

## FIRST DIVISION

[ G.R. No. 163866, July 29, 2005 ]

**ISIDRO OLIVAREZ, PETITIONER, COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

For review is the Court of Appeals' decision in CA-G.R. CR No. 22860<sup>[1]</sup> which affirmed the judgment<sup>[2]</sup> rendered by the Regional Trial Court of San Pedro, Laguna, Branch 93,<sup>[3]</sup> in Crim. Case No. 0505-SPL finding petitioner Isidro Olivarez guilty of violating Section 5, Republic Act No. 7610,<sup>[4]</sup> and its resolution denying reconsideration thereof.<sup>[5]</sup>

The case originated from a complaint filed by the offended party with the Municipal Trial Court of San Pedro, Laguna which was the basis upon which an information for violation of R.A. 7610 was filed against Isidro Olivarez, to wit:

The undersigned 4<sup>th</sup> Assistant Provincial Prosecution (sic) of Laguna upon a sworn complaint filed by the private complainant, CRISTINA B. ELITIONG, hereby accuses ISIDRO OLIVAREZ of the crime of "VIOLATION OF RA 7610", committed as follows:

That on or about July 20, 1997, in the Municipality of San Pedro, Province of Laguna, within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously by means of force and intimidation commit acts of lasciviousness on the person of one CRISTINA B. ELITIONG, by touching her breasts and kissing her lips, against her will, to her damage and prejudice.

CONTRARY TO LAW.<sup>[6]</sup>

The established facts of this case are as follows:

... The offended party Cristina Elitiong was a 16-year old high school student who with her brothers were employed by the accused, 64-year old Isidro Olivarez, in the making of sampaguita garlands. For one year she had been reporting for work during weekends at the residence of the accused. Within the compound and at about three armslength from the main door of the house was her workplace.

At about 11:30 o'clock in the morning of July 20, 1997, Cristina, her two brothers Macoy and Dodong, and one named Liezel were at their work

when the accused who was near the main door called for her. She dutifully approached him. The accused asked her if she had told her mother that he gave her money, and when she said that she did not, he embraced her and held her breast. The workers were facing the street so that the two were not seen. He pulled her to the kitchen and, closing the kitchen door, kissed her on the lips. She pushed him away and went back to her station. Her brother Macoy saw her crying when she came out of the house. She did not say a word, but went to the faucet and washed her face.

The offended party continued to finish the garlands she was working on, and waited until the afternoon for her wages. When she arrived at her home, she first told her mother that she no longer wished to go back. When pressed for a reason, she said *basta po mama ayaw ko ng magtuhog*. Finally, she told her mother what happened.

Aurora Elitiong, the mother, accompanied the offended party to the San Vicente Barangay Hall on July 26 to report the incident and give a statement. Days later, Cristina gave another statement to the local police.

In the defense version, the offended party and her brothers had slept overnight in the house of the accused. When Isidro woke up in the early morning to relieve himself, he saw the girl sleeping on the sofa. He admonished her to join her brothers in the basement. He went back to his room and slept until 8 A.M. Two hours later, at 10 A.M., he left for the Caltex Service Station which was only a five minute ride from his home by tricycle. His daughter Analee Olivarez was staying in another house in the compound and attended a morning mass. When she returned at 10:30 A.M., she no longer saw her father. Maritess Buen, the laundrywoman, who was washing clothes outside the kitchen, saw the accused earlier. By 10 A.M., when she entered the house, he already left. He returned by noontime.

The accused testified that he was at the Caltex station for two and a half hours waiting for the shipment of flowers from Pampanga. The goods arrived at 12:15 P.M. He left shortly thereafter and passed by the market before going home. He arrived at 12:30 P.M. The next several days were uneventful for him until his laundrywoman Maritess told him that there was a complaint against him at the barangay office. A meeting took place between him and the girl's family in the presence of the barangay authorities. The girl's mother was demanding P30,000 for the settlement of the case, but he refused to cave in and told a barangay official Jaime Ramos that he would rather see his accusers in court than give a centavo because he did not commit the crime.<sup>[7]</sup>

The trial court found Olivarez guilty of violating Section 5 of R.A. 7610 and sentenced him to suffer an indeterminate penalty of imprisonment from 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, to indemnify the minor Cristina Elitiong in the amount of P15,000.00 as moral damages and to pay the costs.

On appeal, the decision of the trial court<sup>[8]</sup> was affirmed by the Court of Appeals. The motion for reconsideration<sup>[9]</sup> filed by the accused was denied.<sup>[10]</sup> Hence, this petition for review<sup>[11]</sup> on the following grounds:

- I. The Honorable Court of Appeals committed grave abuse of discretion in not holding that the essential elements in Violation of Section 5, Article III of Republic Act 7610, which are age of the offended party and that she is an abused or exploited child as defined in the law, not having been alleged in the Information, petitioner/accused cannot be found guilty of said offense and must be acquitted.
- II. The Honorable Court of Appeals erred and committed grave abuse of discretion in holding that the Information charging petitioner/accused of Violation of Section 5, Republic Act 7610, but failing to allege the essential elements of said offense, had substantially complied with the requirements of due process for the accused.
- III. The Honorable Court of Appeals erred and gravely abused its discretion in not reversing the judgment of the trial court convicting the accused/petitioner and sentencing him to suffer the penalty of imprisonment for alleged Violation of Section 5, Republic Act 7610, which was not alleged in the Information.<sup>[12]</sup>

Petitioner alleges that his right to be informed of the nature and cause of the accusation against him was violated for failure to allege in the information the essential elements of the offense for which he is being charged.

Section 5, Article III of R.A. 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:

...

(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; ..." (Italics supplied)

The elements of sexual abuse under Section 5, Article III of R.A. 7610 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.<sup>[13]</sup>

Section 32, Article XIII, of the Implementing Rules and Regulations of R.A. 7610 defines lascivious conduct as follows:

**[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.**<sup>[14]</sup> (Emphasis supplied)

The first element obtains in this case. It was established beyond reasonable doubt that petitioner kissed Cristina and touched her breasts with lewd designs as inferred from the nature of the acts themselves and the environmental circumstances.<sup>[15]</sup>

The second element, *i.e.*, that the act is performed with a child exploited in prostitution or subjected to other sexual abuse, is likewise present. As succinctly explained in *People v. Larin*:<sup>[16]</sup>

**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...**

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 lascivious conduct. (Emphasis supplied)

We reiterated this ruling in *Amployo v. People*:<sup>[17]</sup>

... As we observed in *People v. Larin*, Section 5 of Rep. Act No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation...

Thus, a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. In this case, Cristina was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. Furthermore, it is inconsequential that the sexual abuse occurred only once. As expressly provided in Section 3 (b) of R.A. 7610, the abuse may be habitual or not. It must be observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated

into lascivious conduct, not necessarily for money or profit. The law covers not only child prostitution but also other forms of sexual abuse. This is clear from the deliberations of the Senate:

*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 still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that *there may be situations where the child may not have been used for profit or ...*

*The President Pro Tempore.* So, it is no longer prostitution. Because the essence of prostitution is profit.

*Senator Angara.* Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

*The President Pro Tempore.* What does the Sponsor say? Will the Gentleman kindly restate the amendment?

#### ANGARA AMENDMENT

*Senator Angara.* The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, *et cetera*.

*Senator Lina.* It is accepted, Mr. President.

*The President Pro Tempore.* Is there any objection? [Silence] Hearing none, the amendment is approved.

How about the title, "Child Prostitution," shall we change that too?

*Senator Angara.* Yes, Mr. President, *to cover the expanded scope*.