

PEOPLE OF THE PHILIPPINES, APPELLEE. VS. DIONESIO ROY Y PERALTA, APPELLANT.

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

This is an appeal from the decision[1] of the Regional Trial Court (“RTC”), Branch 5, of the City of Manila, finding accused-appellant Dionesio Roy y Peralta (“appellant”) guilty beyond reasonable doubt of one count of statutory rape and sentencing him to suffer the penalty of Reclusion Perpetua, with all its accessory penalties, and to indemnify the victim, AAA[2], the amounts of Php50,000.00 as civil indemnity, another Php50,000.00 as moral damages, and Php30,000.00 as exemplary damages.

The Information[3] charging appellant of statutory rape alleged:

“ That on or about June 30, 2010, in the City of Manila, Philippines, the said accused, with lewd design and by means of force, violence, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one AAA, a minor, 9 years of age, by then and there pulling her inside a building at Intramuros, this City, covering her mouth so she could not shout for help, removing her shorts and panty, make her sit on his lap, kissing her on the lips and forcibly inserting his penis into her vagina against her will and consent.

Contrary to law.”

Appellant pleaded not guilty.

The prosecution presented AAA, AAA's mother, BBB, alleged eyewitness CCC, and the attending physician, Dr. Merle Tan.

AAA testified that “around 4 p.m.” of 30 June 2010, she was strolling in Intramuros when somebody dragged her into a break or opening in a wall. She recognized her assailant as the appellant, whom she calls Roy and who lived a block away from her family's house. After dragging her into the opening, appellant allegedly removed her clothes. AAA shouted but appellant covered her mouth and removed his own shorts and briefs. Then he allegedly pulled her hair and made her sit on his lap, facing him. With her legs spread apart, appellant tried to insert his penis into her vagina. Appellant also held her by the waist and kissed her lips. There was no full penetration; she testified that he only “dipped” his penis into her organ. Appellant then sensed that someone saw them and he stood up and put on his clothes. A security guard then arrived and handcuffed the appellant.

CCC, testified that “around 9 in the morning” of 30 June 2010 he proceeded from Letran College to San Gabriel Street in Intramuros to urinate. He then saw the appellant, whom he identified in court, and who was at the time of the incident naked and only a meter and a half away from him, sitting undressed with a naked child on his lap. CCC saw that the appellant had covered the child's mouth while the child appeared to be in pain. CCC described that the appellant appeared to be pulling out something in front of the child while the latter's legs had stretched out. He reported the ghastly scene to a security guard. On the stand, he also identified his Sinumpaang Salaysay.

AAA's mother, BBB, presented a Certificate of Live Birth showing that her daughter was born on 13 May 2001. She testified that when the alleged rape happened, she was at the inauguration of President Aquino at the Luneta Park. Before attending, she left AAA sleeping at her mother's house in Intramuros. She knew the appellant since she was 18 years old, and testified that she would usually see him near her residence. When she heard that her daughter had been molested, she accompanied AAA to the Philippine General Hospital ("PGH") for examination. With her assistance, AAA executed a sworn statement detailing the crime.

Dr. Merle Tan, the examining physician, testified that she attended to AAA on 30 June 2010. She summarized her findings in a report[4], which concluded that "congenital findings are diagnostic of blunt force or penetrating trauma."

For the defense, the appellant initially raised the defense of alibi. He testified that while he recognized AAA, he did not rape her. At the time of the alleged rape, he was only defecating, but was inconsistent on whether this was at home or at the hole where he was arrested.

On cross, the prosecution grilled the appellant on his whereabouts, but the latter gave contradicting answers, and did not provide the RTC a definite answer on whether he was at home or at the break in the hole where he encountered AAA. This led the defense to pray for the determination of the mental status of the appellant, which the Court granted.[5]

Subsequently, Dr. Grace Domingo from the National Center for Mental Health testified on the appellant's mental status. She stated that appellant had undergone a battery of tests and examinations, and concluded that the results showed appellant to be suffering from imbecility, or moderate mental retardation. She clarified that while this was irreversible, appellant can be taught, and recommended continuous treatment. On cross, she testified that the finding of imbecility only covered the mental status of the appellant at the time he underwent mental evaluation, and not necessarily at the time of the offense, meaning that, at the time of the rape, appellant probably knew what he was doing and the consequences thereof.

