

SECOND DIVISION

[G.R. No. 171863, August 20, 2008]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE COURT OF APPEALS (SECOND DIVISION) AND
GASPAR OLAYON, RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

The then 22-year old herein respondent Gaspar Olayon was charged with violation of **Section 10(a) of Republic Act No. 7610** (The Special Protection of Children against Abuse, Exploitation, and Discrimination Act) in two separate Informations filed before the Regional Trial Court (RTC) of Pasig City, of which the then 14-year old AAA was alleged to be the victim.

Criminal Case No. 112571 alleged that

On or about 10:00 a.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.^[1] (Underscoring supplied)

Criminal Case No. 112572 alleged that

On or about 2:00 p.m. of January 27, 1997 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with and commit lewd and lascivious acts upon the person of [AAA], a minor, fourteen (14) years of age.^[2] (Underscoring supplied)

Respondent was also charged for acts of lasciviousness before the RTC of Taguig, docketed **as Criminal Case No. 116350**, of which the same then 14-year old AAA was alleged to be the victim. The case was transferred to the Pasig City RTC and consolidated with Criminal Case Nos. 112571-72. ^[3] The three cases were jointly tried.^[4]

After trial, Branch 158 of the Pasig City RTC, by Decision of January 15, 2002, acquitted respondent in Criminal Case No. 116350 (for acts of lasciviousness).^[5] It, however, convicted respondent of violation of Section 10 (a) of Republic Act (R.A.) No. 7610 in Criminal Case Nos. 112571-72 in this wise:

x x x The accused, Olayon admitted his sexual liaisons with [AAA]. His defenses are: 1) [AAA] is his sweetheart and 2) whatever happened to them in terms of these sexual liaisons, occurred with the consent of [AAA]. Although the testimony of [AAA] denies she consented to the sexual liaisons, the evidence did not support it.

The events that occurred on January 27, 1997 at the house of one Duke Espiritu show that [AAA] went with Olayon to that place voluntarily. First, she was fetched from a tricycle stand and it took them another ride to go to the house of Espiritu. If indeed she was forced to board the tricycle, she could have resisted and shouted for help considering that there were normally people around in a tricycle stand, waiting for rides. If she indeed resisted and showed any manifestation in this regard, people could have easily helped her in resisting whatever it was Olayon wanted. Second, at the house of Espiritu she could have easily shouted for help since it was located near a road and a pathway. x x x

x x x x

Although the sexual liaisons that occurred on January 27, 1997 were with the consent of [AAA] who at that time was only 14 years of age, Olayon cannot escape responsibility because **he took advantage of [AAA's] minority to have these sexual liaisons**, even if they were **with her consent**. Consent is not an accepted defense in this special law. He violated then Republic Act No. 7610, **Section 10(a)** which provides:

Section 10(a) - Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, shall suffer the penalty of prision mayor in its minimum period.

x x x x^[6] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, Gaspar Olayon y Matubis a.k.a Eric Ramirez is found guilty beyond reasonable doubt for having violated Republic Act No. 7610, Section 10 (a) in Criminal Case Nos. 112571-72 and is sentenced to suffer in prison the penalty of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months of prision mayor for each count. He is acquitted in Criminal Case No. 116350.

Costs against the accused.

SO ORDERED.^[7]

On appeal by respondent,^[8] the Court of Appeals, answering in the negative the issue of whether consensual sexual intercourse with a minor is classified as child abuse under Section 10 of RA No. 7610, **reversed** the trial court's decision and **acquitted** respondent, by Decision^[9] of January 13, 2006, reasoning as follows:

"Acts of child abuse" under Section 10 (a) of R.A. 7610 refers to those acts listed under Sec. 3(b) of R.A. 7610, which reads as follows:

Sec. 3. Definition of Terms -

(a) x x x

(b) "Child Abuse" refers to **maltreatment**, whether habitual or not, of the child which includes any of the following:

- 1) Psychological and physical abuse, neglect, cruelty, sexual abuse>and emotional maltreatment;
- 2) Any act or deeds [*sic*] or words [*sic*] which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
- 3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
- 4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Consensual sexual intercourse between OLAY[O]N and [AAA] does not fall under the "sexual abuse" definition [in Section 5 of R.A. No. 7610] which is a completely distinct and separate offense from "child abuse," [under Section 10] because "sexual abuse" pertains to and is associated with "child prostitution" [as defined in Section 5]. **"Sexual abuse" is defined separately under Section 5 of R.A. 7610**, which reads as follows:

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.

Moreover, for the act of intercourse between OLAY[O]N and [AAA] **to be considered sexual abuse [under Section 5], such intercourse should have occurred due to coercion or intimidation**. In the case at bench, neither coercion nor intimidation were found to have been present, consent having been freely given.^[10] (Emphasis, italics and underscoring supplied)

Hence, the present petition for certiorari^[11] of the People under Rule 65, alleging that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction

x x x IN ACQUITTING RESPONDENT OLAYON OF THE TWO (2) COUNTS OF CHILD ABUSE UNDER SECTION 10(A) OF R.A. 7610 **DESPITE** THE FACT THAT THE **SEXUAL ACTS** COMMITTED BY RESPONDENT OLAYON