

SIXTEENTH DIVISION

[CA-G.R. CR. No. 35150, June 10, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL
ORONAN, ACCUSED-APPELLANT.

DECISION

MACALINO, J:

The Case

Assailed in this appeal under Rule 41 of the Rules of Court is the Judgment^[1] ("Assailed Judgment") dated August 7, 2012 Of the Regional Trial Court ("RTC") of XXX^[2], Branch 60, in Criminal Case No. IR-4878 for violation of Sec. 5(b), Art. III of Republic Act No. 7610 ("R.A. 7610"), otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." The *fallo* of the Assailed Judgment reads:

"**WHEREFORE**, the Court finds accused NOEL ORONAN guilty beyond reasonable doubt of the crime of child abuse defined and penalized under Sec. 5, (b), Article III, Republic Act No. 7610. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of 8 years and 1 day of *prision mayor* as minimum to 15 years, 6 months and 1 day of *reclusion temporal* as maximum; and to pay [AAA] civil indemnity of P50,000.00, moral damages of P50,000.00 and exemplary damages of P30,000.00.

SO ORDERED."^[3]

The Facts

In an Information^[4] dated March 1, 1999, Accused-Appellant Noel Oronan ("Accused-Appellant") was charged with violation of Sec. 5(b), Art. III of R.A. 7610, committed as follows:

"That on or about the 21st day of October 1998 at around 7:00 o'clock in the evening inside the 'bahay kubo' in Barangay 1, XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did, then and there, willfully, unlawfully and feloniously commit an act of sexual abuse with one [AAA], a 15-year olds (*sic*) through insidious machination or influence by inducing her to engage and in fact she did engage in sexual intercourse with him inside the 'bahay kubo' owned by his father, to the damage and prejudice of said [AAA] in such amount as may be proved in court.

ACTS CONTRARY TO LAW. "

When arraigned on April 26, 1999, Accused-Appellant, assisted by counsel, pleaded not guilty to the crime charged.^[5]

At the pre-trial held on May 19, 1999, Accused-Appellant offered to marry AAA, to which the latter's parents objected. The parties stipulated on the following: (1) the identity of the parties; (2) that on October 21, 1998, Accused-Appellant and AAA were in a *balayan* or small hut in Barangay 1, XXX; and (3) that on the same day, at about 7:00 o'clock in the evening, Accused-Appellant and AAA were with the latter's classmate, YYY, and the latter's boyfriend, ZZZ, inside the *balayan* in Barangay 1, XXX.^[6]

During trial, the prosecution offered the testimonies of the city health officer of XXX; AAA's grandmother, GGG; AAA's mother, MMM; a former barangay kagawad of XXX; and AAA herself. The prosecution presented its version of the story in this wise:

Around 10:00 a.m. of October 21, 1998, YYY fetched fifteen (15) year-old^[7] AAA in her house in WWW, a town near XXX, to take an alleged special examination in school.^[8] At that time, MMM was in the market.^[9] GGG, who lives nearby, dissuaded the two from going out since there was a typhoon, but they did not heed her advice.^[10]

AAA was surprised to see twenty-three (23) year-old Accused-Appellant near the gate of her house. She had known him for only a week as he is a cousin of ZZZ.^[11] Accused-Appellant followed AAA and YYY when they boarded a jeepney bound for XXX.^[12]

Upon reaching the school, however, AAA and YYY did not alight from the jeepney. Instead, AAA, YYY and Accused-Appellant alighted at an outpost in XXX. Thereafter, they rode a tricycle going to the *balayan*, which is a small hut owned by Accused-Appellant's father.^[13]

ZZZ was at the *balayan* when the three arrived. YYY then told AAA to just go home in the afternoon. After the four had eaten, YYY, ZZZ and Accused-Appellant took a dip at the NIA irrigation, which is only 40-50 meters from the *balayan*. AAA was left at the *balayan* because she had no extra clothes.^[14]

Around 4:00 p.m. of the same day, AAA expressed her desire to go home. She was thus told by YYY, ZZZ and Accused-Appellant to wait for a tricycle. But since AAA found no tricycle due to the typhoon, she was constrained to stay at the *balayan*.^[15]

When evening came, AAA and Accused-Appellant slept on one bed at the right side of the *balayan*. On another bed at the left side were YYY and ZZZ. The *balayan* had no dividing wall but the lights were switched off.^[16] Taking advantage of this setting, Accused-Appellant began to remove AAA's shorts and panty, followed by her shirt and bra. Accused-Appellant then removed his pants and brief and placed himself on top of AAA, who tried to push him with her hands and feet. After embracing AAA and covering her mouth with his left hand, Accused-Appellant inserted his penis into AAA's vagina.^[17]

As Accused-Appellant prevailed upon her, AAA felt pain and could do nothing but cry. Accused-Appellant then assured AAA that he will marry her.^[18]

AAA helplessly cried until the morning of the following day, October 22, 1998. She could not leave the *balayan* because it had no window and was locked.^[19]

Meanwhile, MMM went to the school and YYY's house to search for AAA. According to YYY's mother, AAA and YYY are possibly with ZZZ in Barangay 1, XXX.^[20]

On October 23, 1998, MMM found AAA at the *balayan* with YYY, ZZZ, Accused-Appellant and the latter's father. MMM blamed Accused-Appellant's father for tolerating AAA to stay at the *balayan* considering that she was still a minor and could have been brought home using their trimobile.^[21]

Bringing AAA along, MMM decided to go to the house of a barangay kagawad in XXX to report the incident.^[22] Because MMM did not want the matter to be settled as suggested by the barangay kagawad, she and AAA proceeded to the police station in XXX^[23], where AAA executed her Sworn Statement^[24]. AAA likewise submitted herself to a medical examination before the city health officer of XXX.

