

MICHAEL JOHN Z. MALTO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 164733. September 21, 2007

Ponente: CORONA, J.

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CORONA, J.:

Whereas, mankind owes to the child the best it has to give. (Final preambular clause of the Declaration of the Rights of the Child)

This is a petition for review[1] of the decision[2] dated July 30, 2004 of the Court of Appeals (CA) in CA-G.R. CR No. 25925 affirming with modification the decision[3] of Branch 109 of the Regional Trial Court of Pasay City in Criminal Case No. 00-0691 which found petitioner Michael John Z. Malto guilty for violation of paragraph 3, Section 5(a), Article III of RA 7610,[4] as amended.

Petitioner was originally charged in an information which read:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(b), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse for several times with him as in fact said accused had carnal knowledge.

Contrary to law.[5]

This was subsequently amended as follows:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(a), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously take advantage and exert influence, relationship and moral ascendancy and induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse and lascivious conduct for several times with him as in fact said accused has carnal knowledge.

Contrary to law.[6]

Petitioner did not make a plea when arraigned; hence, the trial court entered for him a plea of "not guilty." After the mandatory pre-trial, trial on the merits proceeded.

The prosecution established the following:

At the time of the incident, private complainant AAA was 17 years old.[7] She was a college student at the Assumption College in San Lorenzo Village, Makati City. Petitioner, then 28, was her professor in her Philosophy II class in the first semester of the school year 1997 to 1998.

On July 18, 1997, AAA was having lunch with her friends when petitioner joined their group. He told them to address him simply as "Mike." He handed them his organizer and asked them to list down their names and contact numbers.

On October 3, 1997, while AAA and her friends were discussing the movie Kama Sutra, petitioner butted in and bragged that it was nothing compared to his collection of xxx-rated films. To the shock of AAA's group, he lectured on and demonstrated sexual acts he had already experienced. He then invited the group to view his collection.

On October 10, 1997, petitioner reiterated his invitation to AAA and her friends to watch his collection of pornographic films. Afraid of offending petitioner, AAA and two of her friends went with him. They rode in his car and he brought them to the Anito Lodge on Harrison St. in Pasay City. They checked in at a "calesa room." Petitioner was disappointed when he found out there was neither a video cassette player (on which he could play his video tapes) nor an x-rated show on the closed-circuit television. He suggested that they just cuddle up together. AAA and her friends ignored him but he pulled each of them towards him to lie with him in bed. They resisted until he relented.

AAA and her friends regretted having accepted petitioner's invitation. For fear of embarrassment in case their classmates got wind of what happened, they agreed to keep things a secret. Meanwhile, petitioner apologized for his actuations.

Thereafter, petitioner started to show AAA amorous attention. He called her on the phone and paged[8] her romantic messages at least thrice a day. When semestral break came, his calls and messages became more frequent. Their conversation always started innocently but he had a way of veering the subject to sex. Young, naive and coming from a broken family, AAA was soon overwhelmed by petitioner's persistence and slowly got attracted to him. He was the first person to court her. Soon, they had a "mutual understanding" and became sweethearts.

When AAA secured her class card in Philosophy II at the start of the second semester, petitioner told her that he gave her a final grade of "3." She protested, stating that her mid-term grade was "1.2." He gave her a grade of "1.5" when she promised not to disclose his intimate messages to her to anyone. He also cautioned her not to tell anyone about their affair as it could jeopardize his job.

On November 19, 1997, at around 11:00 a.m., AAA agreed to have lunch with petitioner outside the premises of the college. Since she was not feeling well at that time, he asked her to lie down in the backseat of his car. She was surprised when he brought her to Queensland Lodge[9] on Harrison St. in Pasay City. Once inside the motel room, he kissed her at the back and neck, touched her breasts and placed his hand inside her blouse. She resisted his advances but he was too strong for her. He stopped only when she got angry at him.

