

SECOND DIVISION

**[G.R. No. 169143 [Formerly G.R. No. 138328],
February 02, 2007]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SIMPLICIO
DELANTAR, APPELLANT.**

D E C I S I O N

TINGA, J.:

The forfeiture of the right to live free in society is the due requital for peddling a child to sexual servitude.

We begin with the antecedents.

On 27 August 1996, an information for violation of Section 5, Article III of Republic Act (R.A.) No. 7610^[1] was filed against appellant Simplicio Delantar y Redondo. Docketed as Criminal Case No. 96-9175^[2] of the Regional Trial Court (RTC) of Pasay City, the information was amended on 3 September 1996.^[3] The accusatory portion of the Amended Information reads:

That sometime and during the period from 1994 to August 1996, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, SIMPLICIO DELANTAR Y REDONDO, through coercion and influence, did then and there wilfully, unlawfully and feloniously promote, facilitate and induce [AAA],^[4] a female child below 12 years of age, to indulge in sexual intercourse and lascivious conduct for money, profit and other consideration.

Contrary to [I]aw.^[5]

On 4 September 1996, appellant, assisted by counsel *de parte*, entered a plea of not guilty and informed the court that he did not want a pre-trial.^[6] An attempt to quash the information was made but the same proved futile.^[7] Thereafter, trial proceeded in due course.

The prosecution presented the following as witnesses: (1) AAA,^[8] the complainant; (2) Dr. Emmanuel Aranas^[9] of the PNP Crime Laboratory; and (3) Carolina Buan^[10] of the Philippine Long Distance Telephone Co. On 31 January 1997, the prosecution submitted its Formal Offer of Evidence.^[11]

Trial thereafter continued with the defense presenting the following as witnesses: (1) Simplicio Delantar;^[12] (2) Angelito Entruzo;^[13] and (3) Eduardo Juarez, Jr.^[14] On 20 August 1998, the defense rested its case.

On 25 February 1999, the RTC-Pasay City, Branch 109, rendered a Decision,^[15] finding appellant guilty beyond reasonable doubt of two counts of violation of Section 5(a), paragraphs 1, 4 and 5 of Article III of R.A. No. 7610. The trial court arrived at the following principal findings and conclusions, thus:

From all the foregoing, the Court opines that the prosecution has proven the guilt of the accused Simplicio Delantar y Redondo beyond reasonable doubt when he delivered his daughter [AAA] to an Arab national by the name of Mr. Hammond from their house at 2165-A P. Burgos St., Pasay City sometime in 1994 selling her in prostitution to the said [A]rab who committed acts of lasciviousness on her person by kissing her on her lips, her breast, her private parts and even rubbing his penis against her private parts which is a clear violation of Section 5(a), paragraph 1, 4, and 5 [of] Article III of R.A. [No.] 7610 and hereby sentences him of *Reclusion Perpetua* and to pay civil liability to the victim in the amount of P60,000.00.

Likewise, the Court finds accused guilty beyond reasonable doubt for violation of Section 5(a) paragraph 1, 4, and 5 of Article III of R.A. [No.] 7610 when the accused Simplicio Delantar pimped and delivered the complainant, an eleven (11) year old minor to Congressman Romeo Jalosjos of the First District of Zamboanga del Norte at the Ritz Tower in Makati where the said Congressman for eight (8) times committed acts of lasciviousness on her person when he kissed her on her lips, private organ and even raped her. That all these times, the accused brought his child from their residence at 2165-A P. Burgos St., Pasay City and [the Court] hereby sentences him to *Reclusion Perpetua* and to pay the victim civil liability in the amount of P60,000.00.

SO ORDERED.^[16]

Appellant interposed an appeal with this Court. After submission of the parties' briefs, on 20 September 2004, this Court through the Second Division then transferred the appeal to the Court of Appeals for appropriate action and disposition.^[17] On 31 May 2005, the Court of Appeals rendered a Decision^[18] affirming with modification the trial court's Decision. The appellate court ruled in the dispositive portion, thus:

WHEREFORE, the appealed decision, finding appellant Simplicio Delantar guilty beyond reasonable doubt of Violation of Section 5(a), paragraph[s] 1, 4 and 5, Article III of R.A. No. 7610, for one count only, is **AFFIRMED** with the **MODIFICATION** that he is also sentenced to pay complainant [AAA] the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

Costs against appellant.

SO ORDERED.^[19]

On 23 June 2005, appellant, through counsel, filed a Notice of Appeal from the Decision of the Court of Appeals to this Court.^[20] On 21 July 2005, the Court of Appeals gave due course to the Notice of Appeal and elevated the records of the

case to this Court for purposes of the appeal.^[21]

In his Brief,^[22] appellant assigns the following errors committed by the trial court:

I

THE TRIAL COURT ERRED IN CONVICTING [APPELLANT] OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING [APPELLANT] OF TWO (2) VIOLATIONS OF SECTION 5, ARTICLE III, R.A. [NO.] 7610 DESPITE THE FACT THAT ONLY A SINGLE INFORMATION WAS FILED BY THE 2ND ASSISTANT CITY PROSECUTOR OF PASAY CITY.

