

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICOLAS TUBILLO Y ABELLA, ACCUSED-APPELLANT.

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS APPEAL, filed by accused-appellant Nicolas Tubillo y Abella (accused-appellant), seeks to reverse and set aside the Decision[1] dated July 4, 2012, issued by the Regional Trial Court, Branch 225, Quezon City in Criminal Case No. Q-06-139031, the decretal portion of which reads, thus:

WHEREFORE, accused Nicolas Tubillo y Abella is found guilty beyond reasonable doubt of simple rape as defined under Art. 266-A, The Revised Penal Code. He is sentenced to suffer imprisonment with the duration of reclusion perpetua pursuant to Art. 266-A, The Revised Penal Code. He is ordered to pay HGE[2] P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, plus interest of 6% per annum on each of the amounts reckoned from the finality of this Decision, and the costs of suit.

SO ORDERED.

THE ANTECEDENTS

On February 20, 2006, an Information[3] was filed charging accused-appellant with rape in relation to Republic Act No. 7610[4] (RA7610):

That on or about the 1[st] day of February 2006, in Quezon City, Philippines, the said accused, by means of force, violence and intimidation and at knife point, commit an act of sexual assault upon one HGE, a minor, 13 years of age, by then and there while complainant was sound asleep alone inside the room, forcibly opened the door then accused motivated by sexual desire, undressed her, pulled down her underwear and mounted on top of her, and thereafter have carnal knowledge with said complainant, all against her will and without her consent, which act debases, degrades and demeans the intrinsic worth and dignity of said HGE, as a human being, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

Accused-appellant was arraigned[5] on April 5, 2006 and, with the assistance of counsel, entered a plea of "Not Guilty".

During the pre-trial[6], the prosecution and the defense stipulated on the following: the identity of the accused-appellant; territorial jurisdiction of the court; private complainant HGE is a minor, 13 years old; police investigation and inquest proceedings were conducted; and, letter-referral submitted by Police Station 6 was prepared.

Thereafter, trial proceeded.

The prosecution presented the testimonies of HGE[7] and Dr. Paul Ortiz[8], whose combined testimonies tended to establish that:

HGE, a minor then thirteen (13) years of age, lives with AAA, the person who "adopted" her and who is gay, at 249 St. Peter Street, Barangay Holy Spirit, Quezon City.

On February 1, 2006, at around 10 o'clock in the evening, HGE was home alone as AAA works as a beautician at a salon from 2 o'clock in the afternoon until 10 o'clock in the evening and usually arrives home at around 11:30 in the evening. HGE was asleep and was awakened when accused-appellant, a neighbor, entered the house by breaking the padlock of the door.

Upon entry, accused-appellant removed HGE's clothes and his own. He then forcibly inserted his penis in her vagina by pushing his body towards her. HGE felt pain but she did not resist as accused-appellant was poking a knife at her neck. The incident lasted about 30 seconds.

On February 8, 2006, HGE told her tita, the sister of her father, about the incident.

Dr. Paul Ortiz, the Medico-Legal Officer who examined HGE, found a shallow healed laceration at 7 o'clock position in the hymen; the periurethral and vaginal smears were found negative for spermatozoa; the findings are suggestive of remote history of blunt force or penetrating trauma to the hymen which may have been caused by the penetration of an erect penis. The defense presented accused-appellant[9], who denied the accusation and testified that the complaint was filed because HGE's aunt was angry when he tried to collect some money from HGE.

On July 4, 2012, the RTC rendered a Decision[10] finding accused-appellant guilty beyond reasonable doubt of simple rape under Article 266-A of the Revised Penal Code.

Aggrieved, accused-appellant filed this appeal.

THE ISSUE

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal is bereft of merit.

In *People of the Philippines vs. Ben Rubio y Acosta*[11], the Supreme Court reiterated the guiding principles in deciding rape cases, viz.:

- (a) an accusation of rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.

As a result of these guiding principles, the credibility of the victim becomes the single most important issue.