On November 26, 1997, petitioner asked AAA to come with him so that they could talk in private. He again brought her to Queensland Lodge. As soon as they were inside the room, he took off his shirt, lay down in bed and told her, "halika na, dito na tayo mag-usap." She refused but he dragged her towards the bed, kissed her lips, neck and breasts and unsnapped her brassiere. She struggled to stop him but he overpowered her. He went on top of her, lowered her pants and touched her private part. He tried to penetrate her but she pushed him away forcefully and she sat up in bed. He hugged her tightly saying, "Sige na, AAA, pumayag ka na, I won't hurt you."

She refused and said, "Mike, ayoko." He angrily stood up saying, "Fine, hindi na tayo mag-uusap. Don't come to the faculty room anymore. You know I need this and if you will not give in or give it to me, let us end this." She replied, "Mike, hindi pa ako ready and it was you who said it will be after my debut" on December 3, 1997. He insisted that there was no difference between having sex then and after her debut. He told her, "kung hindi ko makukuha ngayon, tapusin na natin ngayon." Pressured and afraid of his threat to end their relationship, she hesitantly replied "Fine." On hearing this, he quickly undressed while commenting "ibibigay mo rin pala, pinahirapan mo pa ako" and laughed. They had sexual intercourse.

In July 1999, AAA ended her relationship with petitioner. She learned that he was either intimately involved with or was sexually harassing his students in Assumption College and in other colleges where he taught. In particular, he was dismissed from the De La Salle University-Aguinaldo for having sexual relations with a student and sexually harassing three other students. His employment was also terminated by Assumption College for sexually harassing two of his students. It was then that AAA realized that she was actually abused by petitioner. Depressed and distressed, she confided all that happened between her and petitioner to her mother, BBB.

On learning what her daughter underwent in the hands of petitioner, BBB filed an administrative complaint in Assumption College against him. She also lodged a complaint in the Office of the City Prosecutor of Pasay City which led to the filing of Criminal Case No. 00-0691.

In his defense, petitioner proffered denial and alibi. He claimed that the alleged incidents on October 3, 1997 and October 10, 1997 did not happen. He spent October 3, 1997 with his colleagues Joseph Hipolito and AJ Lagaso while he was busy checking papers and computing grades on October 10, 1997. The last time he saw AAA during the first semester was when she submitted her final paper on October 18, 1997.

On November 19, 1997, between 10:30 a.m. and 1:00 p.m., he sorted out conflicts of class schedules for the second semester at the Assumption College. On November 26, 1997, he was at St. Scholastica's College (where he was also teaching) preparing a faculty concert slated on December 12, 1997. At lunch time, he attended the birthday treat of a colleague, Evelyn Bancoro.

On November 29, 1997, he attended AAA's 18th birthday party. That was the last time he saw her.

According to petitioner, AAA became his sweetheart when she was already 19 years old and after he was dismissed from Assumption College. On December 27 and 28, 1998, they spent time together, shared their worries, problems and dreams and kissed each other. On January 3, 1999, he brought her to Queensland Lodge where they had sexual intercourse for the first time. It was repeated for at least 20 times from January 1999 until they broke up in July 1999, some of which were done at either his or her house when no one was around.

The trial court found the evidence for the prosecution sufficient to sustain petitioner's conviction. On March 7, 2001, it rendered a decision finding petitioner guilty.^[10] The dispositive portion read:

In view of the foregoing, the Court finds the accused Michael John Malto y Zarsadias guilty beyond reasonable doubt for violation of Article III, Section 5(a), paragraph 3 of RA 7610, as amended and hereby sentences him to reclusion temporal in its medium period or an imprisonment of seventeen (17) years, four (4) months and one (1) day to twenty (20) years and to pay civil indemnity in the amount of Php 75,000.00 and moral and exemplary damages of Php 50,000.00 to minor complainant with subsidiary imprisonment in case of insolvency.^[11]

Petitioner questioned the trial court's decision in the CA. In a decision dated July 30, 2004,^[12] the appellate court affirmed his conviction even if it found that his acts were not covered by paragraph (a) but by paragraph (b) of Section 5, Article III of RA 7610. It further observed that the trial court failed to fix the minimum term of

indeterminate sentence imposed on him. It also ruled that the trial court erred in awarding P75,000 civil indemnity in favor of AAA as it was proper only in a conviction for rape committed under the circumstances under which the death penalty was authorized by law.[13] Hence, the CA modified the decision of the trial court as follows:

