

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS (SECOND DIVISION) AND GASPAR OLAYON, RESPONDENTS.

G.R. No. 171863. August 20, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The then 22-year old herein respondent Gaspar Olayon was charged with violation of Section 10(a) of Republic Act No. 7610 (The Special Protection of Children against Abuse, Exploitation, and Discrimination Act) in two separate Informations filed before the Regional Trial Court (RTC) of Pasig City, of which the then 14-year old AAA was alleged to be the victim.

Criminal Case No. 112571 alleged that

On or about 10:00 a.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.[1] (Underscoring supplied)

Criminal Case No. 112572 alleged that

On or about 2:00 p.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.[2] (Underscoring supplied)

Respondent was also charged for acts of lasciviousness before the RTC of Taguig, docketed as Criminal Case No. 116350, of which the same then 14-year old AAA was alleged to be the victim. The case was transferred to the Pasig City RTC and consolidated with Criminal Case Nos. 112571-72. [3] The three cases were jointly tried.[4]

After trial, Branch 158 of the Pasig City RTC, by Decision of January 15, 2002, acquitted respondent in Criminal Case No. 116350 (for acts of lasciviousness).[5] It, however, convicted respondent of violation of Section 10 (a) of Republic Act (R.A.) No. 7610 in Criminal Case Nos. 112571-72 in this wise:

x x x The accused, Olayon admitted his sexual liaisons with [AAA]. His defenses are: 1) [AAA] is his sweetheart and 2) whatever happened to them in terms of these sexual liaisons, occurred with the consent of [AAA]. Although the testimony of [AAA] denies she consented to the sexual liaisons, the evidence did not support it.

The events that occurred on January 27, 1997 at the house of one Duke Espiritu show that [AAA] went with Olayon to that place voluntarily. First, she was fetched from a tricycle stand and it took them another ride to go to the house of Espiritu. If indeed she was forced to board the tricycle, she could have resisted and shouted for help considering that there were normally people around in a tricycle stand, waiting for rides. If she indeed

resisted and showed any manifestation in this regard, people could have easily helped her in resisting whatever it was Olayon wanted. Second, at the house of Espiritu she could have easily shouted for help since it was located near a road and a pathway. x x x

x x x x

Although the sexual liaisons that occurred on January 27, 1997 were with the consent of [AAA] who at that time was only 14 years of age, Olayon cannot escape responsibility because he took advantage of [AAA's] minority to have these sexual liaisons, even if they were with her consent. Consent is not an accepted defense in this special law. He violated then Republic Act No. 7610, Section 10(a) which provides:

Section 10(a) - Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, shall suffer the penalty of prision mayor in its minimum period.

x x x x[6](Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, Gaspar Olayon y Matubis a.k.a Eric Ramirez is found guilty beyond reasonable doubt for having violated Republic Act No. 7610, Section 10 (a) in Criminal Case Nos. 112571-72 and is sentenced to suffer in prison the penalty of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months of prision mayor for each count. He is acquitted in Criminal Case No. 116350.

Costs against the accused.

SO ORDERED.[7]

On appeal by respondent,[8] the Court of Appeals, answering in the negative the issue of whether consensual sexual intercourse with a minor is classified as child abuse under Section 10 of RA No. 7610, reversed the trial court's decision and acquitted respondent, by Decision[9] of January 13, 2006, reasoning as follows:

"Acts of child abuse" under Section 10 (a) of R.A. 7610 refers to those acts listed under Sec. 3(b) of R.A. 7610, which reads as follows:

Sec. 3. Definition of Terms -

(a) x x x

(b) "Child Abuse" refers to maltreatment, whether habitual or not, of the child which includes any of the following:

1)

Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

2)

Any act or deeds [sic] or words [sic] which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

3)

Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

4)

Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Consensual sexual intercourse between OLAY[O]N and [AAA] does not fall under the "sexual abuse" definition [in Section 5 of R.A. No. 7610] which is a completely distinct and separate offense from "child abuse," [under Section 10] because "sexual abuse" pertains to and is associated with "child prostitution" [as defined in Section 5]. "Sexual abuse" is defined separately under Section 5 of R.A. 7610, which reads as follows:

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.

