

The Facts

On March 16, 1999, an Information⁵ was filed charging Caballo of violation of Section 10(a), Article VI of RA 7610 which was later amended on May 28, 1999, to include statements pertaining to the delivery of private complainant AAA's⁶ baby. The Amended Information⁷ reads:

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, until June 1998, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23 year old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of [worldly] experience of AAA who was only 17 years old at that time, having been born on November 3, 1980, did then and there wilfully, unlawfully and feloniously commit sexual abuse upon said AAA, by persuading and inducing the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy and delivery of a baby on March 8, 1999, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

Surigao City, Philippines, May 28, 1999.

Upon arraignment, Caballo pleaded not guilty to the aforesaid charges.⁸

Based on the records, the undisputed facts are as follows:

⁵ Rollo, pp. 31-32.

That undersigned Second Assistant City Prosecutor hereby accuses Christian Caballo of the crime of Violation of Section 10 (a) of Republic Act No. 7610, committed as follows:

That in or about the last week of March 1998, and on different dates subsequent thereto, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a 23 year old man, in utter disregard of the prohibition of the provisions of Republic Act No. 7610 and taking advantage of the innocence and lack of [worldly] experience of AAA who was only 17 years old at that time, did then and there wilfully, unlawfully and feloniously commit sexual abuse upon said AAA, by persuading and inducing the latter to have sexual intercourse with him, which ultimately resulted to her untimely pregnancy, a condition prejudicial to her development, to the damage and prejudice of AAA in such amount as may be allowed by law.

CONTRARY TO LAW.

Surigao City, Philippines, March 16, 1999.

⁶ Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," and its implementing rules, the real name of the victim, together with the names of her immediate family members, is withheld, and fictitious initials instead are used to represent her, to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703, 705-709 (2006).

⁷ Rollo, p. 32.

⁸ Id. at 33.

AAA, then 17 years old, met Caballo, then 23 years old, in her uncle's place in Surigao City. Her uncle was a choreographer and Caballo was one of his dancers. During that time, AAA was a sophomore college student at the University of San Carlos and resided at a boarding house in Cebu City. On January 17, 1998, Caballo went to Cebu City to attend the Sinulog Festival and there, visited AAA. After spending time together, they eventually became sweethearts.⁹ Sometime during the third week of March 1998, AAA went home to Surigao City and stayed with her uncle. In the last week of March of the same year, Caballo persuaded AAA to have sexual intercourse with him. This was followed by several more of the same in April 1998, in the first and second weeks of May 1998, on August 31, 1998 and in November 1998, all of which happened in Surigao City, except the one in August which occurred in Cebu.¹⁰ In June 1998, AAA became pregnant and later gave birth on March 8, 1999.¹¹

During the trial, the prosecution asserted that Caballo was only able to induce AAA to lose her virginity due to promises of marriage and his assurance that he would not get her pregnant due to the use of the "withdrawal method." Moreover, it claimed that Caballo was shocked upon hearing the news of AAA's pregnancy and consequently, advised her to have an abortion. She heeded Caballo's advice; however, her efforts were unsuccessful. Further, the prosecution averred that when AAA's mother confronted Caballo to find out what his plans were for AAA, he assured her that he would marry her daughter.¹²

Opposed to the foregoing, Caballo claimed that during their first sexual intercourse, AAA was no longer a virgin as he found it easy to penetrate her and that there was no bleeding. He also maintained that AAA had (3) three boyfriends prior to him. Further, he posited that he and AAA were sweethearts who lived-in together, for one (1) week in a certain Litang Hotel and another week in the residence of AAA's uncle. Eventually, they broke up due to the intervention of AAA's parents. At a certain time, AAA's mother even told Caballo that he was not deserving of AAA because he was poor. Lastly, he alleged that he repeatedly proposed marriage to AAA but was always rejected because she was still studying.¹³

The RTC's Ruling

In a Decision dated April 1, 2003, the RTC found Caballo guilty beyond reasonable doubt of violation of Section 10(a), Article VI of RA 7610, in relation to Section 2 of the Rules on Child Abuse Cases.

⁹ Id. at 33.

¹⁰ Id. at 34-35.

¹¹ Id. at 35-36

¹² Id. at 33-36.

¹³ Id. at 36-37.

Accordingly, it sentenced Caballo to suffer imprisonment for an indeterminate period ranging from *prision correccional*, in its maximum period of four (4) years, two (2) months and one (1) day, as minimum, to *prision mayor* in its minimum period of six (6) years, eight (8) months and one (1) day, as maximum. It also ordered Caballo to pay AAA moral damages in the amount of ₱50,000.00.¹⁴

Aggrieved, Caballo elevated the case to the CA.

The CA's Ruling

In a Decision dated January 28, 2011,¹⁵ the CA dismissed the appeal and affirmed with modification the RTC's ruling, finding Caballo guilty of violating Section 5(b), Article III of RA 7610.

