carla would fabricate a story of sexual abuse, subject herself to medical examination and undergo public trial, with concomitant ridicule and humiliation, if she is not motivated by a sincere desire to put behind bars the person who assaulted her.[26]

In sum, the prosecution presented proof beyond reasonable doubt that appellant, through his moral ascendancy and influence over the fourteen-year-old Carla, committed lascivious conduct upon her.

Acts that Constitute
Lascivious Conduct

Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610,[27] defines lascivious conduct as follows:

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[23] *People v. Atuel*, 261 SCRA 339, 349, September 3, 1996.

[24] *People v. De Leon*, 262 SCRA 445, 450, September 26, 1996; *People v. Abutin*, 259 SCRA 500, 508, July 26, 1996.

[25] *People v. Gecomo*, 254 SCRA 82, 96, February 23, 1996. See also *People v. Nazareno*, 260 SCRA 256, 276, August 1, 1996; *People v. Guarin*, 259 SCRA 34, 46-47, July 17, 1996; *People v. Sotto*, 255 SCRA 344, 353, March 29, 1996.

[26] *People v. Andres*, 253 SCRA 751, 757, February 20, 1996. See also *People v. Dado*, 244 SCRA 655, 660, June 1, 1995; and *People v. Rivera*, 242 SCRA 26, 36, March 1, 1995.

[27] RA 7610 authorizes the promulgation of the Implementing Rules, *viz.*:

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"[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."

In this case, appellant shaved the pubic hair of the victim, performed cunnilingus on her, licked her breast, touched her genitalia, and forced her to hold his sexual organ. These actions cannot be brushed aside as innocent; rather, they manifest sexual perversity and lewd intentions. Larin was the swimming instructor or trainor of Carla, a mere child. We find no justification for Larin's conduct.

Coercion or Influence

Appellant also asserts that no proof was presented that he gave private complainant money or any other consideration, or that he coerced or influenced her to "indulge in lascivious conduct."

We hold otherwise. The prosecution established that appellant employed moral and psychological coercion on the victim. Dr. Elizabeth Ventura, a psychologist who made a professional assessment of Carla, stated the following in her affidavit:

"That Carla's swimming trainor, a certain Mr. Ernesto Larin had built a relationship with Carla for the past year before the incident in question. During that year, Mr. Larin presented himself as a person Carla could trust. Mr. Larin would give Carla special attention and be perceptive [of] Carla's needs and protective towards her. There was a certain degree of manipulation by Mr. Larin as he would intimidate Carla by attacking her self-esteem, after which he would offer himself as someone who could help solve her inadequacies.

"Unless otherwise provided in this Act, the Department of Justice, in coordination with the Department of Social Welfare and Development, shall promulgate rules and regulations for the effective implementation of this Act."

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"Carla manifested all the symptoms of Post-Traumatic Stress Disorder, *i.e.*, sleeplessness, nightmares, anxiousness about going back to school, paranoia and fear that people would know and talk about what happened to her. At the same time, she is angry at Mr. Larin for what he has done to her and how he could have manipulated and intimidated her so."[28]

During her direct examination, she clarified the meaning of *psychological coercion:*

"Q What exactly is a psychological coer[c]ion?

A It involves the use of influence of a more powerful person who is in position of power. It can be a parent or an adult but basically that person has to have had some kind of continued relationship with the child. It cannot happen that you just meet the child or the other person or to submit right away to the person because in psychological coercion, a relationship is built up with the victim and to my knowledge in this particular case there was such, if I may refer to this case, there was such a relationship between [C]arla and her coach in swimming. Generally in psychological coercion there is a form of trust. That is what I mean by relation. A trust in relation is built up and it is understandable that this happened in this particular case because you know it was a skill that was being taught and at the same time, because a teacher cannot be effective unless there [is] some kind of rapport. x x x"[29]

xxx xxx xxx

"A I was saying that in everything that [C]arla communicated to me, I could say that the perpetrator continued to communicate or tried to continue that feeling of trust even he was doing all of those things to her, so that made her particularly vulnerable and that is part of psychological coercion."[30]

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[28] Affidavit marked "Exhibits D" to "D-4"; records, pp. 132-133.

[29] TSN, August 29, 1996, pp. 4-5.

[30] *Ibid.*, p. 8.

