

THIRD DIVISION

[G.R. No. 235610, September 16, 2020]

**RODAN A. BANGAYAN, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CARANDANG, J.:

This is a Petition for Review on *Certiorari*^[1] assailing the Decision^[2] dated June 28, 2017 of the Court of Appeals finding Rodan Bangayan y Alcaide (Bangayan) guilty beyond reasonable doubt of violation of Section 5(b), Article III of Republic Act No. (R.A) 7610, the dispositive portion of which reads:

FOR THE STATED REASONS, the appeal is **DENIED**. The assailed Decision of the Regional Trial Court is **AFFIRMED with MODIFICATION** that the award of damages is increased to Php 75,000.00 each as civil indemnity, moral damages and exemplary damages.

SO ORDERED.^[3]

Antecedents

The Information^[4] against Bangayan alleges:

That sometime in the month of January, [sic] 2012 at Brgy. San Ramos, Municipality of Nagtipunan, Province of Quirino, Philippines,. and within the jurisdiction of this Honorable Court, the above-named Accused, with intent to abuse, harass and degrade AAA^[5], a twelve (12) year old minor at that time, and gratify the sexual desire of said accused, the latter did then and there, willfully, unlawfully and feloniously, had sexual intercourse with said AAA, in her dwelling against her will and consent.^[6]

During trial, the prosecution presented three (3) witnesses, namely: (1) PO2 Rosalita Manilao (PO2 Manilao); (2) BBB;^[7] and (3) Dr. Luis Villar (Dr. Villar). The following documents were likewise submitted in evidence: (1) Malaya at Kusang Loob na Salaysay of AAA;^[8] (2) Malaya at Kusang Loob na Salaysay ni BBB;^[9] (3) Medical Certificate issued by Dr. Villar;^[10] and (4) Certificate of Live Birth of AAA.^[11]

According to the prosecution's witnesses, on January 5, 2012, AAA's brother, BBB, upon arriving home from the farm, saw Bangayan laying on top of AAA. Bangayan

and AAA were both naked from the waist down.^[12] BBB shouted at Bangayan and told him that he would report what he did to AAA but the latter allegedly threatened to kill him if he tries to tell anyone.^[13] AAA was born on December 14, 1999 and was more than 12 years old at the time of the incident.^[14]

On April 24, 2012, AAA, accompanied by her aunt, CCC,^[15] reported the incident to the police.^[16] On the same date, Dr. Villar examined AAA. The pertinent portion of the Medico-Legal Report^[17] revealed the following:

Physical Examination Findings:

1. Formed and developed areolar complexes.
 2. Developed labia majora,
 3. No recent hymenal injury but the edges are smooth and the opening approximates the size of the index finger of the examiner.
- ^[18]

When Dr. Villar testified, he confirmed that AAA admitted to him that she had sexual intercourse with Bangayan on several occasions even prior to January 5, 2012.^[19] He explained that the "opening" noted during his examination, as stated in item no. 3 of the physical findings, is not a normal occurrence. For a young patient like AAA, it should have been closed. He further testified that AAA was already pregnant when she was examined because her fundus is 15 centimeters in height and the presence of 151 beats per minute at the last lower quadrant of her abdomen was observed.^[20] These indicate that, at the time of the examination, she was two (2) to three (3) months pregnant, which could be compatible with the claim that she had sexual intercourse with Bangayan in January 2012, the date stated in the information, or even before said date.^[21]

On October 2, 2012, AAA gave birth to a baby boy.^[22]

Notably, during arraignment on September 4, 2014, the counsel of Bangayan manifested that AAA, who was then 14 years old, executed an Affidavit of Desistance^[23] stating that she has decided not to continue the case against Bangayan because they "are living [together] as husband and wife and was blessed with a healthy baby boy."^[24] Thus, the Regional Trial Court (RTC) ordered that the Office of the Municipal Social Welfare Development Officer conduct a case study on AAA.^[25]

On May 4, 2015, their second child was born.^[26]

Ruling of the Regional Trial Court

After trial, the RTC of Maddela, Quirino, Branch 38 rendered its Decision^[27] dated April 11, 2016, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered finding RODAN BANGAYAN y ALCAIDE GUILTY beyond reasonable doubt of violation of Section 5 (b), Article

III of Republic Act 7610 and sentences him to an imprisonment of **14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum**. However, his preventive imprisonment shall be fully credited to him in the service of sentence pursuant to Article 29 of the Revised Penal Code, as amended.

Accused is ordered to pay [AAA] the amount of 1] **PHP 50,000.00 as civil indemnity** with interest of 6% per annum from finality of the decision until fully paid.

With the category of the accused as a national prisoner, the Clerk of Court is directed to prepare the corresponding mittimus or commitment order for his immediate transfer to the Bureau of Corrections and Penology, Muntinlupa City, pursuant to SC Circular No. 4- 92-A dated April 20, 1992.