It ruled that while the Amended Information denominated the crime charged as violation of Section 10(a), Article VI of RA 7610, the statements in its body actually support a charge of violation of Section 5(b), Article III of RA 7610.¹⁶

On the merits of the case, it found that the evidence adduced by the prosecution clearly showed that Caballo persuaded, induced and enticed AAA, then a minor, to have carnal knowledge with him. Towards this end, Caballo repeatedly assured AAA of his love and even went on to promise marriage to her. He also assured AAA that she would not get pregnant because he would be using the "withdrawal method." Thus, it was upon these repeated coaxing and assuring words that AAA succumbed to Caballo's evil desires which deflowered and got her pregnant. On this score, it observed that consent is immaterial in child abuse cases involving sexual intercourse and lascivious conduct and therefore, the sweetheart defense remains unacceptable.¹⁷ It also found basis to sustain the award of moral damages.¹⁸

Caballo filed a motion for reconsideration which was, however, denied on September 26, 2011.¹⁹

Hence, the instant petition.

¹⁴ Id. at 31.

¹⁵ Id. at 30-45.

¹⁶ Id. at 40.

¹⁷ Id. at 41-43.

¹⁸ Id. at 44.

¹⁹ Id. at 46-47.

The Issue

The core of the present controversy revolves around the interpretation of the phrase “*due to the coercion or influence of any adult*” which would thereby classify the victim as a “**child exploited in prostitution and other sexual abuse**” as found in Section 5, Article III of RA 7610. Consequently, the interpretation which the Court accords herein would determine whether or not the CA erred in finding Caballo guilty of violating paragraph (b) of the same proviso.

In his petition, Caballo essentially argues that his promise to marry or his use of the “withdrawal method” should not be considered as “persuasion” or “inducement” sufficient to convict him for the aforementioned offense, asserting that these should be coupled with some form of coercion or intimidation to constitute child abuse. He further alleges that he and AAA were sweethearts which thus, made the sexual intercourse consensual.

In its Comment,²⁰ respondent advances the argument that there was “sexual abuse” within the purview of RA 7610 as well as the Rules on Child Abuse Cases since it was only upon Caballo’s repeated assurances and persuasion that AAA gave in to his worldly desires. Likewise, it points out that the sweetheart theory, as relied on by Caballo, deserves scant consideration in view of the Court’s ruling in *Malto v. People (Malto)*.²¹

The Court’s Ruling

The petition has no merit.

Section 5(b), Article III of RA 7610 pertinently reads:

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 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

²⁰ Id. at 58-76.

²¹ G.R. No. 164733, September 21, 2007, 533 SCRA 643, 653-668.

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 x (Emphasis and underscoring supplied)

As determined in the case of *Olivarez v. CA (Olivarez)*,²² the elements of the foregoing offense are the following:

- (a) The accused commits the act of sexual intercourse or lascivious conduct;
- (b) The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
- (c) The child, whether male or female, is below 18 years of age.

In this case, the existence of the *first* and *third* elements remains undisputed. Records disclose that **Caballo had succeeded in repeatedly having sexual intercourse with AAA** who, during all those instances, **was still a minor**. Thus, *the only bone of contention lies in the presence of the second element*. On this note, the defense submits that AAA could not be considered as a “child exploited in prostitution and other sexual abuse” since the incidents do not point to any form of “coercion” or “influence” on Caballo’s part.

The argument is untenable.

To put things in proper perspective, it must be pointed out that RA 7610 was meant to advance the state policy of affording “special protection to children from ***all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development***” and in such regard, “provide sanctions for their commission.”²³ It also furthers

²² G.R. No. 163866, July 29, 2005, 465 SCRA 465, 473.

²³ Section 2, Article I of RA 7610 provides in part:

SEC. 2. Declaration of State Policy and Principles. – It is hereby declared to be the policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.

It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

the “best interests of children” and as such, its provisions are guided by this standard.²⁴

Driven by the foregoing considerations, Congress crafted Article III of the same law in order to penalize child prostitution and other forms of sexual abuse. Section 5 thereof provides a definition of who is considered a “child exploited in prostitution and other sexual abuse.” As illumined in *Olivarez*,²⁵ citing *People v. Larin*²⁶ and *Amployo v. People*,²⁷ the final version of the aforesaid provision was a product of various deliberations to expand its original coverage to cases where the minor may have been coerced or intimidated into sexual intercourse or lascivious conduct, not necessarily for money or profit, viz:

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*:

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.**

We reiterated this ruling in *Amployo v. People*:

... 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**

²⁴ Section 2, Article I of RA 7610 provides in part:

Section 2. *Declaration of State Policy and Principles.* – x x x x

The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. (Emphasis supplied)

²⁵ Supra note 22, at 474-476.

²⁶ G.R. No. 128777, October 7, 1998, 297 SCRA 309, 319-320.

²⁷ G.R. No. 157718, April 26, 2005, 457 SCRA 282, 295.

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.**

The President Pro Tempore. Is that not what we would call probable 'child abuse'?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Subject to rewording. Is there any objection? [Silence] Hearing none, the amendment is approved. (Emphasis and underscoring supplied)

As it is presently worded, Section 5, Article III of RA 7610 provides that **when a child indulges in sexual intercourse or any lascivious conduct due to the coercion or influence of any adult**, the child is deemed to be a ***“child exploited in prostitution and other sexual abuse.”*** In this manner, the law is able to act as an effective deterrent to quell all forms of abuse, neglect, cruelty, exploitation and discrimination against children, prejudicial as they are to their development.