The Medical Certificate^[25] dated October 26, 1998 issued to AAA by the city health officer of XXX yielded the following findings:

"1) Complete, healed laceration of the hymen with sharp coaptible borders and without congestion at 10 o'clock.

2) Test tube with a diameter of $\frac{3}{4}$ inch easily entered the vagina."

According to the city health officer of XXX, a blunt instrument such as a penis could have caused the laceration in AAA's hymen, and that it could have been inserted several times into AAA's vagina.^[26]

After the prosecution's formal offer of evidence, Accused-Appellant, through his own testimony and those of his neighbor and vegetable buyer, professed his innocence in this wise:

Accused-Appellant met AAA through a common friend. He and AAA liked each other and soon became lovers. Being a tricycle driver, Accused-Appellant often roamed around places or stayed at the *balayan* with AAA when her teacher is absent.^[27] Accused-Appellant's neighbor and vegetable buyer supported his testimony that AAA used to frequent the *balayan*.^[28]

Accused-Appellant asserted that he and AAA have been lovers for ten (10) months before the incident subject matter of this case. According to him, AAA and YYY went to the *balayan* out of their own volition on October 21, 1998.^[29] Before sunset of the same day, Accused-Appellant even told AAA to go home but the latter insisted on staying. He denied having forced himself upon AAA because it was she who suggested that they live together as live-in partners.^[30]

When Accused-Appellant had rested his case, AAA again took the witness stand for her rebuttal testimony, wherein she admitted having gone to the *balayan* twice with YYY and another classmate before the incident, but denied being a sweetheart of Accused-Appellant since they only talked twice from the time they were introduced to each other.^[31]

In the Assailed Judgment dated August 7, 2012, the RTC convicted Accused-Appellant of the crime charged and rejected the latter's defenses that he and AAA were sweethearts and that their sexual congress was consensual, reasoning as follows:

"[AAA] was not only clear and straightforward in her positive assertion that the sexual act of the accused on the night of October 21, 1998 was against her will. She never wavered in her testimony that the accused molested her. She even burst into tears whenever she was asked about the sexual assault. There is nothing on record that would reveal, clearly and convincingly, some ill-motive on her part to trump up this serious criminal charge against the accused.

x x x

The presence of the accused from the time the private complainant was fetched at the latter's house to the time the jeepney did not stop at the private complainant's school, the disembarking at the outpost and the flagging of the trimobile by the accused to go to the *balayan* where he resides, the lack of initiative (on account of the typhoon despite owning a trimobile) on the part of the accused to bring the private complainant to the latter's house, and finally the fact that the accused allowed the private complainant to stay for two (2) days at the *balayan*, taken together and if correlated to what he did to private complainant on the night of October 21, 1998 despite the latter's minority, collectively reveal, either in cahoots with [YYY] and [ZZZ] or not, a **lustful design**.

x x x

x x x The court does not find the lack of bodily injuries in [AAA] as conclusive proof of her consent or voluntariness. **The place is relatively secluded and the accused, or the latter's family, owns the place. These are circumstances enough to stifle the nerve of a female minor in the environment.**

Another point of argument raised by the accused is the seeming incredibility of the testimony of the private complainant that despite the presence and proximity of [YYY] and [ZZZ] who were sleeping just on the nearby bed, these two (2) did not hear her cries of resistance to the sexual abuse.

The Supreme Court has held a number of times that rape (or sexual abuse) can be committed even in places where people congregate x x x. Lust is no respecter of time and place."^[32] (Boldfacing supplied)

Aggrieved, Accused-Appellant filed a Notice of Appeal^[33] dated April 10, 2012, which was given due course by the RTC in an Order^[34] dated August 15, 2012.

The Issues

In his Brief^[35] before this Court, Accused-Appellant now ascribes a lone error to the RTC:

"THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF ARTICLE III, SEC. 5 (B) OF R.A. NO. 7610 DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR."^[36]

In support of the above assignment of error, Accused-Appellant maintains that the following are indications that AAA was not sexually abused by him: AAA could have easily called for help as YYY and ZZZ were right inside the room where the incident took place; there was no showing of resistance on AAA's part; AAA did not escape even when she had all the opportunity to do so; and AAA only made general averments of sexual abuse and was highly inconsistent in her account of the incident.

Whereas, Plaintiff-Appellee, through the Office of the Solicitor General, counters in its Brief^[37] that all the elements of the crime were established by the prosecution and that Accused-Appellant's sweetheart defense must fail considering that consent is immaterial in cases involving violation of Sec. 5, Art. III of R.A. 7610.

The Ruling of this Court

We affirm Accused-Appellant's conviction.

Accused-Appellant is indicted for violation of Sec. 5(b), Art. III of R.A. 7610, 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

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject 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."

Thus, the elements of the above crime are the following:

"(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; and

(3) The child, whether male or female, is below 18 years of age."^[38]

In the case at bench, the existence of the first and third elements are not disputed by Accused-Appellant. Accused-Appellant does not deny having sexual intercourse