SO ORDERED.^[28] (Emphasis in the original)

In convicting Bangayan, the RTC found that the prosecution was able to establish the elements of Section 5(b), Article III of R.A. 7610. Bangayan had sexual intercourse with AAA who was born on December 14, 1999 and was 12 years, one (1) month, and 14 days old at the time of the incident.^[29] For the RTC, the moral ascendancy or influence of Bangayan over AAA is beyond question due to their age gap of 15 years, and the fact that he is her brother-in-law, he being the brother of the husband of her older sister.^[30] The RTC ruled that it will not matter if AAA consented to her defloration because as a rule, the submissiveness or consent of the child under the influence of an adult is not a defense in sexual abuse.^[31] The RTC also considered the Affidavit of Desistance AAA executed as hearsay evidence because she did not testify regarding its execution. The RTC added that an Affidavit of Desistance is like an Affidavit of Recantation which the court does not look with favor.^[32]

On appeal^[33] Bangayan impugned the findings of the RTC and argued that the trial court gravely erred in finding that the defense failed to prove by clear and convincing evidence that he is not criminally liable for the act complained of.^[34] Bangayan argued that he had proven, by clear and convincing evidence, that he is in a relationship with AAA and that the act complained of was consensual.^[35] Bangayan maintained that their persisting relationship should be taken into account and be considered an absolatory cause.^[36] He averred that this is similar to Article 266-C of R.A. 8353, or the Anti-Rape Law of 1997, on the effect of pardon where the subsequent valid marriage of the offended party to the offender shall extinguish the criminal action or the penalty imposed. While there is no valid marriage to speak of yet, they were clearly living together as husband and wife as evidenced by the birth of their second child. Bangayan asserted that it would be in the best interest of their growing family to acquit him and allow him to help with rearing their children.^[37]

Ruling of the Court of Appeal

In a Decision^[38] dated June 28, 2017, the Court of Appeals denied Bangayan's appeal and affirmed with modification his conviction. The award of civil indemnity, moral damages, and exemplary damages were each increased to P75,000.00.^[39]

In affirming Bangayan's conviction, the Court of Appeals held that the elements of sexual abuse under Section 5, Article III of R.A. 7610 were established as follows: (1) BBB positively identified Bangayan as the person who had sexual intercourse with his minor sister and AAA was confirmed to be 2-3 months pregnant at the time of her medical examination; (2) AAA was subjected to sexual abuse under the coercion and influence of Bangayan because he was already 27 years old or 15 years her senior, thus making her vulnerable to the cajolery and deception of adults; and (3) It was proven that, at the time of the incident, she was only 12 years and one (1) month old – a minor not capable of fully understanding or knowing the nature or import of her actions.^[40]

The Court of Appeals emphasized that consent of the child is immaterial in cases involving violation of Section 5, Article III of R.A. 7610. It was held that the Sweetheart Theory is a defense in acts of lasciviousness and rape that are felonies against or without the consent of the victim. It operates on the theory that the sexual act was consensual. However, for purposes of sexual intercourse and lascivious conduct in child abuse cases under R.A. 7610, the Court of Appeals ruled that the Sweetheart Theory defense is unacceptable.

Petitioner's Motion for Reconsideration^[41] was denied in a Resolution^[42] dated October 24, 2017. Hence, this petition for review.

Bangayan filed the instant Petition for Review^[43] on January 5, 2018, assailing the Decision of the Court of Appeals dated June 28, 2017 and its subsequent Resolution dated October 24, 2017. He insists that he was able to prove by clear and convincing evidence that he should not be held criminally liable for the act complained of because they were in a relationship at the time of its commission.^[44] For Bangayan, the fact that they were allowed to be together after the alleged sexual -abuse and that AAA conceived their second child right after the complaint was filed in court negate the claim that AAA was unwilling.^[45] Bangayan posits that his continuing relationship with AAA should be considered an absolatory cause.^[46] Invoking the best interest of their family, Bangayan prays that he be acquitted and be allowed to help raise their family.

Meanwhile, the People of the Philippines, through the Office of the Solicitor General, manifested that it is no longer filing a Comment and is merely adopting its Brief for the Plaintiff-Appellee previously filed with the Court of Appeals.^[47]

Issue

The issue to be resolved in this case is whether Bangayan may use as a defense the consent of AAA and his on-going relationship with her which had already produced two children to exonerate himself from the charge of violation of Section 5(b), Article III of R.A. 7610.

Ruling of the Court

The petition is meritorious. The records of this case show that the prosecution failed to establish all the elements of sexual abuse contemplated under Section 5(b), Article III of R.A. 7610^[48] which 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 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 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 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;^[49]

The following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female is below eighteen (18) years of age.^[50] This paragraph "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