Accused-appellant contends that the testimony of HGE is riddled with glaring inconsistencies rendering her version highly improbable as HGE testified that the accused-appellant raped her for the first time on February 1, 2006 but subsequently testified that accused-appellant raped her around six (6) times since October 28, 2005; that after the supposed rape incident, HGE went about her usual activities as if nothing happened, even staying out late at night unaccompanied, thereby belying her claim that she was raped; and the imputation of ill-motive for filing

the complaint should have raised reasonable doubt as to the credibility of the testimony of HGE.

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration[12]. In this case, the testimony of HGE was taken out of context by the defense.

The alleged glaring inconsistency in the testimony of HGE on whether she was raped for the first time by accused-appellant on February 1, 2006 or not, was clarified[13], thus:

ACP VILLANUEVA:

Now, HGE, for purposes of clarification, you stated in your Answer in Question No. 7, "Simula pa noong October 28, 2005 ay hinalay na ako ng suspect at mula noon ay halos inaaraw-araw akong hinalay ng suspect, do you affirm that allegation, HGE?

A:

Yes, sir.

Q:

Now, during your direct examination, you mentioned that the February 1, 2006 incident was the first time only rape incident that you suffered in [sic] the hands of the accused. Now, which is which, Ms. Witness?

A:

The February 1, 2006, sir.

Q:

So you mean to say there was no rape incident that happened prior to the incident which happened on October 28, 2005?

A:

Yes, sir.

Q:

But who supplied this statement, Ms. Witness, were you the one who gave this statement?

A:

Yes, sir.

Q:

Do you understand my question, Ms. Witness?

COURT:

Naintindihan mo ba yung tanong sa'yo, HGE? Paulit uli natin yung tanong[,] ha?

ACP VILLANUEVA:

Now, which is true, Ms. Witness, there were other rape incidents that were committed against you by the accused prior to the February 1, 2006 incident or there is only one rape incident and that occurred only on February 1, 200[6]?

A:

There was a prior incident that happened on October 28, 2005, sir.

Q:

Could you recall, Ms. Witness, the number of times did the accused rape you prior to February 1, 200[6] incident?

A:

Around 6 times, sir.

Q:

How come in those previous rape incidents, you did not report said incidents to your parents or to your relatives?

A:

Because he threatened to kill me if I will tell anybody. (*Italics in the original*)

The perceived inconsistency is trivial. The previous rape incidents since October 28, 2005 were not reported because of the overwhelming fear HGE felt against her abuser, accused-appellant; and the fact that it was not reported does not mean that it did not happen. Also, the alleged inconsistency may have been brought about by the confusion in the way the question was phrased, so much so that the court a quo had to prod the prosecutor to simplify his questions.

The argument that after the supposed rape incident, HGE went about her usual activities as if nothing happened, even staying out late at night unaccompanied, thereby belying her claim that she was raped, was taken out of context.

First, the questions propounded by counsel for accused-appellant referred to her usual, daily routine, without specific time reference to the February 1, 2006 rape incident, thus:

Q (ATTY. MATEO):

When you are left by yourself in that house, what do you usually do?

A:

Sometimes watching t.v., I sometimes go out of the house.

Q:

Are there also times that you bring along friends in your home?

A:

Yes, ma'am, my classmates.

Q:

So, these classmates are your friends?

A:

Yes, ma'am.

Q:

You said also that there are times that you would go out. Whenever you would go out, what time do you usually do that?

A:

Sometimes 6:00, sometimes 7:00 in the evening.

Q:

And if you would go out 7:00 or 6:00 in the evening, what time would you arrive home?

A:

Sometimes, late in the evening 9:00 or 10:00, ma'am.

Q:

And what would you usually do whenever you would go out?

A:

Minsan po tambay sa computer shop ng mga kaibigan ko.

xxx[14] (Underscoring ours)

Second, in contrast, when asked what happened to her life after the incident, HGE had this to say:

Q (ACP VILLANUEVA):

Now, what happened to your life, HGE, after that incident you suffered at the hands of the accused?

