

FIRST DIVISION

[G.R. No. 164733, September 21, 2007]

**MICHAEL JOHN Z. MALTO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

CORONA, J.:

Whereas, mankind owes to the child the best it has to give. (Final preambular clause of the Declaration of the Rights of the Child)

This is a petition for review^[1] of the decision^[2] dated July 30, 2004 of the Court of Appeals (CA) in CA-G.R. CR No. 25925 affirming with modification the decision^[3] of Branch 109 of the Regional Trial Court of Pasay City in Criminal Case No. 00-0691 which found petitioner Michael John Z. Malto guilty for violation of paragraph 3, Section 5(a), Article III of RA 7610,^[4] as amended.

Petitioner was originally charged in an information which read:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(b), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse for several times with him as in fact said accused had carnal knowledge.

Contrary to law.^[5]

This was subsequently amended as follows:

The undersigned Assistant City Prosecutor accuses MICHAEL JOHN Z. MALTO of VIOLATION OF SECTION 5(a), ARTICLE III, REPUBLIC ACT 7610, AS AMENDED, committed as follows:

That on or about and sometime during the month of November 1997 up to 1998, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Michael John. Z. Malto, a professor, did then and there willfully, unlawfully and feloniously take advantage and exert influence, relationship and moral

ascendancy and induce and/or seduce his student at Assumption College, complainant, AAA, a minor of 17 years old, to indulge in sexual intercourse and lascivious conduct for several times with him as in fact said accused has carnal knowledge.

Contrary to law.^[6]

Petitioner did not make a plea when arraigned; hence, the trial court entered for him a plea of "not guilty." After the mandatory pre-trial, trial on the merits proceeded.

The prosecution established the following:

At the time of the incident, private complainant AAA was 17 years old.^[7] She was a college student at the Assumption College in San Lorenzo Village, Makati City. Petitioner, then 28, was her professor in her Philosophy II class in the first semester of the school year 1997 to 1998.

On July 18, 1997, AAA was having lunch with her friends when petitioner joined their group. He told them to address him simply as "Mike." He handed them his organizer and asked them to list down their names and contact numbers.

On October 3, 1997, while AAA and her friends were discussing the movie Kama Sutra, petitioner butted in and bragged that it was nothing compared to his collection of xxx-rated films. To the shock of AAA's group, he lectured on and demonstrated sexual acts he had already experienced. He then invited the group to view his collection.

On October 10, 1997, petitioner reiterated his invitation to AAA and her friends to watch his collection of pornographic films. Afraid of offending petitioner, AAA and two of her friends went with him. They rode in his car and he brought them to the Anito Lodge on Harrison St. in Pasay City. They checked in at a "calesa room." Petitioner was disappointed when he found out there was neither a video cassette player (on which he could play his video tapes) nor an x-rated show on the closed-circuit television. He suggested that they just cuddle up together. AAA and her friends ignored him but he pulled each of them towards him to lie with him in bed. They resisted until he relented.

AAA and her friends regretted having accepted petitioner's invitation. For fear of embarrassment in case their classmates got wind of what happened, they agreed to keep things a secret. Meanwhile, petitioner apologized for his actions.

Thereafter, petitioner started to show AAA amorous attention. He called her on the phone and paged^[8] her romantic messages at least thrice a day. When semestral break came, his calls and messages became more frequent. Their conversation always started innocently but he had a way of veering the subject to sex. Young, naive and coming from a broken family, AAA was soon overwhelmed by petitioner's persistence and slowly got attracted to him. He was the first person to court her. Soon, they had a "mutual understanding" and became sweethearts.

When AAA secured her class card in Philosophy II at the start of the second

semester, petitioner told her that he gave her a final grade of "3." She protested, stating that her mid-term grade was "1.2." He gave her a grade of "1.5" when she promised not to disclose his intimate messages to her to anyone. He also cautioned her not to tell anyone about their affair as it could jeopardize his job.

On November 19, 1997, at around 11:00 a.m., AAA agreed to have lunch with petitioner outside the premises of the college. Since she was not feeling well at that time, he asked her to lie down in the backseat of his car. She was surprised when he brought her to Queensland Lodge^[9] on Harrison St. in Pasay City. Once inside the motel room, he kissed her at the back and neck, touched her breasts and placed his hand inside her blouse. She resisted his advances but he was too strong for her. He stopped only when she got angry at him.

On November 26, 1997, petitioner asked AAA to come with him so that they could talk in private. He again brought her to Queensland Lodge. As soon as they were inside the room, he took off his shirt, lay down in bed and told her, "*halika na, dito na tayo mag-usap.*" She refused but he dragged her towards the bed, kissed her lips, neck and breasts and unsnapped her brassiere. She struggled to stop him but he overpowered her. He went on top of her, lowered her pants and touched her private part. He tried to penetrate her but she pushed him away forcefully and she sat up in bed. He hugged her tightly saying, "*Sige na, AAA, pumayag ka na, I won't hurt you.*" She refused and said, "*Mike, ayoko.*" He angrily stood up saying, "*Fine, hindi na tayo mag-uusap.* Don't come to the faculty room anymore. You know I need this and if you will not give in or give it to me, let us end this." She replied, "*Mike, hindi pa ako ready* and it was you who said it will be after my debut" on December 3, 1997. He insisted that there was no difference between having sex then and after her debut. He told her, "*kung hindi ko makukuha ngayon, tapusin na natin ngayon.*" Pressured and afraid of his threat to end their relationship, she hesitantly replied "Fine." On hearing this, he quickly undressed while commenting "*ibibigay mo rin pala, pinahirapan mo pa ako*" and laughed. They had sexual intercourse.