On redirect, Dr. Domingo testified that she could not conclude absolutely that appellant was aware of his actions since he was not immediately brought to the Center immediately after the rape. On re-cross, Dr. Domingo maintained her general response.

After admitting and considering the evidence of the prosecution and the defense, the RTC convicted the appellant.

The RTC began by reiterating the presumption in law that an offender possesses full control of his faculties, and hence, insanity or imbecility as defenses must be established by clear and competent evidence that the accused completely lost his reason, or was demented immediately prior to or at the very moment of the commission of the crime.[6]

Applying this standard, the RTC held that while it did not doubt Dr. Domingo's finding that appellant was an imbecile, the defense still failed to convince the Court that appellant had no control over his mental faculties prior to or at the very moment of the commission of the crime. On the contrary, the RTC observed that the appellant concealed his actions by dragging AAA to a concealed spot and covering her mouth, thereby showing that he was fully aware of the wrong he was committing.

Anent the charge of statutory rape, the RTC was persuaded that appellant committed the same. According to the RTC, the prosecution successfully proved that AAA was only nine (9) years old at the time of the rape, and that appellant committed the deed since he had been positively identified by AAA and CCC.

The RTC furthermore held that despite the absence of full penetration, appellant was still guilty of rape, citing

jurisprudence.[7]

The RTC disposed:

“ WHEREFORE, the court hereby finds the accused DIONESIO ROY y PERALTA, GUILTY beyond reasonable doubt of the crime of Statutory Rape under Article 266-B of the Revised Penal Cde and is hereby sentenced to suffer the penalty of Reclusion Perpetua.

The said accused is ordered to pay the victim, AAA the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (p30,000.00) as exemplary damages.

SO ORDERED.”

Appellant timely filed this appeal.

In his Brief[8], appellant raises the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO CONVINCINGLY PROVE HIS GUILT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT CRIMINALLY LIABLE DESPITE THE FACT THAT HE IS SUFFERING FROM MODERATE MENTAL RETARDATION.

Appellant maintains that he cannot be held guilty of rape considering that he was diagnosed as an imbecile, as his psychological results showed that he was suffering from moderate mental retardation and possessing the mental age of a 7 year old.

The appellant also argues that the prosecution failed to show that he employed force, violence, and intimidation against the purported victim. He asserts that the prosecution did not adduce in evidence any weapon, and also failed to establish that the circumstances surrounding the alleged rape cowed AAA into submitting to the desires of the appellant.

On the other hand, the Office of the Solicitor General (“OSG”), for the prosecution[9], argues that appellant's guilt for the crime of statutory rape has been proved with moral certainty. The OSG emphasizes that AAA clearly testified on the details of the rape, and categorically identified appellant as the perpetrator. The OSG also stresses that the prosecution duly proved AAA's age. Given her young age and immaturity, and that the present case involved an assault on her dignity, the OSG contends, she must only be telling the truth.[10]

The OSG further argues that appellant's defense of imbecility lacks merit. Appellant, stresses the OSG, failed to overcome the presumption of sanity and to prove that at the time of the rape, he did not know what he was doing. In this regard, the OSG also offers that the RTC's finding must be respected.

The OSG also contends that the damages which appellant must pay be increased to Php100,000.00, following the recent holding in *People v. Gutierrez*[11].

Before resolving the appeal, We first dispense with a minor matter. It appears that during the proceedings before the RTC, two witnesses, Reynaldo Llagas and Richard Panaguiton, failed to appear and testify despite due notice. As a result, the RTC issued a Warrant of Arrest against them on 24 October 2011.

Reynaldo Llagas filed a Motion to Lift Warrant of Arrest[12] on 8 August 2014, but he was notified by the RTC that all the records of the criminal case had been forwarded to this Court. Thus on 13 August 2014, he filed before Us an Urgent Motion to Lift Warrant of Arrest[13]

On 17 September 2014, We ordered the OSG to comment on the Urgent Motion before We acted on it[14]. On 27 October 2014, the OSG manifested that it still had not received a copy of the Urgent Motion[15], and prayed that the period to comply with Our 17 September 2014 Order be suspended until it had been furnished with such copy.

