

TWENTY-SECOND DIVISION

[CA-G.R. CR NO. 01013-MIN, February 10, 2015]

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

D E C I S I O N

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