

NICANOR PINLAC Y RESOLME, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 197458. November 11, 2015

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition filed under Rule 45 of the Rules of Court assails the March 29, 2011 Decision[1] of the Court of Appeals (CA) which affirmed with modification the ruling[2] of the Regional Trial Court (RTC) of Olongapo City, Branch 72, finding petitioner Nicanor Pinlac (petitioner) guilty of violation of Section 5(b), Article III of Republic Act (RA) No. 7610 (otherwise known as the Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act), which 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 subjected to other sexual abuse: x x x

The prosecution established that on the evening of March 9, 1997, "AAA,"[3] a 14-year old boy, went with petitioner to the Kale Beach Resort in Subic, Olongapo City for initiation rites in a fraternity founded by the latter. After succumbing to petitioner's "persuasion" to drink alcohol and smoke marijuana, "AAA" lost control of himself ("nawala ako sa sarili"). While in a daze, stupor, or near total unconsciousness, petitioner isolated "AAA" from his companions and other fraternity recruits, forcibly disrobed "AAA", and performed oral sex on him by sucking his penis until he ejaculated. The following day or on March 10, 1997, petitioner again performed oral sex on "AAA" after convincing him anew to ingest alcohol and to smoke marijuana.

Petitioner denied the charges against him. He disclaimed that he was at the Kale Beach Resort in Subic, Olongapo City on March 9, 1997; that "AAA" underwent initiation to join a fraternity; that he isolated "AAA" from his companions and other fraternity recruits; that he forcibly disrobed "AAA" and performed oral sex on him; that he sucked "AAA's" penis until "AAA" ejaculated; and that on March 10, 1997, he again performed oral sex on "AAA" after convincing the latter anew to ingest alcohol and to smoke marijuana. He claimed that he was a candidate for barangay kagawad at the time and that he was too pre-occupied then campaigning for that post, so that he could find no time at all for some other activities, including the commission of the alleged acts of lasciviousness imputed to him. He insisted that this case was instigated by "BBB," "AAA's" mother, who was also running for the position of barangay kagawad.

Ruling of the Regional Trial Court

The RTC did not lend credence to the version of petitioner. In a Decision dated January 6, 2010, it found petitioner guilty beyond reasonable doubt of having violated Section 5(b), Article III of RA 7610, thus:

On the basis of the foregoing evidence presented, the Court finds and so holds that the prosecution has presented the required evidence to prove the guilt of the accused beyond reasonable doubt [of] [violation of Section 05 (b) of Article III of Republic Act 7610.

Prosecution evidence would show that on March 9, 1997 accused brought the victim [AAA,] a minor, together with other persons to Kale Beach Resort located in Subic at around 7:00 o'clock in the evening as part of their initiation as x x x recruits of the fraternity founded by the accused. At the said place, the accused let [AAA] take alcohol, marijuana, and drugs as part of their initiation. After taking drugs and marijuana the victim lost control of himself (nawala sa sarili) because he was "high["] at that time. Seeing the situation of the victim, the accused asked their companions to leave the place leaving him (accused) and the victim in the said place. While the victim was [in that] condition, and taking advantage of such condition of the victim, the accused sucked his penis. The following day, particularly on March 10, 1997, the accused did the same thing to the victim, that is, sucking again the minor victim's penis while lying on the sand. Before the accused sucked his penis, the accused [first] took off x x x his shirt and pants. The victim was [then still] drunk and "high" on drugs.

It was very clear that the prosecution was able to present a complete picture detailing how the accused sexually abused the minor victim by sucking his penis [on] the night of March 9, 1997 and also on the following day while the victim was under the influence of liquor and dangerous drugs.