In July 1999, AAA ended her relationship with petitioner. She learned that he was either intimately involved with or was sexually harassing his students in Assumption College and in other colleges where he taught. In particular, he was dismissed from the De La Salle University-Aguinaldo for having sexual relations with a student and sexually harassing three other students. His employment was also terminated by Assumption College for sexually harassing two of his students. It was then that AAA realized that she was actually abused by petitioner. Depressed and distressed, she confided all that happened between her and petitioner to her mother, BBB.

On learning what her daughter underwent in the hands of petitioner, BBB filed an administrative complaint in Assumption College against him. She also lodged a complaint in the Office of the City Prosecutor of Pasay City which led to the filing of Criminal Case No. 00-0691.

In his defense, petitioner proffered denial and alibi. He claimed that the alleged incidents on October 3, 1997 and October 10, 1997 did not happen. He spent October 3, 1997 with his colleagues Joseph Hipolito and AJ Lagaso while he was busy checking papers and computing grades on October 10, 1997. The last time he saw AAA during the first semester was when she submitted her final paper on October 18, 1997.

On November 19, 1997, between 10:30 a.m. and 1:00 p.m., he sorted out conflicts of class schedules for the second semester at the Assumption College. On November 26, 1997, he was at St. Scholastica's College (where he was also teaching) preparing a faculty concert slated on December 12, 1997. At lunch time, he attended the birthday treat of a colleague, Evelyn Bancoro.

On November 29, 1997, he attended AAA's 18th birthday party. That was the last time he saw her.

According to petitioner, AAA became his sweetheart when she was already 19 years old and after he was dismissed from Assumption College. On December 27 and 28, 1998, they spent time together, shared their worries, problems and dreams and kissed each other. On January 3, 1999, he brought her to Queensland Lodge where they had sexual intercourse for the first time. It was repeated for at least 20 times from January 1999 until they broke up in July 1999, some of which were done at either his or her house when no one was around.

The trial court found the evidence for the prosecution sufficient to sustain petitioner's conviction. On March 7, 2001, it rendered a decision finding petitioner guilty.^[10] The dispositive portion read:

In view of the foregoing, the Court finds the accused Michael John Maltoy Zarsadias guilty beyond reasonable doubt for violation of Article III, Section 5(a)[,] paragraph 3 of RA 7610[,], as amended and hereby sentences him to *reclusion temporal* in its medium period or an imprisonment of seventeen (17) years, four (4) months and one (1) day to twenty (20) years and to pay civil indemnity in the amount of Php 75,000.00 and moral and exemplary damages of Php 50,000.00 to minor complainant with subsidiary imprisonment in case of insolvency.^[11]

Petitioner questioned the trial court's decision in the CA. In a decision dated July 30, 2004,^[12] the appellate court affirmed his conviction even if it found that his acts were not covered by paragraph (a) but by paragraph (b) of Section 5, Article III of RA 7610. It further observed that the trial court failed to fix the minimum term of indeterminate sentence imposed on him. It also ruled that the trial court erred in awarding P75,000 civil indemnity in favor of AAA as it was proper only in a conviction for rape committed under the circumstances under which the death penalty was authorized by law.^[13] Hence, the CA modified the decision of the trial court as follows:

WHEREFORE, the appealed Decision of conviction is **AFFIRMED**, with the **MODIFICATION** that (1) appellant MICHAEL JOHN MALTO y ZARSADIAS is hereby sentenced to an indeterminate penalty of Eight (8) Years and One (1) Day of *prision mayor* as minimum, to Seventeen (17) Years, Four (4) Months and One (1) Day of *reclusion temporal* as maximum; and (2) the sum of P75,000.00 as civil indemnity is **DELETED**.^[14]

Hence, this petition.

Petitioner contends that the CA erred in sustaining his conviction although it found

that he did not rape AAA. For him, he should have been acquitted since there was no rape. He also claims that he and AAA were sweethearts and their sexual intercourse was consensual.

Petitioner is wrong.

The Offense Stated in the Information Was Wrongly Designated

In all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him.^[15] Pursuant thereto, the complaint or information against him should be sufficient in form and substance. A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense and the place where the offense was committed.^[16]

The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances.^[17] If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.^[18] The acts or omissions constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.^[19]

The designation of the offense in the information against petitioner was changed from "violation of Section 5(b), Article III" of RA 7610 to "violation of Section 5(a), Article III" thereof. Paragraphs (a) and (b) of Section 5, Article III of RA 7610 provide:

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;