Moreover, for the act of intercourse between OLAY[O]N and [AAA] to be considered sexual abuse [under Section 5], such intercourse should have occurred due to coercion or intimidation. In the case at bench, neither coercion nor intimidation were found to have been present, consent having been freely given.[10] (Emphasis, italics and underscoring supplied)

Hence, the present petition for certiorari[11] of the People under Rule 65, alleging that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction

x x x IN ACQUITTING RESPONDENT OLAYON OF THE TWO (2) COUNTS OF CHILD ABUSE UNDER SECTION 10(A) OF R.A. 7610 DESPITE THE FACT THAT THE SEXUAL ACTS COMMITTED BY RESPONDENT OLAYON ON THE MINOR PRIVATE COMPLAINANT ARE CLEARLY WITHIN THE TERM "OTHER ACTS OF NEGLECT, ABUSE, CRUELTY OR EXPLOITATION AND OTHER CONDITIONS PREJUDICIAL TO THE CHILD'S DEVELOPMENT" DECLARED PUNISHABLE UNDER SECTION 10(A) OF R.A. 7610.[12] (Emphasis and underscoring supplied)

The record shows that the Pasig City Prosecutor's Office found that the acts of respondent did not amount to rape as they were done with the consent of the 14-year old AAA.[13] Nevertheless, it found the acts constitutive of "violations of [Republic] Act No. 7610," hence, its filing of the above-quoted Informations for violation of Section 10(a).[14]

The Informations alleged that respondent, "with lewd designs did willfully, unlawfully, and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age." [15]

Section 10(a) of R.A. No. 7610 under which respondent was charged in each of the two cases provides:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. --

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prison mayor in its minimum period. (Underscoring supplied),

Section 5(b), upon the other hand, provides:

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

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims 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; (*Italics in the original, emphasis and underscoring supplied*)

As Section 10 refers to acts of child abuse prejudicial to the child's development other than child prostitution and other sexual abuse[16] under Section 5, attempt to commit child prostitution,[17] child trafficking,[18] attempt to commit child trafficking,[19] and obscene publications and indecent shows,[20] the Court of Appeals did not commit grave abuse of discretion in holding that "x x x `sexual abuse' [as defined under Section 5] x x x is a completely distinct and separate offense from `child abuse' [as defined under Section 10]."

Consensual sexual intercourse or even acts of lasciviousness with a minor who is 12 years old or older could constitute a violation of Section 5(b) of R.A. No. 7610. For Section 5(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.[21]

Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, promulgated to implement R.A. No. 7610, defines "sexual abuse" as including "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." (*Underscoring supplied*)

For consensual sexual intercourse or lascivious conduct with a minor, who is not exploited in prostitution, to thus fall within the purview of Section 5(b) of R.A. No. 7610, "persuasion, inducement, enticement or coercion" of the child must be present.

In *People v. Larin*,[22] the information alleged that the therein accused took advantage of his authority, influence, and moral ascendancy as trainer/swimming instructor of the minor victim[23] which the Court found constituted "psychological coercion." [24] In convicting the therein accused for lascivious acts, the Court held:

It must be noted that [Republic Act No. 7610] 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.[25] (*Emphasis and underscoring supplied*)

And even in *Malto v. People*[26] wherein the accused was convicted for violation of Section 5(b) of R.A. No. 7610, the information alleged, and the prosecution proved, that the therein accused who was the minor's professor obtained the minor's consent by taking advantage of his relationship and moral ascendancy to exert influence on her.

In the case at bar, even if respondent were charged under Section 5(b), instead of Section 10(a), respondent would just the same have been acquitted as there was no allegation that an element of the offense - coercion or influence or intimidation - attended its commission.

In light of the foregoing disquisition, the petition is DENIED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, p. 1.

[2] Id. at 17.

[3] Id. at 292.

[4] Id. at 179.

[5] Id. at 391-397.

[6] Id. at 395-396.

[7] Id. at 397.

[8] Id. at 407.

[9] Penned by Court of Appeals Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.. Rollo, pp. 33-39.

[10] Rollo, pp. 38-39.

[11] Id. at 2-31.

[12] Id. at 16.

[13] Resolution dated June 14, 1997, records, pp. 4-15.

[14] Id. at 13-14.

[15] Id. at 1, 17.

[16] Section 5, Republic Act No. 7610.

[17] Section 6, Republic Act No. 7610.

[18] Id., Sec. 7

[19] Id., Sec. 8.

[20] Id., Sec. 9.

[21] Vide *People v. Larin*, 357 Phil. 987, 998 (1998); *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 654-657.

[22] *Supra*.

[23] Id. at 1000.

[24] Id. at 1006-1008.

[25] Id. at 998.

[26] Vide note 21, *Malto v. People*.

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