On the other hand, accused[']s defense is merely denial. He denied having in [his] company x x x the victim on said dates. His denial was also corroborated by a witness who happened to be his friend. The court is not persuaded by the version of the accused insinuating that the filing of the instant case was concocted and instigated by the mother of the minor victim and that the victim had asked forgiveness for the same. For one, it is very apparent that the accused was just concocting [a] story to exculpate himself. Accused stated that there was no occasion on said dates and prior thereto that he was with the victim because he was always with Leslie Enciro who always accompanied him in his campaign sorties as a candidate for barangay kagawad. This is, however, hard to believe. The testimony of Leslie Enciro that there was no time that she was not [in] the company of the accused on said dates due to their campaign activities even made the defense more unreliable. Denial and alibi are the weakest defense in criminal cases. (People vs. Bulan 459 SCRA 550). Settled is the rule that denial is essentially the weakest defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness (People vs. Mendoza 450 SCRA 328).

x x x x

Section 5(b) of Republic Act 7610 provides:

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 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 subjected to other sexual abuse: x x x

Undoubtedly, the accused's act of sucking the penis of the minor victim amounts to lascivious conduct. Hence,

there is no doubt that the accused is guilty of the crime charged against him.[4]

Thereafter, the RTC disposed decretally as follows -

WHEREFORE, in view of the foregoing considerations, the Court finds the accused NICANOR PINLAC Y RESOLME GUILTY beyond reasonable doubt for Violation of Section 5 (b) of Republic Act 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and hereby sentences him to suffer the indeterminate imprisonment of TWELVE YEARS (12) YEARS and ONE (1) DAY of Reclusion Temporal as the minimum to FIFTEEN (15) YEARS SIX MONTHS and TWENTY DAYS of Reclusion Temporal as the maximum, and for the accused to pay the sum of THIRTY THOUSAND PESOS (P30,000.00) as moral damages.

SO ORDERED.[5]

Proceedings before the Court of Appeals

On appeal, petitioner challenged "AAA's" credibility by citing alleged inconsistencies in his testimony vis-a-vis the testimony of his mother, "BBB." He likewise questioned why it took "AAA" 10 months to report the crime to the authorities. He also asserted that the judge who penned the Decision was not the judge[6] who tried and heard the case, hence, did not allegedly have the opportunity to personally observe the deportment and demeanor of the prosecution witnesses who gave the testimonies that led to his conviction.

Dismissing petitioner's arguments, the CA held that the government's case was erected upon actual, incontrovertible facts which proved beyond reasonable doubt that petitioner did in fact commit the crime set forth under Section 5(b), Article III of RA 7610 i.e., performing lascivious acts upon a child exploited in prostitution or subjected to sexual abuse, and that the child-victim, in this case "AAA" as clearly and specifically spelled out in the trial court's discussion, was below 18 years of age.

The CA stressed that -

In the instant case, the act of accused-appellant in disrobing the minor AAA, who was then under the influence of illegal drugs and liquor after he was made to take them by accused-appellant, and thereafter, sucking AAA's penis, is clearly a lascivious conduct performed by accused-appellant on AAA.

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. The law covers not only a situation in which a child, through coercion or intimidation, engages in any lascivious conduct. The very title of Section 5, Article III (Child prostitution and Other Sexual Abuse) of RA 7610 shows that it applies not only to a child subjected to prostitution but also to a child subjected to other sexual abuse. A child is deemed subjected to "other sexual abuse" when he or she indulges in lascivious conduct under the coercion or influence of any adult. In the instant case, accused-appellant influenced minor AAA to go to Sta. Cruz, Zambales; made him to take' drugs and drink liquor; and when he was already high and out of control, accused-appellant performed lascivious conduct on AAA.

When the said lascivious conduct was performed on 09 and 10 March 1997 by accused-appellant on AAA, the latter was fourteen years old. As indicated in his Certificate of Live Birth (Exhibit "A"), AAA was born on 21 August 1982. During the pre-trial, the defense stipulated on AAA's birth certificate (Exhibit "A"). BBB, the mother of AAA, also testified that AAA was born on 21 August 1982. AAA further testified that he was born on 21 August 1982.[7]

The CA gave short shrift to petitioner's pale and stale alibi and denial of the sexual abuse charges, appropriately characterizing these as "weak and self-serving." The CA held such a characterization both telling and compelling

in light of "AAA's" positive and categorical assertions graphically detailing the lewd and lascivious acts perpetrated by the petitioner.