In this relation, case law further clarifies that sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when **there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.**²⁸ Corollary thereto, Section 2(g) of the Rules on Child Abuse Cases conveys that sexual abuse **involves the element of influence which manifests in a variety of forms.** It is defined as:

The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.

To note, the term *“influence”* means the “improper use of power or trust in any way that deprives a person of free will and substitutes another’s objective.”²⁹ Meanwhile, “coercion” is the “improper use of x x x power to compel another to submit to the wishes of one who wields it.”³⁰

In view of the foregoing, the Court observes that Caballo’s actuations may be classified as “coercion” and “influence” within the purview of Section 5, Article III of RA 7610:

First, the most crucial element is AAA’s minority. It is undisputed that AAA was only 17 years old at the time of the commission of the crime and is hence, considered a child under the law.³¹ In this respect, AAA was

²⁸ *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 395.

²⁹ The Law Dictionary <<http://thelawdictionary.org/undue-influence>> (visited May 27, 2013)

³⁰ The Law Dictionary, 2nd Ed. <<http://thelawdictionary.org/Black's Law Dictionary coercion>> (visited May 27, 2013)

³¹ Section 3 of RA 7610 provides:

SEC. 3. *Definition of Terms.* –

(a) "Children" refers to person **below eighteen (18) years of age** or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty,

not capable of fully understanding or knowing the import of her actions and in consequence, remained vulnerable to the cajolery and deception of adults, as in this case.

Based on this premise, jurisprudence settles that consent is immaterial in cases involving a violation of Section 5, Article III of RA 7610; as such, the argument that AAA and Caballo were sweethearts remains irrelevant. The *Malto* ruling is largely instructive on this point:

For purposes of sexual intercourse and lascivious conduct in child abuse cases under RA 7610, the sweetheart defense is unacceptable. *A child exploited in prostitution or subjected to other sexual abuse cannot validly give consent to sexual intercourse with another person.*

The language of the law is clear: it seeks to punish “[t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse.”

Unlike rape, therefore, consent is immaterial in cases involving violation of Section 5, Article III of RA 7610. The mere act of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense. **It is a *malum prohibitum*, an evil that is proscribed.**

A child cannot give consent to a contract under our civil laws. This is on the rationale that she can easily be the victim of fraud as she is not capable of fully understanding or knowing the nature or import of her actions. The State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are as yet unable to take care of themselves fully. Those of tender years deserve its protection.

The harm which results from a child’s bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. **(Otherwise, sexual predators like petitioner will be justified, or even unwittingly tempted by the law, to view her as fair game and vulnerable prey.) In other words, a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse.** x x x x³² (Emphasis and underscoring supplied; citations omitted)

Second, coupled with AAA’s minority is Caballo’s seniority. Records indicate that Caballo was 23 years old at the time of the commission of the offense and therefore, 6 years older than AAA, more or less. The age

exploitation or discrimination because of a physical or mental disability or condition x x x x (Emphasis supplied)

³² *Malto v. People*, supra note 21, at 661-663. (Citation omitted)

disparity between an adult and a minor placed Caballo in a stronger position over AAA so as to enable him to force his will upon the latter.

Third, Caballo's actions effectively constitute overt acts of coercion and influence. Records reveal that Caballo repeatedly assured AAA of his love for her, and even, promised to marry her. In addition, he also guaranteed that she would not get pregnant since he would be using the "withdrawal method" for safety. Irrefragably, these were meant to influence AAA to set aside her reservations and eventually give into having sex with him, with which he succeeded.

Fourth, at least, with respect to the parties' first sexual encounter, it is observed that the brash and unexpected manner in which Caballo pursued AAA to her room and pressed on her to have sex with him, effectively placed her in, to a certain extent, a position of duress. An important factor is that AAA refused Caballo's incipient advances and in fact, asked him to leave. However, AAA eventually yielded. Thus, it stands to reason that she was put in a situation deprived of the benefit of clear thought and choice. In any case, the Court observes that any other choice would, nonetheless, remain tarnished due to AAA's minority as above-discussed.

Hence, considering that Caballo's acts constitute "coercion" and "influence" within the context of the law, and that AAA indulged in sexual intercourse and/or lascivious conduct with Caballo due to the same, she is deemed as a "child exploited in prostitution and other sexual abuse"; as such, the second element of the subject offense exists.

In fine, finding all elements to be present, the Court hereby sustains Caballo's conviction for violation of Section 5(b), Article III of RA 7610.

WHEREFORE, the petition is **DENIED**. The January 28, 2011 Decision and September 26, 2011 Resolution of the Court of Appeals in CA-G.R. CR No. 27399-MIN are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:



ARTURO D. BRION

Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice



MARVIC MARIO VICTOR F. LEONEN

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

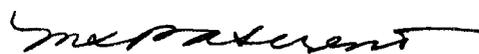


ARTURO D. BRION

Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice