

FIRST DIVISION

[G.R. No. 128777, October 07, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO LARIN Y BONDAD, ACCUSED-APPELLANT.**

DECISION

PANGANIBAN, J.:

Republic Act No. 7610 penalizes child prostitution and other sexual abuses. It was enacted in consonance with the policy of the State to "provide special protection to children from all forms of abuse." The Court thus applies this law to the present case and grants the victim the full vindication and protection that RA 7610 accords to this helpless sector of society.

Statement of the Case

Ernesto Larin seeks reversal of the Decision^[1] of the Regional Trial Court of Calamba, Laguna, Branch 34, which found him guilty of violating Section 5(b) of RA 7610.^[2] The decretal portion of the appealed Decision reads:

"ACCORDINGLY, this Court finds accused Ernesto Larin y Bondad GUILTY beyond reasonable doubt of the crime of violation of Section 5(b) of Republic Act No. 7610 and hereby sentences him to suffer the penalty of [r]eclusion [p]erpetua with all its attendant accessory penalty and to indemnify AAA [in] the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS as moral damages.

"Pursuant to Supreme Court Administrative Circular No. 2-92 dated January 20, 1992, the bail bond posted by the accused for his provisional liberty is hereby cancelled and accused is ordered confined at the National Penitentiary pending resolution of his appeal."

State Prosecutor Lilian Doris S. Alejo accused herein appellant of violating Section 5(b), in relation to Section 31(e) of RA 7610, in the following Information^[3] dated May 27, 1996:

"The undersigned, upon the prior sworn complaint of the offended party, fourteen (14) year old AAA, assisted by her parents [REDACTED], accuses ERNESTO LARIN Y BONDAD of violation of Sec. 5(b) in relation to Sec. 31(e) of RA 7610 (An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes) committed as follows:

"That on or about April 17, 1996, inside the ladies' shower room located at the Baker's Hall, UP Los Baños, Laguna, and within the jurisdiction of

this Honorable Court, the above-named accused, who is a public employee of the U.P. Los Baños, by taking advantage of his authority, influence and moral ascendancy as trainer/swimming instructor of minor AAA, and through moral compulsion, did then and there, willfully, unlawfully and feloniously, commit lascivious conduct on the person of said minor AAA by shaving her pubic hair, performing the lewd act of cunnilingus on her, licking her breasts, forcing her to hold and squeeze his penis; and forcibly kissing her on the cheeks and lips the day after, against her will and consent, to her damage and prejudice."^[4]

When arraigned on July 17, 1996,^[5] the appellant, with the assistance of Counsel *de Parte* Cayetano T. Santos, entered a plea of not guilty and thereafter waived the pretrial proceedings. After trial in due course, the court a quo rendered its assailed Decision.

Hence, this appeal.^[6]

Statement of Facts Version of the Prosecution

The prosecution presented (1) AAA, the complainant herself; (2) Dr. Nectarina Rabor-Fellizar, who examined and determined that AAA had not been raped, though her pubic hair was partially shaved; (3) [REDACTED], the victim's mother; and (4) Elizabeth Ventura, a practicing clinical child psychologist. Their testimonies were summarized by the trial court as follows:

"On April 17, 1996, at around 4:00 o'clock in the afternoon, after a practice swim at the university pool in Baker's Hall, U.P. Los Baños, [private complainant] proceeded to the bath house to shower and dress up; unknown to her, accused followed and then instructed her to remove the towel wrapped around her; clad in her swimsuit, accused again ordered her to undress to allow him to shave her public hair which he allegedly noticed was visible [sic]; accused then went outside while she undressed and wrapped a towel around her body; when the accused came back, he asked her to sit down while he took a squatting position in front of her holding on to a shaving instrument; but instead of shaving her pubic hair as he committed to do, accused performed the act of cunnilingus; she backed away saying "Nandidiri ako" but accused kept on saying "Huwag mong lagyan ng malisya"; accused then asked her to stand up and told her to simply pretend that he was her boyfriend and thereupon accused removed the right cap of her brassiere and licked her right breast while touching her vagina at the same time; she was then told to lie down but she sat down instead and again accused performed the act of cunnilingus on her as she repeatedly said "Nandidiri ako."; accused then told her to stand up as he pulled down his shorts and forced her to hold and squeeze his penis saying "if your boyfriend will do this, just tell him, 'huwag mo itong ipapasok sa katawan ko'"; thereafter, accused left after instructing her to shave her public hair; the next day, she went to see the accused to return a book and there she told him that she was confused, bothered and terribly upset with what happened and accused replied "Ako rin. Hindi ako nakatulog kagabi at para mawala ang kaba mo, halik lang ang kailangan." and forced her to kiss him on the right cheek and on the lips; that on the night after the incident, she

experienced a nightmare about rape and she then decided to quit swimming; she told her mother about her decision as she narrated what the accused actually did to her; she was then brought to Dr. Nectarina Rabor-Fellizar and thereafter in [the] company of her parents, went to the National Bureau of Investigation where she filed her complaint."^[7]