WHEREFORE, the appealed Decision of conviction is AFFIRMED, with the MODIFICATION that (1) appellant MICHAEL JOHN MALTO y ZARSADIAS is hereby sentenced to an indeterminate penalty of Eight (8) Years and One (1) Day of prison mayor as minimum, to Seventeen (17) Years, Four (4) Months and One (1) Day of reclusion temporal as maximum; and (2) the sum of P75,000.00 as civil indemnity is DELETED.[14]

Hence, this petition.

Petitioner contends that the CA erred in sustaining his conviction although it found that he did not rape AAA. For him, he should have been acquitted since there was no rape. He also claims that he and AAA were sweethearts and their sexual intercourse was consensual.

Petitioner is wrong.

The Offense Stated in the Information Was
Wrongly Designated

In all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him.[15] Pursuant thereto, the complaint or information against him should be sufficient in form and substance. A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense and the place where the offense was committed.[16]

The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances.[17] If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.[18] The acts or omissions constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.[19]

The designation of the offense in the information against petitioner was changed from "violation of Section 5(b), Article III" of RA 7610 to "violation of Section 5(a), Article III" thereof. Paragraphs (a) and (b) of Section 5, Article III of RA 7610 provide:

Section 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:

- Acting as a procurer of a child prostitute;
- Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other

similar means;

- Taking advantage of influence or relationship to procure a child as a prostitute;
- Threatening or using violence towards a child to engage him as a prostitute; or
- Giving monetary consideration, goods or other pecuniary benefit to a child with 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

xxx xxx xxx (emphasis supplied)

The elements of paragraph (a) are:

- the accused engages in, promotes, facilitates or induces child prostitution;
- the act is done through, but not limited to, the following means:
 - acting as a procurer of a child prostitute;
 - inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
 - taking advantage of influence or relationship to procure a child as a prostitute;
 - threatening or using violence towards a child to engage him as a prostitute or
 - 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.

On the other hand, the elements of paragraph (b) are:

- the accused commits the act of sexual intercourse or lascivious conduct;
- the act is performed with a child exploited in prostitution or subjected to other sexual abuse and
- the child, whether male or female, is below 18 years of age.

Paragraph (a) essentially punishes acts pertaining to or connected with child prostitution. It contemplates sexual abuse of a child exploited in prostitution. In other words, under paragraph (a), the child is abused primarily for profit.

On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.[20]

The information against petitioner did not allege anything pertaining to or connected with child prostitution. It did

not aver that AAA was abused for profit. What it charged was that petitioner had carnal knowledge or committed sexual intercourse and lascivious conduct with AAA; AAA was induced and/or seduced by petitioner who was her professor to indulge in sexual intercourse and lascivious conduct and AAA was a 17-year old minor. These allegations support a charge for violation of paragraph (b), not paragraph (a), of Section 5, Article III, RA 7610.

The Real Nature of the Offense is
Determined by Facts Alleged in the
Information, Not By the Designation

The designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. However, the failure to designate the offense by statute,[21] or to mention the specific provision penalizing the act,[22] or an erroneous specification of the law violated[23] does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged.[24] What controls is not the title of the information or the designation of the offense but the actual facts recited in the information.[25] In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information.[26]

The facts stated in the amended information against petitioner correctly made out a charge for violation of Section 5(b), Article III, RA 7610. Thus, even if the trial and appellate courts followed the wrong designation of the offense, petitioner could be convicted of the offense on the basis of the facts recited in the information and duly proven during trial.

Petitioner violated Section 5(b), Article III
of RA 7610, as amended

The first element of Section 5(b), Article III of RA 7610 pertains to the act or acts committed by the accused. The second element refers to the state or condition of the offended party. The third element corresponds to the minority or age of the offended party.