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Dr. Ventura explained why Carla, an intelligent child, succumbed to such lewd acts:

> "COURT: Could you explain the utter submissiveness displayed by [C]arla to the acts committed by the accused considering that she is a very intelligent girl?
>
> A It can happen to children, no matter how intelligent they are that they will submit themselves to these acts because of what we refer to [in] psychology so basically there was [a] trusting relationship that was established by the perpetrator or by the child molester[,] and given that particular trust it was easy for this person, for the adult, to use this influence on the child."[31]

It is an accepted rule that different people react differently to a given situation or type of situation.[32] One cannot reasonably expect uniform reactions from victims of sexual assault.[33] Carla's submissiveness to Larin's lascivious conduct does not exonerate him from criminal liability, as the law does not require physical violence on the person of the victim. Moral coercion or ascendancy is sufficient.

Third Issue:
The Imposable Penalty

Appellant submits that the law does not provide the penalty in the event the victim, as in this case, is above twelve (12) and below eighteen (18) years of age. Thus, he argues for the imposition of *prision correccional*, the penalty for acts of lasciviousness under Article 336 of the Revised Penal Code.

Appellant's argument is misleading. The penalty of *reclusion temporal,* in its medium period, to *reclusion perpetua* is imposed

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[31] *Ibid.*, p. 20.

[32] *People v. Pontilar, Jr.*, 275 SCRA 338, 355, July 11, 1997; *People v. Rabosa*, 273 SCRA 142, 150-151, June 9, 1997; and *People v. Talaboc*, 256 SCRA 441, 453, April 23, 1996.

[33] *People v. Tadulan*, 271 SCRA 233, 244, April 15, 1997 and *People v. Roncal*, 272 SCRA 242, 248-249, May 6, 1997.

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by RA 7610 on those who perform sexual intercourse with or lascivious conduct on a *child* exploited in prostitution or subjected to any other form of sexual abuse. As earlier stated, RA 7610 defines *child* as a person below eighteen (18) years of age, or one who is unable to fully take care of or protect from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[34] Contrary to appellant's interpretation, the law does not confine its protective mantle only to children under twelve (12) years of age. Carla, who was fourteen (14) years of age when the crime was committed, is considered a child for purposes of RA 7610. Her molester, therefore, may be punished with imprisonment of *reclusion temporal,* in its medium period, to *reclusion perpetua.*[35]

The law, however, mandates that the "penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer."[36] Larin's employment at UPLB as swimming instructor or, as he insists, a lifeguard[37] makes him a part of the civil service[38] and a public officer.[39] Thus, we affirm the ruling of the trial court imposing upon him the maximum penalty of *reclusion perpetua.* Consistent with the express provision of RA 7610, the penalty of perpetual absolute disqualification is likewise meted upon appellant.[40]

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[34] Section 3 (a), Article I of RA 7610.

[35] Section 5, Article III of RA 7610.

[36] Section 31 (c), Article XII of RA 7610.

[37] Exhibits "5" and "5-A", "8" to "12"; Records, pp. 378, 381-385.

[38] *University of the Philippines v. Regino*, 221 SCRA 598, 602, May 3, 1993.

[39] Article 203, Revised Penal Code, defines a public officer as a person who performs "in said Government or in any of its branches public duties as an employee, agent or subordinate official, *of any rank or class* xxx." (Italics supplied.) See also *Maniego v. People*, 88 Phil. 494 (1951).

[40] Section 31 (c), Article XII, RA 7610. *See also* Article 41, Revised Penal Code.

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Damages

The trial court ordered the appellant to pay the victim the sum of P100,000 as moral damages. Carla Calumpang testified that she "was confused, bothered and terribly upset about what had happened."[41] In fact, the incident affected her profoundly that she suffered nightmares and eventually decided to quit swimming.[42] While the award of moral damages is clearly justified, this Court deems it proper to reduce the amount to ₱50,000, in view of prevailing jurisprudence.[43]

WHEREFORE, the appeal is hereby *DENIED* and the assailed Decision is *AFFIRMED,* but the award of moral damages is reduced to ₱50,000. Costs against appellant.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug, and *Quisumbing, JJ.,* concur.

FIRST DIVISION

[G.R. No. 129566. October 7, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL NAVARRO,** *accused-appellant.*

SYNOPSIS

Two informations, one for murder for allegedly killing Ferdinand Rabadon with treachery and evident premeditation

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[41] TSN, August 14, 1996, p. 8.

[42] *Ibid.*, p. 9.

[43] *People v. Atop*, GR Nos. 124303-05, February 10, 1998 and *People v. Luzorata*, GR No. 122478, February 24, 1998.