Version of the Defense

During the trial, appellant denied committing the alleged acts. He added that he was only a lifeguard at the University pool, and not a swimming instructor or trainor of the victim. The defense also presented the following witnesses: (1) Patricio Laurel,^[8] lifeguard at UPLB (University of the Philippines, Los Baños); (2) Veneranda Genio,^[9] chairman of the UPLB PE Department; (3) Elmer Suñaz,^[10] a student; and (4) Prof. Almond Oquendo,^[11] PE 1 instructor at UPLB who testified as a rebuttal witness. The facts, as concisely narrated in the Appellant's Brief,^[12] are as follows:

"x x x [T]hat on the day in question, there were around seven (7) people in the pool and that AAA was not alone as she was with a classmate until 5:45 p.m. when they dressed up. When the classmate left, [the appellant] even accompanied AAA to the boarding area in the company of two (2) other girls and a security guard' (Ibid., p. 4)."^[13]

Finding the above abbreviated narration insufficient, we hereby reproduce the trial court's digest of the testimonies of the defense witnesses:^[14]

"PATRICIO LAUREL, a lifeguard at UPLB who testified that he ha[d] known the accused since 1992 and that by virtue of a university memorandum, they [were] prohibited from conducting swimming lessons to high school students. He further averred that on the day in question, he saw AAA and a companion still swimming in the pool with another individual by the time he left the area, but that he ha[d] no knowledge as to what transpired inside the premises of the bathhouse.

"VENERANDA L. GENIO, Chairman of the P.E. Department of UPLB with the rank of Associate Professor, attested to the appointment of accused as a lifeguard in the P.E. Department but belied the prosecution's claim that accused was a swimming instructor.

"ELMER SUÑAZ, a fourth year high school student at UP Rural High School, was at Baker's Hall on April 17, 1996, and took a dip at the pool for about five minutes; that he saw AAA in the pool talking to the accused but that he never saw AAA enter the bathroom during the time that he was there and when he left, AAA was all alone in the pool.

"ERNESTO LARIN, the accused himself, who vehemently denied the charge and maintained that he was only a lifeguard and never a trainer of the victim in swimming. Accused averred that on the day in question, there were around seven (7) people swimming in the pool and that AAA was not alone as she was with a classmate until 5:45 p.m. when they dressed up. When the classmate left, he even accompanied AAA to the boarding area in the company of two other girls and a security guard.

"On rebuttal, the prosecution called to the witness stand defense witness Professor Genio and Tony Ann A. Cortez, a college sophomore at UPLB, who averred that while still in first year high, she tried out for the freshmen swimming team and singled out the accused as her trainer; that for accused's efforts, their batch paid him P500.00 during the summer and P70.00 each during the semestral break.

"By way of sur-rebuttal, defense presented Almond Oquendo, swimming instructor at UP Rural High who disclaimed the testimony of Tony Anne Cortez [o]n the matter of her training by the accused and the amount of remuneration paid to the latter."

The Trial Court's Ruling

The court a quo found the testimony of AAA worthy of full faith and credence. It reasoned that, unless motivated by a genuine desire to seek justice, a young girl like her will not fabricate a story, undergo medical examination, appear in court and announce to the whole world that she was sexually abused. The trial court also found that the defense failed to prove ill motive on the part of the private complainant and to overcome the evidence adduced by the prosecution. Thus, it imposed upon appellant the penalty of reclusion perpetua and ordered him to pay the sum of P100,000 as moral damages.

Assignment of Errors

In support of his appeal, appellant alleges:

"A. That the lower court erred in finding the accused-appellant guilty of a violation of Sec. 5 (b) of R.A. No. 7610.

"B. That the lower court erred in giving weight to the highly incredible and unnatural testimony of the offended party as the lone eyewitness for the prosecution.

"C. That, assuming the accused-appellant to be guilty, the lower court erred in imposing the penalty of reclusion perpetua."^[15]

In fine, appellant assails the sufficiency of the evidence adduced against him.

This Court's Ruling

The appeal is unmeritorious.

First Issue: Sexual Abuse Under RA 7610

Section 5, Article III^[16] of RA 7610, states:

"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 x 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; 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; x x x." (Italics supplied.)

The elements of the offense penalized under this provision are as follows:

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 other sexual abuse.
3. The child, whether male or female, is below 18 years of age.

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. Under RA 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition."^[17]

It must be noted that the law 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. Hence, the foregoing provision penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. This is clear from the deliberations of the Senate:^[18]

"Senator Angara. I refer to line 9, 'who for money or profit'. I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.

"The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.

"The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

"Senator Angara. No, no. Not necessarily, Mr. President, because we are