

## TWELFTH DIVISION

[ CA-G.R. CR No. 36137, March 12, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ORLANDO OONES Y SERRANO, ACCUSED-APPELLANT,**

### **DECISION**

**MACALINO, J:**

#### **THE CASE**

This is an appeal seeking to reverse and set aside the Joint Decision<sup>[1]</sup> dated 27 September 2013 ("assailed Decision") of the Regional Trial Court of Tayug, Pangasinan, Branch 52 ("RTC") in Criminal Case No. T-3555 and Criminal Case No. T-3556, the dispositive portion<sup>[2]</sup> of which reads:

*"**WHEREFORE**, the foregoing considered, accused Orlando Oones is found **guilty** for two counts of violating Section 5(b), Article III of RA 7610.*

*For each count, he is sentence to an indeterminate prison term of **14 years and 8 months of reclusion temporal** as minimum to **20 years of reclusion temporal** as maximum. He is further ordered to pay AAA Php50,000 as civil indemnity, for each case.*

**SO ORDERED."**

#### **THE ANTECEDENTS**

Orlando Oones y Serrano ("Accused-Appellant") was charged for violation of Section 5, Article III of RA 7610 in two (2) Informations, the accusatory portions of which read:

#### **Criminal Case No. T-3555<sup>[3]</sup>**

*"That on or about September 30, 2003, in the afternoon, at XXX<sup>[4]</sup>, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commit sexual and lascivious conduct upon AAA<sup>[5]</sup> a minor 16 years of age, in consideration of P500.00 to the damage and prejudice of said AAA.*

Contrary to Section 5, Article III of RA 7610."

#### **Criminal Case No. T-3556<sup>[6]</sup>**

*"That on or about November 30, 2003, in the afternoon, at XXX, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commit sexual and lascivious conduct upon **AAA**, a minor 16 years of age, in consideration of P500.00 to the damage and prejudice of said AAA.*

*Contrary to Section 5, Article III of RA 7610."*

On 21 February 2011, Accused-Appellant, assisted by counsel, entered a plea of not guilty to the abovementioned cases.<sup>[7]</sup> During the pre-trial conference, the identity of both the Accused-Appellant and AAA ("Private Complainant") was admitted. The parties also agreed that the cases would be tried jointly against Accused-Appellant.<sup>[8]</sup> Thereafter, trial ensued.

### **THE EVIDENCE FOR THE PROSECUTION**

The facts as established by the prosecution based on Private Complainant's oral statement<sup>[9]</sup> taken on 03 April 2004 and her direct testimony<sup>[10]</sup> conducted on 20 March 2012 are as follows:

At the time of the incident, AAA was a 16 year old, 3<sup>rd</sup> year high school student at YYY.<sup>[11]</sup> Due to problems with her academic standing in Science, she sought the help of EEE, a PEHM teacher, to assist her in completing her clearance form to obtain her grades.

On 15 September 2003, AAA's friends, BBB and CCC, both minors and schoolmates of AAA, invited her to visit EEE in his videoke bar located in Urdaneta City. AAA and BBB alone met at 2 P.M. after school to head to the said videoke bar as CCC was not allowed by her parents to tag along. As they had arrived at the bar late in the afternoon, EEE decided to transfer to XXX located nearby. Upon reaching the resort, EEE left the two girls in a room while he ordered them beer and *pulutan*. During such time, BBB confessed that she was the girlfriend of EEE and told AAA that should he attempt anything intimate with her, she should oblige as he was willing to give money. While they were drinking, EEE asked them to remove their clothes including their underwear. Thereafter, he lay AAA on the bed while BBB watched them. He proceeded to kiss AAA on the lips, down to her breast and vagina, and fondled her breasts. When EEE inserted his index finger and middle finger into her vagina, AAA testified that she kicked his hand away because she felt pain. EEE stopped his attempt at fingering her vagina but continued to kiss her whole body. When EEE turned his attention to BBB, AAA felt ashamed and as a result, she headed to the comfort room until BBB and EEE had finished their sexual tryst. After they were through, EEE gave them Php500.00 each and told them to come back on 30 September, 2003 to meet his friend and to keep everything secret.<sup>[12]</sup>