Regarding "AAA's" alleged delay of 10 months in reporting the incident to the authorities, the CA held that there is no behavioral norm that victims of sexual abuse follow in respect to the time-frame for making such report, each case being determined by its peculiar milieu and setting; and that assuming for argument's sake that there was indeed some delay in this case, such delay should not be construed as implying that the accusation might not have been true at all especially in light of the fact that the victim was a minor.[8]

Anent petitioner's contention that the judge who wrote the Decision was not the judge who presided over the trial and did not have the opportunity to personally observe the deportment and demeanor of the witnesses and hence was not in a position to calibrate the credibility of these witnesses, the CA ruled that -

x x x The fact that the judge who heard the evidence was not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not per se render his decision void. The validity of a decision is not necessarily impaired by the fact that its ponente only took over from a colleague who had earlier presided at the trial. x x x[9]

On March 29, 2011, the CA rendered judgment as follows:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 06 January 2010 of the Regional Trial Court of Olongapo City, Branch 72, in Criminal Case No. 79-1999 finding accused-appellant Nicanor Pinlac y Resolme guilty beyond reasonable [doubt] for violation of Section 5 (b), Article III of Republic Act No. 7610, is AFFIRMED with MODIFICATION in that, accused-appellant is hereby sentenced to suffer the indeterminate penalty of imprisonment of 8 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum, and to pay a fine of P15,000.00; and for him to pay the victim AAA the amounts of P20,000.00 as civil indemnity, and P15,000.00 as moral damages. Costs against accused-appellant.

SO ORDERED.[10]

Hence, this Petition raising the sole issue of:

Whether x x x the Court of Appeals erred in giving credence to the testimony of "AAA." [11]

Our Ruling

Petitioner claims that the CA erred in its "findings of facts." [12] He avers that the factual finding of the CA that the crime was committed at Kale Beach Resort, Sta. Cruz, Zambales was erroneous; he posits that Kale Beach Resort is in Olongapo City and not Sta. Cruz which is another local government unit. [13] Petitioner next insists that the appellate court erred in its assessment of "AAA's" credibility. [14]

The Petition lacks merit.

It must be stressed that only questions of law may be raised in a petition for review filed under Rule 45 of the Rules of Court. The issue raised by petitioner as well as his arguments pertains to factual findings which are not within the ambit of a petition for review. Our ruling in *Ortega v. People* [15] is pertinent: "The petition being a petition for review, the jurisdiction of this Court is confined to reviewing questions of law." [16]

In any event, we find no cogent reason to set aside the findings of the trial court which were affirmed by the CA. After a thorough review of the records of this case, we find that the CA Decision squares with the evidence and with the law as well as with the jurisprudential doctrines laid down by this Court. Both the RTC of Olongapo City, Branch 72 and the CA reached the correct conclusion that petitioner was indeed guilty beyond reasonable

doubt of having violated Section 5(b), Article III of RA 7610. We find, as did the RTC and the CA, that the State had satisfactorily established the following elements constitutive of the offense charged: "(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 sexual abuse; and (3) the child, whether male or female, is below 18 years of age." [17] In this case "AAA" was 14 years and eight months old when he was subjected to sexual abuse by the herein petitioner on March 9 and 10, 1997. This Court thus finds no reversible error in the assailed Decision.

Penalties and Awards of Damages

Under Section 5, Article III of RA 7610, the penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed on those who commit acts of lasciviousness with a child exploited in prostitution or subjected to other sexual abuse. Notwithstanding the fact that RA 7610 is a special law, the petitioner in this case may enjoy the benefits of the Indeterminate Sentence Law. [18] In applying the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor in its medium period to reclusion temporal in its minimum period. Thus, the CA correctly imposed the indeterminate sentence of eight (8) years and one (1) day of prision mayor as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum.