On 6 January 2015, We noted the OSG's Manifestation and ordered movant Llagas to furnish the OSG with a copy of his Urgent Motion[16].

The records bear that, to date, movant Llagas has not yet complied with Our Order. Hence, considering that the OSG has not yet commented on his motion, which We required before We could grant or deny it, We likewise suspend any action on Llagas' Urgent Motion to Lift Warrant of Arrest.

Now to the main case.

After due deliberation, We deny the appeal. We uphold the conviction of the appellant. We discuss below.

Settled is the rule that an appeal in a criminal case opens the case for review, such that the reviewing court can correct errors though unassigned in the appeal, or even reverse the trial court's decision on grounds other than those raised as errors by the parties therein. [17]

Statutory rape is defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended by R.A. No. 8353[18], to wit:

“ Article 266-A. Rape, When and How Committed. - Rape is committed -

1. By a man who shall have carnal knowledge of a woman x x x:

x x x x

d) When the offended party is under twelve (12) years of age or demented, even though none of the circumstances mentioned above be present.

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.”

For statutory rape, the following elements must concur: 1) the victim is a female under 12 years of age or is demented; and 2) the offender has carnal knowledge of the victim.[19]

With respect to the first element, the birth certificate[20] of AAA shows that she was born on 13 May 2001, making her 9 years of age at the time of the rape.

Second, the prosecution's evidence showed that it was indeed appellant who raped her on 30 June 2010.

AAA's categorical and consistent testimony convincingly identifies appellant as her offender and persuasively narrates the events leading to her violation; that appellant suddenly dragged her while she was strolling about Intramuros; that appellant removed her garments, covered her mouth when she was about to shout for help and pulled her hair when she tried to run; that appellant undressed himself, and made her sit on him; and that appellant tried to force himself inside her, by holding her at her waist, and forcing her downwards, but only managed to “dip” his penis into her vagina. AAA vividly described the incident: that she faced appellant, that appellant kissed her, and that she felt pain when appellant continued to press his penis to penetrate her.

It has already been held that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Furthermore, youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[21]

Relevantly, that AAA testified that she was raped in the afternoon[22] instead of in the morning, as testified to by CCC[23], is not fatal to her testimony. In her statement[24] dated 30 June 2010, executed around 4.p.m., AAA had responded under question that she was raped in the morning of that day. When she was cross-examined, she also maintained that appellant assaulted her in the morning[25]. Her apparent inconsistency can therefore be brushed aside as a minor mistake, and being minor, cannot affect AAA's credibility.

AAA's testimony is rendered more persuasive as it is corroborated by CCC. CCC testified that he saw appellant in the secluded spot in the wall with a child, and both were naked; that the child was straddled on the appellant's legs; and that the appellant was covering the child's mouth. CCC stood only a meter and a half away from the appellant during this discovery. He also identified appellant in court. While he did not categorically declare that he saw that the victim was AAA, he nonetheless, on cross, testified that he only knew the child's mother[26], strongly implying that he recognized the naked child when he saw her. In any case, such testimony fully supports AAA's account.

That appellant managed to "dip" his organ in AAA's vagina is in turn confirmed by the findings of Dr. Tan, the attending physician. In her report[27], she concluded that AAA's anogenital findings were diagnostic of blunt force or penetrating trauma. The dipping of appellant's penis is enough to consummate rape. It has been held that full penetration is not necessary for a charge of rape to prosper, rather, the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge[28].

The above testimonies and evidence incline Us to sustain the ruling of the RTC that the elements of statutory rape have been duly proved. In this regard, We recall that absent any evidence that the RTC's assessment has been tainted with arbitrariness or oversight of a fact of consequence or influence, the trial court's assessment is entitled to great weight, if not conclusive and binding.[29]

Appellant tries to buck the charge of statutory rape by claiming that the circumstances of force, violence, and intimidation have not been fully established. The argument merits only scant consideration. As discussed above, in statutory rape, the prosecution only has to prove that the accused had carnal knowledge of the offended party who is under 12 years of age, and who, by law, is incapable of giving consent.[30] Since the prosecution has amply proven that appellant had carnal knowledge of AAA, who is below 12 years of age, any issue as to the existence of force, violence, and intimidation becomes moot as the carnal act alone is punished, having been defined as rape by statute.

