

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAISY CALAMBA Y OCULAR, DEFENDANT-APPELLANT.

Ponente: CAMELLO, J.

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CAMELLO, J.:

On appeal is the part of the Joint Decision dated August 21, 2012[1] by the Regional Trial Court, Branch 2 of Tagum City, Davao del Norte finding accused-appellant Daisy Calamba y Ocular guilty of violation of Section 5 of Republic Act No. 7610 (otherwise known as Special Protection of Children Against Abuse, Exploitation and Discrimination Act) in Criminal Case No. 16640.

Facts of the case:

On May 27, 2009, the Prosecutor's Office of Tagum City charged accused-appellant in the Regional Trial Court in Tagum City of violation of Section 5(a) of Republic Act No. 7610, alleging as follows:[2]

That on or about May 13, 2009, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly received the amount of P2,000.00 for and in behalf of AAA and BBB, 16 and 14 year-old minors, respectively, knowing the same to be a payment for sexual services to be rendered by said minors to their clients who were induced by said accused to avail of said sexual services from the prostituted minors, which act of facilitating child prostitution is prejudicial to the normal physical, emotional and psychological growth or development of the said minors.

CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.

The facts as summarized in appellant's brief alleged the following:

Version of the Prosecution

A summary of the testimony of the prosecution witnesses unravels that at 10:00 o'clock in the evening of 20 May 2009, the members of the PNP CIDG of Davao del Norte proceeded to La Filipina Street in Tagum City to conduct an entrapment operation. The operation was apparently based on the information received by the operatives that most of the videoke bars along La Filipina Street were engaged in commercial sex trade.

When the operatives arrived at La Filipina, they pointed the videoke bar owned by the appellant as the target of their entrapment operation. Two police officers (PO2 Jeffrey Ayop and PO2 Matt) acted as customers, while the others posted themselves outside the establishment.

According to Ayop, the girls come in and out of the videoke bar. With this observation, Ayop asked the appellant whether the girls are "maayohon" to which appellant nodded and said yes. Ayop then asked appellant how much, and the latter said around P1,000.00 to P1,500.00, but she advised Ayop to personally ask the girls. So, Ayop went outside and one of the girls whispered to him, apparently introducing herself as AAA. She asked AAA how much, and AAA answered P1,000.00 for each girl. Ayop said he needed two girls.

After the transaction, Ayop and girls agreed to go to a lodging house. Thereafter, Ayop returned to his table inside the videoke bar and texted his companions. AAA then asked Ayop if he has already paid, and so Ayop gave P2,200.00 to appellant. Thereafter, the police operatives rushed to arrest the appellant and the girls (AAA and BBB). They were then brought to the police station.

Version of the Defense

Appellant testified that she had an eatery business. Her eatery store (named At Home and Videoke Bar) was located at La Filipina Street. Her sister, Jocelyn Calamba, Sherlyn Lacbayan, and Joy, helped her run the store. She opened her store at 6:00 in the morning to serve breakfast until evening.

Appellant admitted that she knew AAA, being her neighbor. She remembered that she was in her store at 9:00 in the evening of 20 May 2009 when she noticed three men on board a motorcycle arrived. Appellant knew them as Ayop, Matt, and their cook in the barracks, because they previously visited her store thrice on the month of March. She also knew that they were police officers.

Appellant asked the police officers if they wanted some drinks, but they answered no and intimated that they were looking for a woman. Appellant replied she does not have any, and so the police officers left. Thirty minutes later, the police officers returned, entered her store, and ordered bottles of beer.

The police officers requested appellant to entertain them but she refused because the last time they visited, they were vulgar to her, asking her how much she's worth. After consuming the three bottles of beer, they asked Sherlyn, who was in the counter, to call for the appellant. Before the appellant entered the store to receive the payment for the beer, as requested by Ayop, she noticed that the police officers talked to the girls outside.