III

THE TRIAL COURT ERRED IN IMPOSING THE PENALTY FOR THE CRIME CHARGED IN ITS MAXIMUM PERIOD (*RECLUSION PERPETUA*) WHEN THERE IS NO SHOWING IN ITS DECISION [OF] THE ATTENDANCE OF A QUALIFYING CIRCUMSTANCE WHICH WOULD WARRANT THE IMPOSITION OF THE MAXIMUM PENALTY.^[23]

Of the issues raised by appellant in his brief, we only have to resolve the first and the third issues since the Court of Appeals has already upheld the second contention which is that he should only be convicted of one violation^[24] and also since a reversal of the ruling would constitute double jeopardy. In any event, we fully agree with the appellate court's adjudication.^[25]

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
 - (5) Giving monetary consideration, goods or other pecuniary benefit to a child with the 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

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.^[26]

There is no doubt, drawing from the evidence, that AAA was a child who was exploited in prostitution as defined in Section 5, Article III quoted above. The law punishes not only the person who commits the acts of sexual intercourse or lascivious conduct with the child but also those who engage in or promote, facilitate or induce child prostitution. Appellant is one such person.

The testimony of AAA shows that appellant procured her as a child prostitute for at least two clients: the first, an Arab national named Mr. Hammond and the second, then Congressman Romeo Jalosjos.

AAA testified that she was brought to the first client at least eleven (11) times between the period 1994 to June 1996.^[27] On each of these occasions, appellant and AAA would go to Ralph Anthony Suites in Manila where the client stayed. Appellant would tell AAA that they had to go to the client because they needed to pay some obligations,^[28] they had to settle something,^[29] they had to pay the electric bill,^[30] or they had to ask for money for AAA's tuition fees.^[31] Upon their arrival at Ralph Anthony Suites, appellant would talk to the client for a few minutes and then leave AAA alone with the client. Money was usually given by the client to appellant who would leave on the pretext of buying something from Robinsons, a nearby mall. When he returned, usually after two (2) to four (4) hours, appellant would have something for AAA such as food and clothes.

Once left alone with AAA, the client would perform lascivious acts on AAA. With the sordid details spread all over the transcript of AAA's testimony as she gave it before the trial court, the recurrent salient points of her harrowing experience revolved around the client's kissing her, touching her breasts, embracing her, and inserting his finger in her private parts. [32]

On one occasion, the client even tried to insert his penis inside AAA's vagina but the latter pleaded for him not to. The client thereafter rubbed his penis on AAA's vagina. On the same occasion, the client made AAA sit on him near his groin while his penis was fully erect. The client then made pumping motions while his organ was touching AAA's vagina until "his penis got wet." [33]

After their first visit to the client, AAA told appellant that she did not want to go back because the client was "bastos." Appellant promised her that they would no longer go back but the promise was broken as they went back a few more times. [34] AAA continued to complain to appellant about the acts committed on her by the first client but appellant would dismiss the same saying that if the client's private part is not inserted in AAA's private part, there is nothing wrong about it, [35] or that since there was no penetration, there was nothing wrong about it. [36]

Sometime in June 1996, AAA told appellant that she did not want to go to the client anymore. On that day, AAA and appellant went to Harrison Plaza where appellant instructed AAA to call the client and tell the latter that if he would not give them P5000, they would not go there anymore. AAA complied and told the client exactly what appellant had told her. The client responded by saying that he would only give them P5,000.00 if AAA would have sexual intercourse with him. They did not go to this client anymore. [37]

Appellant thereafter started to bring AAA to the second client. As with the first client, appellant would tell AAA that they had to go to the second client because they had obligations to pay such as the telephone bill, electric bill, rent, and tuition fees. [38] During each of these visits, the

client would give AAA money ranging from P2,000.00 to P10,000.00. [39] The details of what transpired when AAA was left alone with the second client were vividly recounted in *People v. Jalosjos*, [40] where the second client was convicted of two (2) counts of rape and six (6) counts of acts of lasciviousness, all committed against AAA on various dates. In the case, the Court found that it was appellant who brought AAA to said client. The Court in that case even referred to appellant as the second client's "*suking bugaw*." [41]

From her testimony, it could easily be gleaned that AAA did not consent to the acts of lasciviousness and the sexual intercourse. After their initial visit to the first client, AAA pointedly told appellant that she did not want to go back because the client was "bastos" but appellant did not mind this and continued to bring AAA to the first client still. [42] AAA persisted in complaining but appellant would dismiss the remonstrations, saying that if the client's private parts are not inserted in AAA's private parts, there is nothing wrong about it, [43] or that since there was no penetration, there was nothing wrong about it. [44]