Now We turn to the defense of imbecility raised by the appellant.

After due consideration, We find that the exempting circumstance cannot be applied in favor of the appellant.

In *People v. Pambid*[31], the Court revisited the guidelines in appreciating Art. 12 (1) of the Revised Penal Code, to wit:

“While Art. 12(1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every man is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it. He must show that he was completely deprived of reason when he committed the crime charged. As held in *People v. Bañez*, “the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.”

Appellant unfortunately failed to establish that he was utterly deprived of reason when he committed the crime charged.

First, We cannot give full credence to the findings of Dr. Domingo. Under direct examination, Dr. Domingo could not positively or certainly conclude that appellant's state of imbecility afflicted him at the time he raped AAA.

Under cross, Dr. Domingo revealed that she could not make any conclusion as to appellant's mental faculties at the time of the rape:

Q: Now, during that time that he committed the offense, are you still, considering that mental retardation according to you is incurable, permanent, irreversible, are you impressing upon this court that when he committed the crime, he does not know the consequence of his own acts?

A: Unfortunately, sir, I cannot attest to that because the patient was not immediately brought to the center and the only way that we can say that the person during the time of the commitment of the crime is suffering from any mental illness is if we witness the crime itself or he as immediately brought to the center for evaluation.

Q: So my point here is when he committed the crime, you cannot be so sure whether he was suffering from mental retardation at that time? Because you said that it was only this time that you could say categorically that he was suffering from mental retardation?

A: Yes, sir. That was the only time that we found out that. (sic)

Q: So there is a possibility doctor, considering that when he committed the crime, he knows the consequence of his own action?

A: Probably.[32]

Dr. Domingo's Report is likewise inconclusive as to the state of appellant's mental faculties at the time of the rape. While the report extensively discussed his condition in early 2013, it does not conclude that he was afflicted with imbecility, or that he was unaware of what he was doing, at the time he raped AAA. The report only concluded that “at present, the patient is deemed INCOMPETENT to stand the rigors of court trial.” Unfortunately, such incompetence merely means that appellant's mental state is not fit for trial. It does not mean that he was completely deprived of reason and freedom of will at the time he committed the crime.[33]

Furthermore, We agree with the RTC that appellant's actions at the moment of the rape reveal that appellant was aware of what he was committing, and that what he was doing was wrong. Appellant, as convincingly testified to by AAA, and corroborated by CCC, dragged AAA into a secluded spot, thereby isolating himself and AAA to facilitate the commission of his lust. When AAA tried to call for help, appellant covered her mouth, ensuring that they would not be disturbed. Such precautions make it difficult to believe that appellant was in such a state that he could not discern what was right from wrong, or that he was completely deprived of intelligence or will.

Having now established moral certainty that appellant committed statutory rape against AAA, We now discuss the penalty.

The RTC correctly concluded that appellant must be meted the penalty of reclusion perpetua. We clarify that because the law imposes such penalty, appellant is not entitled to the benefit of an indeterminate sentence, provided by the Indeterminate Sentence Law, as discussed in *People v. Gardon*[34], to wit:

“We should point out that the benefit of parole cannot be extended to Gardon even if he committed the crimes for which he is now convicted prior to the effectivity of R.A. No. 9346. Sec. 2 of the Indeterminate Sentence Law provides that the law “shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment.” Although the law makes no reference to persons convicted to suffer the penalty of reclusion perpetua such as Gardon, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to reclusion perpetua.”

Anent the award of damages, We increase the award of civil indemnity and moral damages, following recent jurisprudence[35]. Thus civil indemnity and moral damages should be increased to Php75,000 each. With respect to exemplary damages, the award of Php30,000.00 is deemed sufficient.