The first element was present in this case. Petitioner committed lascivious conduct against and had sexual intercourse with AAA in the following instances: (1) on November 19, 1997, when he kissed her at the back and neck, touched her breasts and placed his hand inside her blouse to gratify his lust; (2) on November 26, 1997, when, with lewd designs, he dragged her towards the bed of the motel room and forcibly kissed her on the lips, neck and breasts and (3) when he exerted moral influence on her and pressured her until she surrendered herself to him on November 26, 1997. His acts were covered by the definitions of sexual abuse and lascivious conduct under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of RA 7610, particularly on child abuse:

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

(h) "Lascivious conduct" means the 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 public area of a person. (emphasis supplied)

The second element was likewise present here. The following pronouncement in *People v. Larin*[27] is significant:

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. (emphasis supplied)

On November 19, 1997, due to the influence of petitioner, AAA indulged in lascivious acts with or allowed him to commit lascivious acts on her. This was repeated on November 26, 1997 on which date AAA also indulged in sexual intercourse with petitioner as a result of the latter's influence and moral ascendancy. Thus, she was deemed to be a "child subjected to other sexual abuse" as the concept is defined in the opening paragraph of Section 5, Article III of RA 7610 and in *Larin*.

The third element of the offense was also satisfied. Section 3 (a), Article I of RA 7610 provides:

SECTION 3. Definition of Terms. -

(a) "Children" refers [to] persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition; (emphasis supplied)

On November 19, 2007 and November 26, 2007, AAA was a child as she was below 18 years of age. She was therefore within the protective mantle of the law.

Since all three elements of the crime were present, the conviction of petitioner was proper.

Violation of Section 5(b), Article III of RA 7610 and Rape are Separate and Distinct Crimes

Petitioner was charged and convicted for violation of Section 5(b), Article III of RA 7610, not rape. The offense for which he was convicted is punished by a special law while rape is a felony under the Revised Penal Code.[28] They have different elements.[29] The two are separate and distinct crimes. Thus, petitioner can be held liable for violation of Section 5(b), Article III of RA 7610 despite a finding that he did not commit rape.

Consent of the Child is Immaterial in Criminal Cases Involving Violation of Section 5, Article III of RA 7610

Petitioner claims that AAA welcomed his kisses and touches and consented to have sexual intercourse with him. They engaged in these acts out of mutual love and affection. But may the "sweetheart theory" be invoked in cases of child prostitution and other sexual abuse prosecuted under Section 5, Article III of RA 7610? No.

The sweetheart theory applies in acts of lasciviousness and rape, felonies committed against or without the consent of the victim. It operates on the theory that the sexual act was consensual. It requires proof that the accused and the victim were lovers and that she consented to the sexual relations.[30]

For purposes of sexual intercourse and lascivious conduct in child abuse cases under RA 7610, the sweetheart defense is unacceptable. A child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person.

The language of the law is clear: it seeks to punish

[t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.

Unlike rape, therefore, consent is immaterial in cases involving violation of Section 5, Article III of RA 7610. The

mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense. It is a *malum prohibitum*, an evil that is proscribed.

A child cannot give consent to a contract under our civil laws.[31] This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully.[32] Those of tender years deserve its protection.[33]

The harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences[34] of her attempts at adult sexual behavior.[35] For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. (Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.[36]

This must be so if we are to be true to the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth.[37] This is consistent with the declared policy of the State

[T]o provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination.[38] (emphasis supplied)

as well as to

intervene on behalf of the child when the parents, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation, and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.[39] (emphasis supplied)

This is also in harmony with the foremost consideration of the child's best interests in all actions concerning him or her.

The best interest of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.[40] (emphasis supplied)

Petitioner May Enjoy the Benefits of the Indeterminate Sentence Law

The penalty prescribed for violation of the provisions of Section 5, Article III of RA 7610 is 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.[41] Notwithstanding that RA 7610 is a special law, petitioner may enjoy the benefits of the Indeterminate Sentence Law.[42] Since the penalty provided in RA 7610 is taken from the range of penalties in the Revised

Penal Code, it is covered by the first clause of Section 1 of the Indeterminate Sentence Law.[43] Thus, he is entitled to a maximum term which should be within the range of the proper imposable penalty of 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 within the range of the penalty next lower to that prescribed by the law: 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).