When appellant finally received the P200.00 as payment for the beer, the police officers arrested her. She was then invited to go to the CIDG office where she was interrogated and detained thereafter.

Sherlyn Lacbayan corroborated appellant's testimony. On the other hand, Maricel Cabudok testified that she knew AAA and BBB, being her former co-workers at Edcel Videoke Bar. She confirmed appellant's insistence that the latter had no employees who sell themselves for money.

After joint trial, the trial court rendered its Joint Decision on August 21, 2012, with its dispositive portion that reads:[3]

WHEREFORE, premises considered, accused DAISY CALAMBA y OCULAR is hereby found and declared GUILTY by proof beyond reasonable doubt of the charges herein preferred against her under Republic Act No. 7610 and is hereby sentenced to suffer imprisonment for a period of sixteen (16) years, five (5) months and eleven (11) days of reclusion temporal as minimum to twenty (20) years as maximum under Criminal Case No. 16640 and is ACQUITTED under Criminal Case No. 16639, the said case being a mere surplusage.

SO ORDERED.

Hence, this appeal based on a sole assignment of error, to wit:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Appellant stands charged of violating Section 5, Article III of R.A. No. 7610, which provides:

ARTICLE III.

CHILD PROSTITUTION AND OTHER SEXUAL ABUSE

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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1)

Acting as a procurer of a child prostitute;

(2)

Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3)

Taking advantage of influence or relationship to procure a child as a prostitute;

(4)

Threatening or using violence towards a child to engage him as a prostitute; or

(5)

Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

(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; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

The elements of paragraph (a) are:

(1)

the accused engages in, promotes, facilitates or induces child prostitution;

(2)

the act is done through, but not limited to, the following means:

i)

acting as a procurer of a child prostitute;

ii)

inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

iii)

taking advantage of influence or relationship to procure a child as a prostitute;

iv)

threatening or using violence towards a child to engage him as a prostitute; or

v)

giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution;

(3)

the child is exploited or intended to be exploited in prostitution and

(4)

the child, whether male or female, is below 18 years of age.[4]

The crime of child prostitution contemplates sexual abuse of a child exploited in prostitution. In other words, under paragraph (a), the child is abused primarily for profit.[5]

As alleged in the Information and proven through the testimony of AAA, appellant facilitated or induced child prostitution. 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.[6] Thus, the act of appellant in convincing AAA, who was 16 years old and BBB who was then 14 years old at that time, and offering them for sex to a man in exchange for money, makes her liable under the cited law, the purpose of which is to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development.[7] A child exploited in prostitution almost always may seem to consent to everything being done to her or him and may appear not to complain. The Supreme Court ruled, however, that a child who is a person 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 is incapable of giving rational consent⁸ to any lascivious act or sexual intercourse.

Undoubtedly, appellant acted as a procurer of a child prostitute. She induced the child into prostitution. In

defense, appellant merely pleads denial, disputing the allegation and the evidence presented by the prosecution which consists mainly of direct, clear, convincing and categorical testimony compared from AAA that it was appellant who transacted with Ayop and Matt for AAA and BBB to provide sexual pleasure and services to the two men in exchange of money.[9] Nothing is more settled than the role that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony, particularly when it comes from the mouth of a credible witness.[10]

The penalty meted out needs modification though. Violations of the provisions of Section 5, Article III of R.A. 7610 fetch the penalty of reclusion temporal in its medium period to reclusion perpetua. In the absence of any mitigating or aggravating circumstance, the proper imposable penalty is reclusion temporal in its maximum period, the medium of the penalty prescribed by the law.[11] Although R.A. 7610 is a special law, appellant may still enjoy the benefits of the Indeterminate Sentence Law.[12] Since the penalty provided in R.A. 7610 is taken from the range, and uses the nomenclature, of penalties in the Revised Penal Code, the first clause of Section 1 of the Indeterminate Sentence Law applies.[13] Appellant is thus entitled to a maximum prison term which should be taken from the range of the proper imposable penalty, that is reclusion temporal in its maximum period (ranging from 17 years, 4 months and 1 day to 20 years), and a minimum term to be taken from the range of the penalty next lower in degree to that prescribed by the law; that is, prision mayor in its medium period to reclusion temporal in its minimum period (ranging from 8 years and 1 day to 14 years and 8 months).[14]