While the OSG posits that these awards must be increased to Php100,000.00 each, following *People v. Gutierrez*[36], We find the same to be unnecessary. In *People v. Gutierrez*, the Supreme Court exercised its judicial prerogative to further increase the amount of damages considering the utter heinousness of the acts committed by the accused therein. A review of appellant's case persuades that, while he has committed a vile crime, the circumstances of his case does not call to mind the degree of depravity observed in *Gutierrez*. To recall, in *Gutierrez*, the accused exercised moral ascendancy over his victim, was alleged by his victim to have raped her over ten times, and the accused paid or tipped her measly amounts after every violation. No act of a similar nature have been established to have committed by the appellant. Hence, while We strongly condemn his violation against the dignity and person of AAA, We find no reason to apply the heavier penalty imposed in *Gutierrez*.

Following the discussion above, We affirm appellant's conviction for statutory rape.

WHEREFORE, premises considered, the APPEAL is DENIED, and the Decision of the RTC finding appellant guilty of statutory rape is AFFIRMED with MODIFICATION. The appellant is sentenced to reclusion perpetua, and is ordered to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php30,000.00 as exemplary damages.

We GRANT the OSG's Motion dated 23 October 2014. The period to comply with Our directive to comment on movant Reynaldo Llagas' Urgent Motion to Lift Warrant of Arrest within ten (10) days from notice of the 17 September 2014 Order is suspended. The OSG is instead ordered to comment thereon within ten (10) days from receipt of a copy of Llagas' Urgent Motion, pursuant to Our 6 January 2015 Order. Movant Reynaldo Llagas is again ordered to furnish the OSG with a copy of his Urgent Motion, with proof of service and receipt, within ten (10) days from notice of this Decision.

SO ORDERED.

Salazar-Fernando, R., Chairperson, and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 32-36.

[2] The real names of the victims, their personal circumstances, and any other information tending to establish, or which may compromise their identities and their family members are withheld, pursuant to Sec. 44 of Republic Act No. 9262 (the Anti-Violence Against Women and their Children Act of 2004) and its Implementing Rules; see also *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

- [3] Records, p. 1.
- [4] Records, p. 14.
- [5] Records, p. 193.
- [6] The RTC citing *People v. Medina*, G.R. No. 113691, 6 February 1998.
- [7] *People v. Albino Galimba*, G.R. Nos. 111563-64, 20 February 1996.
- [8] Rollo, pp. 19-30.
- [9] See Appellee's Brief at rollo, pp. 64-79.
- [10] Citing *People of the Philippines v. Sabal*, G.R. No. 201861, 2 June 2014.
- [11] G.R. No. 208007, 2 April 2014.
- [12] Rollo, pp. 41-42.
- [13] Rollo, pp. 37-40.
- [14] Rollo, p.49.
- [15] Rollo, p. 57.
- [16] Rollo, p. 84.
- [17] *People of the Philippines v. Balagat*, G.R No. 177163, 24 April 2009.
- [18] “An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes”.
- [19] *People v. Teodoro*, G.R. No. 175876, 20 February 2013.
- [20] Records, p. 43.
- [21] *People of the Philippines v. Garcia*, G.R. No. 200529, 19 September 2012.
- [22] See TSN of AAA, dated 27 June 2011, p. 4.
- [23] See TSN of CCC, dated 27 February 2012, p. 3.
- [24] Records, p. 5.
- [25] See TSN of AAA, dated 27 June 2010, p. 14.
- [26] See TSN, dated 27 February 2012, p. 10.
- [27] Records, p. 14.
- [28] See *People v. Campuhan*, G.R. No. 129433, 30 March 2000.
- [29] *People of the Philippines v. Dalipe*, G.R. No. 187154, 23 April 2010.
- [30] See *People v. Villaflores*, G.R. No. 184296, 11 April 2012.
- [31] G.R. No. 124453, 15 March 2000.

[32] See TSN of Dr. Grace Punzalan Domingo, dated 18 July 2013, pp. 13-14.

[33] *People v. Nunez and Cayetano*, G.R. No. 112429-30, 23 July 1999.

[34] G.R. No. 169872, 27 September 2006.

[35] See *People v. Degay*, G.R. No. 182526, 25 August 2010; *People v. Sia*, G.R. No. 174059, 27 February 2009.

[36] G.R. No. 208007, 2 April 2014.

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