In the afternoon of 30 September 2003, at around 2 o'clock, AAA and BBB returned to XXX to meet EEE and his friend, the Accused-Appellant.<sup>[13]</sup> After getting acquainted, they proceeded to a room to drink. After consuming one (1) bottle of Red Horse beer, Accused-Appellant invited AAA to another room where he proceeded to remove her clothes along with her underwear while undressing himself. He then laid AAA down on the bed and started to kiss her lips, down to her breasts and

vagina. Thereafter, he placed himself on top of her and inserted his penis into her vagina. AAA felt pain and testified on bleeding, so she kicked Accused-Appellant and pushed him aside. Insistent, the latter took hold of her two hands and inserted his penis into her vagina, pumping up and down continuously for five (5) minutes. To appease AAA, he gave her Php500.00, telling her to keep their encounter secret.

The same thing happened on 30 November 2003, around the same time and location. After the sexual act, AAA was again given Php500.00 by the Accused-Appellant.<sup>[14]</sup>

The same incident occurred on 30 March 2004<sup>[15]</sup>, around the same time and location. AAA revealed to EEE and Accused-Appellant that she was pregnant as her menstrual period had stopped since October 2003. Having no other sexual encounter other than with the Accused-Appellant, AAA claimed that the former was the father of her unborn child. Accused-Appellant refused to admit that he was the father. She testified that she wanted to abort the baby in fear of her parents. However, EEE suggested against the abortion and offered instead to buy the baby for Twenty Thousand Pesos (Php20,000.00). It was resolved that the baby would be aborted as Accused-Appellant agreed with AAA's decision and promised that they would accompany her to the local abortionist. After their argument, AAA went to the bathroom to take a shower. Accused-Appellant followed her into the shower and thereafter had sexual intercourse along with EEE and BBB on the same bed.

On 31 March 2004, around 9 o'clock in the morning, EEE, BBB, and the Accused-Appellant accompanied AAA to the abortionist.<sup>[16]</sup> During her check-up, it was revealed that she was 5-6 months pregnant. A catheter was inserted inside her vagina and was advised that she stay with the abortionist for at least two (2) days to which she refused. Instead, Accused-Appellant advised her to visit a faith healer to continue the abortion. The faith healer refused to continue the abortion but gave AAA one (1) pack of white tablets, one (1) pack filled with brown and orange powder, and one (1) pack of what looked like dried papaya seeds to relieve pain. Upon reaching home, AAA took two (2) seeds as instructed by the faith healer.

On the night of the same day, AAA felt a terrible pain but did not tell her parents until the night of 01 April 2004 when she was experiencing pain and was bleeding blackish blood that emitted a foul odor.<sup>[17]</sup> Her parents rushed her to the hospital where she revealed her encounters with BBB, EEE, and the Accused-Appellant as well as her pregnancy and abortion.

### **THE EVIDENCE FOR THE DEFENSE**

The Accused-Appellant, in his Judicial Affidavit<sup>[18]</sup> dated 28 February 2013 and cross examination<sup>[19]</sup> dated 01 April 2013 denied the charge against him and thus, states his own version of alleged facts as follows:

The Accused-Appellant was a teacher at YYY and was co-workers with EEE.<sup>[20]</sup> He testified that he met AAA for the first time on 30 September 2003 at XXX when EEE introduced them to each other. A couple of days prior to such meeting, EEE told Accused-Appellant that he had a new arrival in his videoke bar who was interested in meeting a steady male friend.<sup>[21]</sup> On the said date, Accused-Appellant arrived at

the resort, finding EEE, BBB, and AAA already drinking inside a room. EEE then told Accused-Appellant that AAA was the new arrival he was referring to and that they will leave them in the room. EEE turned to AAA, asking her "*ano kursunada mo ba?*", upon which the latter answered "*pwede na rin.*" Accused-Appellant and AAA then transferred to another room where they continued their conversation. Accused-Appellant testified asking AAA her family name to which she did not disclose. When asked where she resides, she merely replied "*sa tabi tabi lang.*" Lastly, when asked how old she was, she replied "*magtwe-twenty, turning twenty*" and added "*dami dami mo tanong*" after which she entered the bathroom to shower. AAA then invited Accused-Appellant inside the shower after which they engaged in sexual intercourse. [22]

A similar encounter took place again on 30 November 2003 at XXX as AAA had allegedly desired to see the Accused-Appellant again. Thereafter, before their third encounter on 30 March 2004, EEE informed Accused-Appellant that AAA had approached the former asking for his help. She allegedly told EEE that she was pregnant and intends to abort the baby. EEE pleaded with Accused-Appellant to convince AAA to reconsider her decision, offering instead to take the baby. Accused-Appellant readily agreed and together with EEE, set a meeting on 30 March 2004 at XXX.

On 30 March 2004, EEE and Accused-Appellant tried to convince AAA not to have the abortion. After failing to change her mind, Accused-Appellant claims that the former insisted on having sex, saying "*sex muna tayo sayang namang dito na tayo at matagal tagal na wala tayo sex pag pinaalis ko ito.*" [23]

During said date, AAA insists that Accused-Appellant was the father of her unborn child, to which the latter vehemently denied, claiming that she must have had sexual relations with other men as they had not seen each other from 30 September 2003 to 30 November 2003. [24] Accused-Appellant also denies paying AAA for her love and sex but gave her all the same because "*she was a very good fuck.*"

On cross-examination, Accused-Appellant testified that he had indeed accompanied AAA to the abortionist upon Mr. EEE's request. [25] However, he claims that he had no knowledge as to the events thereafter, when AAA suffered from heavy bleeding and was rushed to the hospital. It was only when a case was filed against him was he apprised of such facts. Accused-Appellant further testified that he retired from teaching in 2004 and took a vacation for reason of being too ashamed to face his family and friends due to the pending case filed against him. [26]

### **THE RULING OF THE REGIONAL TRIAL COURT**

The RTC rendered a Decision [27] dated 27 September 2013 finding Accused-Appellant guilty of two counts of violating Section 5(b), Article III of RA 7610, material points of the Decision read:

XXX

*"The facts stated in the two Informations against the accused correctly make out a charge for violation of Section 5(b) Article III of RA 7610. The elements of paragraph (b) are: (1) the accused commits the act of*

*sexual intercourse or lascivious conduct; (2) the 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.*

*Paragraph (b) punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers a situation where a child is abused for profit or one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. The first element of Section 5(b) Article III of RA 7610 pertains to the act or acts committed by the accused. The second element refers to the state or condition of the offended party. The third element corresponds to the age of the offended party.*

*The first element is present in these cases. The accused committed lascivious conduct and had sexual intercourse with AAA in the following instances:*

- 1. On September 30, 2003, Odonos and AAA were left alone by their companions, EEE and BBB after the four drank beer. Odonos removed the clothes of AAA who was apparently too drunk to struggle. Then Odonos started kissing AAA's body starting from her lips, breast and down to her vagina. He inserted his fingers in AAA's vagina. Then he inserted his penis in AAA's vagina, and,*
- 2. On November 30, 2003, the same incident happened. Odonos removed her clothes and had sexual intercourse with AAA.*

*Odonos' acts fall under Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of RA 7610 particularly on child abuse*

*XXX*

*In these cases, the accused admitted his sexual liaisons with AAA. He only denied knowing the minority of AAA claiming that AAA misrepresented her age. Furthermore, Odonos avers that AAA looked mature than what she claimed then as her age (turning 20).*

*The Court likewise affirms the presence of the second element. 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.*

*XXX*

*The third element was also proven. Attached to the record is the Certificate of Live Birth of AAA... The defense admitted the authenticity of the Certificate of Live Birth of AAA. On the dates she had sexual*