The CA likewise correctly ordered petitioner to pay "AAA" the following amounts: P20,000.00 in the concept of civil indemnity, P15,000.00 as moral damages, and a fine of P15,000.00 pursuant to Section 31(f), Article XII of RA 7610. [19] In addition, this Court also orders petitioner to pay "AAA" P15,000.00 by way of exemplary damages. [20]

Finally, we note that the RTC, in an Order [21] dated January 21, 2010, allowed petitioner to enjoy his provisional liberty by posting an appeal bond thru Monarch Insurance Company, Inc. in the amount of P80,000.00 under Bond No. JCR(2) 1004159. [22] In conformity with this Decision, the bondsman, Monarch Insurance Company, Inc. is directed to surrender petitioner to the court of origin. In turn, the RTC of Olongapo City, Branch 72 is directed to order the transmittal of petitioner to the Bureau of Corrections.

WHEREFORE, the Petition is DENIED. The Decision dated March 29, 2011 of the Court of Appeals in CA-GR. CR. No. 33169 finding petitioner Nicanor Pinlac y Resolme guilty beyond reasonable doubt of having violated Section 5(b), Article III of Republic Act No. 7610, and sentencing him to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, and to pay the victim "AAA" the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, and P15,000.00 by way of fine is AFFIRMED, subject to the MODIFICATIONS that petitioner is also ordered to pay "AAA" P15,000.00 in the concept of exemplary damages. All damages awarded shall earn interest at the rate of 6% per annum from finality of this Decision until fully paid.

The bondsman, Monarch Insurance Company, Inc. is DIRECTED to surrender the person of petitioner to the Regional Trial Court of Olongapo City, Branch 72 within 10 days from notice and to make a REPORT of the fact of surrender to this Court, also within 10 days. The Regional Trial Court of Olongapo City, Branch 72 is DIRECTED to order or cause the transfer of petitioner to the Bureau of Corrections within 10 days from the time petitioner was turned over, and to make a report to this Court of such transfer, also within 10 days. Finally, the Bureau of Corrections is DIRECTED to make a report within 10 days of petitioner's confinement thereat.

SO ORDERED.

Carpio, (Chairperson), Reyes, [*] Perlas-Bernabe, [**] and Leonen, JJ., concur.

[*] Per Special Order No. 2274 dated November 10, 2015.

[**] Per Special Order No. 2271 dated November 9, 2015.

[1] Rollo, pp. 36-62; permed by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias.

[2] Id. at 27-34; penned by Judge Richard A. Paradeza.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her/his immediate family members, is withheld and fictitious initials instead are used to represent her/him, both to protect her/his privacy. [People v. Cabalquinto, 533 Phil. 703 (2006)]

[4] Rollo, pp. 32-34.

[5] Id. at 34.

[6] This case was originally tried by Judge Eliodoro G. Ubiadas, and at a certain stage of the proceedings by Judge Josefina D. Farrales.

[7] Rollo, p. 53.

[8] People v. Llanas, Jr., 636 Phil. 611, 623 (2010).

[9] Rollo, p. 56.

[10] Id. at 59.

[11] Id. at 14.

[12] Id. at 15.

[13] Id. at 16.

[14] Id. at 17-18.

[15] 595 Phil. 1103 (2008).

[16] Id. at 1113.

[17] People v. Fragante, 657 Phil. 566, 584 (2011).

[18] See People v. Leonardo, 638 Phil. 161, 198 (2010).

[19] Section 31. Common Penal Provisions.

x x x x

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[20] People v. Rayon, Sr., G.R. No. 194236, January 30, 2013, 689 SCRA 745, 761.

[21] Records, p. 197.

[22] Id. at 200.

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