The Award of Damages Should Be Modified

The trial court awarded AAA P75,000 as civil indemnity, P50,000 as moral and exemplary damages. The CA deleted the award for civil indemnity. It correctly reasoned that the award was proper only in a conviction for rape committed under the circumstances under which the death penalty is authorized by law. Consistent, however, with the objective of RA 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,[44] civil indemnity to the child is proper in a case involving violation of Section 5(b), Article III of RA 7610. Every person criminally liable is civilly liable.[45] The rule is that, in crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of.[46] Thus, P50,000 civil indemnity ex delicto shall be awarded in cases of violation of Section 5(b), Article III of RA 7610.[47]

Moreover, the CA erred in affirming the grant of P50,000 as "moral and exemplary damages." The rule is that, in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision.[48] Thus, moral damages and exemplary damages should be separate items of award.

AAA testified that she was "emotionally devastated" and "lost touch of her inner self" as a result of what petitioner did to her. Because of the mental anxiety and wounded feelings caused by petitioner to her, she had several sessions with the dean for student affairs[49] and the guidance counselor of Assumption College as well as with a psychiatrist. This was corroborated by her mother and the dean of student affairs of Assumption College. Thus, she is entitled to moral damages of P50,000. However, in the absence of an aggravating circumstance, the grant of exemplary damages is unwarranted.[50]

Accordingly, the petition is hereby DENIED. Petitioner Michael John Z. Malto is hereby found guilty of violating Section 5(b), Article III of RA 7610, as amended, for which he is sentenced to 14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum. He is further ordered to pay AAA P50,000 as civil indemnity and P50,000 for moral damages.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Edgardo P. Cruz and Mariano C. del Castillo of the Special Tenth Division of the Court of Appeals. Rollo, pp. 33-45.

[3] Dated March 7, 2001. Penned by Judge Lilia C. Lopez. Id., pp. 57-89.

[4] Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act. It is also known as

the "Anti-Child Abuse Law."

[5] Trial court records, vol. I, p. 2.

[6] *Id.*, p. 96.

[7] Her birth certificate (Exhibit "H") showed that she was born on December 3, 1979. *Id.*, p. 229.

[8] Before cellular phones and text messaging came in vogue, the status symbol were pagers/beepers used for paging/beeping messages.

[9] Queensland Motel in some parts of the records.

[10] *Supra* note 3.

[11] *Id.*

[12] *Supra* note 2.

[13] RA 9346 ("An Act Prohibiting the Imposition of Death Penalty" enacted on June 24, 2006) subsequently repealed the death penalty.

[14] *Supra* note 2.

[15] Section 1(b), Rule 115, Rules of Court.

[16] Section 6, Rule 110, *id.*

[17] *Olivarez v. Court of Appeals*, G.R. No. 163866, 29 July 2005, 465 SCRA 465.

[18] Section 8, Rule 110, Rules of Court.

[19] Section 9, *id.*

[20] *People v. Larin*, 357 Phil. 987 (1998).

[21] *U.S. v. de Dao*, 2 Phil. 458 (1903).

[22] *People v. Gatchalian*, 104 Phil. 664 (1958).

[23] *People v. Arnault*, 92 Phil. 252 (1952).

[24] *Herrera, Oscar M., Remedial Law, volume IV: Criminal Procedure*, Rex Bookstore, 1992 edition, p. 59.

[25] *People v. Resayaga*, G.R. No. L-49536, 30 March 1988, 159 SCRA 426; *Santos v. People*, G.R. No. 77429, 29 January 1990, 181 SCRA 487.

[26] *People v. Elesterio*, G.R. No. 63971, 9 May 1989, 173 SCRA 243.

[27] *Supra* note 20.

[28] At the time of the commission of the offense, rape was still classified as a crime against chastity punished under Article 335 of the Revised Penal Code. It is now a crime against persons defined and penalized under Article 266-A of the Revised Penal Code.