We note that the trial court failed to award damages to the victim. The award of damages must conduce to the objective of R.A. 7610 to afford children special protection against abuse, exploitation and discrimination and with the principle that every person who contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same.[15] And in consonance with current case law involving violation of Section 5 (a), Article III of R.A. 7610 applying Article 100 of the Revised Penal Code which makes every person criminally liable civilly liable as well.[16] We hold that civil indemnity as well as moral damages to the child is proper in the present case. Php 50,000.00 civil indemnity as ex delicto, as awarded in cases of violation of Section 5 (b), Article III of R.A. 7610, should also be awarded in cases of violation of Section 5 (a) of that law. Besides Php 50,000.00 for moral damages.

FOR THESE REASONS, the appealed Decision is AFFIRMED with the MODIFICATION that the accused-appellant DAISY CALAMBA is sentenced to suffer an indeterminate prison term of eight (8) years and six months of prision mayor as minimum to seventeen (17) years and five (5) months of reclusion temporal as maximum. The accused-appellant DAISY CALAMBA is ordered to pay AAA P50, 000.00 as civil indemnity and P50,000.00 as moral damages. Costs against the accused-appellant.

SO ORDERED.

Inting and Perez, JJ., concur.

[1] Rollo, pp. 48-58; Penned by Judge Ma. Susana T. Baua.

[2] Record, p. 1, Criminal Case No. 16640; Consistent with the Supreme Court's decision in *People v. Cabalquinto* [G.R. No. 167693, 502 SCRA 419] promulgated on September 19, 2006, citing Rule on Violence Against Women and their Children, Sec. 40; Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the Anti-Violence Against Women and their Children Act, the real names of the victim(s), as well as their personal circumstances tending to establish their identities, will not be disclosed; instead, fictitious, names or symbols will be used to represent the victim throughout the decision.

[3] Rollo, p. 58.

[4] *Malto v. People of the Philippines*, G.R. No. 164733, September 21, 2007, 533 SCRA 643.

[5] *Id.*

[6] R.A. 7610, Sec. 5.

[7] R.A. 7610, Sec. 2

[8] *People v. Delantar*, G.R. No. 169143, February 2, 2007, 514 SCRA 115, citing *People v. Manlapaz*, No. L-41819, February 28, 1979, 88 SCRA 704.

[9] TSN of AAA dated March 11, 2010, pp. 10-14.

[10] *People v. Mendoza*, 490 Phil. 737 (2005).

[11] *Malto v. People of the Philippines*, supra note 4, citing *People v. Delantar* G.R. No. 169143, February 2, 2007.

[12] *Id.*, citing *People v. Bon*, G.R. No. 149199, January 28, 2003, 396 SCRA 506, 516.

[13] *Id.*, citing *Cadua v. Court of Appeals*, G.R. No. 123123, August 19, 1999, 312 SCRA 703, 725, citing *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555. Section 1 of the Indeterminate Sentence Law provides:

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

[14] *Id.*

[15] Civil Code, Art. 20.

[16] Article 100, Revised Penal Code. It provides:

Art. 100. Civil liability of a person guilty of a felony. - Every person criminally liable for a felony is also civilly liable.

It may be applied in this case pursuant to Article 10 of the Revised Penal Code which states that the Code shall be supplementary to special laws unless the latter should specially provide the contrary. [See *People v. Moreno*, 60 Phil. 712 (1934).]

[17] *Malto v. People of the Philippines*, G.R. No. 164733, September 21, 2007.

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