[29] In contrast to the offense punished under Section 5(b), Article III of RA 7610, the crime of rape has the following elements: (1) the offender is a man who had carnal knowledge of a woman and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or

by means of fraudulent machination or grave abuse of authority; or when the victim is under 12 years of age or is demented. (People v. Padilla, G.R. No. 142899, 31 March 2004, 426 SCRA 648)

[30] People v. Bautista, G.R. No. 140278, 03 June 2004, 430 SCRA 469.

[31] Article 1327, Civil Code. A contract between a child and another person who is of legal age is voidable at the instance of the child. The rule is, however, subject to the following exceptions: (a) upon reaching the age of majority, the contract is ratified by the party who was a child when he entered into it, (b) the contract was entered into thru a guardian and approved by a CA competent jurisdiction, (c) it is a contract for necessities, such as food, but the person legally bound to give them support should pay therefor and (e) the child misrepresented his age and pretended to be of majority age and is thus in estoppel.

It should also be noted that under our present criminal laws, the age of exemption from criminal liability was raised from 9 years old to 15 years old. (RA 9344) Thus, a child 15 years of age or under at the time of the commission of the offense is exempt from criminal liability. A child above 15 but below 18 years of age is presumed not to have acted with discernment and will be criminally liable only upon rebuttal of that presumption by proof that he acted with discernment. Thus, there is a presumption of lack of discernment on the part of a child (which presumption is conclusive if she is 15 years of age and below and disputable if she is over 15 but below 18 years of age).

[32] People v. Baylon, G.R. No. L-35785, 29 May 1974, 57 SCRA 114.

[33] Id.

[34] These harmful consequences include teenage pregnancy, mothering or fathering an illegitimate child and contracting sexually transmitted disease(s).

[35] The recognition that copulation is an adult activity is reflected in the way films or shows are classified as rated "R" or "R-18." Under the Guidelines of the Movie and Television Review and Classification Board (MTRCB), a movie or show classified as "Restricted-18" ("R-18") may be viewed only by those who are 18 years old and above. As to its sexual content, the movie may portray sexual activity. (Section 1(D), Chapter IV, 2004 Guidelines of the MTRCB) Moreover, Section 9 of PD 1986 (Creating the MTRCB) makes it unlawful for (a) any person below 18 years of age to enter, to misrepresent or make use of any false evidence about his or her age in order to gain admission into a movie house or theater showing a motion picture classified as "Restricted" or "For Adults Only" by the MTRCB and (b) for any employee of a movie house or theater to sell to, or receive from, another person known to the former to be below 18 years of age any admission ticket to the exhibition of motion pictures classified as "Restricted" or "For Adults Only."

[36] People v. Delantar, G.R. No. 169143, 02 February 2007.

[37] Section 13, Article II, Constitution. The Constitution also provides that the State shall defend "the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." (Section 3, Article XV)

[38] Section 2, Article I, RA 7610.

[39] Id.

[40] Id.

[41] People v. Delantar, *supra* note 36.

[42] People v. Bon, G.R. No. 149199, 28 January 2003, 396 SCRA 506.

[43] Cadua v. Court of Appeals, G.R. No. 123123, 19 August 1999, 312 SCRA 703 citing People v. Simon, 234 SCRA 555 (1994). 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. (emphasis supplied)

Simon ruled:

It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that '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.' We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the 'offense is punished' under that law. (emphasis supplied)

Cadua applied this rule by analogy and extension.

[44] Article 20, Civil Code.

[45] 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).]

[46] Article 2202, Civil Code.

[47] This rule does not apply where, pursuant to the proviso of Section 5(b), Article III of RA 7610, the accused is prosecuted under Article 266-A of the Revised Penal Code and a higher civil indemnity is warranted under the circumstances.

[48] People v. Masagnay, G.R. No. 137364, 10 June 2004, 431 SCRA 572.

[49] Mrs. Ma. Socorro Villafania.

[50] Article 2230, Civil Code. It provides:

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

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