A:

Nagugulo po yung isip ko, pabalik-balik po yun sa isip ko.

Q:

So, are you seeking moral damages from the accused?

A:

No, sir.

As to accused-appellant's imputation of ill-motive for the filing of the complaint, We find this to be self-serving, speculative, and conjectural; accused-appellant failed to advance supporting or corroborative evidence to sustain his proposition. Mere allegation and speculation is not evidence, and is not equivalent to proof[16].

An examination of the testimony of HGE shows that the court a quo did not err when it accorded her testimony great weight and credibility based on her unwavering narration of the incident, the positive identification of accused-appellant as her abuser, and the lack of ill-motive to falsely testify against him. On the other hand, the defense of denial must necessarily fail. A denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters[17].

On the penalty imposed

Accused-appellant was charged for Rape in relation to Section 5 (b), Article III of RA7610, which provides, that:

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.

x x x

(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; and xxx

and convicted of Rape under Article 266-A of the Revised Penal Code, which provides:

ARTICLE 266-A. Rape, When and How Committed. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances;

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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

In *People of the Philippines vs. Eduardo Dahilig y Garan*[18] quoting *People of the Philippines vs. Roberto Abay y Trinidad*[19], the Supreme Court explained that:

Under Section 5(b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code and penalized with reclusion perpetua. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.

In this case, the victim was more than 12 years old when the crime was committed. The Information against accused-appellant also stated that HGE was 13 years old at the time of the incident. Although the prosecution did not present a birth certificate to prove that HGE is a minor, the defense admitted, during the pre-trial, that HGE is a minor, 13 years of age. Facts stipulated and evidence admitted during pre-trial bind the parties[20] as provided for in Section 4, Rule 118[21] of the Revised Rules of Criminal Procedure.

Accordingly, accused-appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor[22]. Considering, however, that the information correctly charged the accused-appellant with rape in relation to RA7610, accused-appellant should be penalized under Section 5(b), Article III of RA7610, which prescribes the penalty of reclusion temporal in its medium period to reclusion perpetua[23]. Since there is no aggravating and no mitigating circumstance, the penalty shall be applied in its medium period. Since the penalty provided in RA 7610 is taken from the range of penalties in the Revised Penal Code, it is covered by the first

clause of Section 1 of the Indeterminate Sentence Law[24]. Thus, accused-appellant is entitled to a maximum term which should be within the range of the proper imposable penalty of reclusion temporal in its maximum period (ranging from 17 years, 4 months and 1 day to 20 years) and a minimum term to be taken within the range of the penalty next lower to that prescribed by the law: prision mayor in its medium period to reclusion temporal in its minimum period (ranging from 8 years and 1 day to 14 years and 8 months)[25].

Applying the Indeterminate Sentence Law, accused-appellant is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum.

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated Decision issued by the Regional Trial Court, Branch 225, Quezon City, on July 4, 2012, in Criminal Case No. Q-06-139031, is AFFIRMED but MODIFIED finding Nicolas Tubillo y Abella Guilty beyond reasonable doubt of child abuse, defined and penalized under Section 5 (b) of Republic Act No. 7610 and, accordingly, sentences him to suffer the penalty of imprisonment ranging from fourteen (14) years and eight (8) months of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum.

SO ORDERED.

Didican, I.P., (Chairperson), and Inting, S.B.,[*] JJ., concur.

[*] Acting Senior Member vice J. Amy C. Lazaro-Javier per Office Order No. 516-14-RSF dated December 5, 2014.

[1] Records, pp. 272-9.

[2] The real name and other personal circumstances of the victim are withheld to protect her privacy pursuant to Republic Act No. 7610 and Republic Act No. 9262, held in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006. The initials "HGE" were used in the appeal.

[3] Records, p. 1.

[4] Otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act".

[5] Order dated April 5, 2006, Records, p. 19.

[6] Records, pp. 32-3.

[7] TSN, October 25, 2006, records, pp. 40-56 and August 22, 2007.

[8] TSN, April 14, 2010, records, pp. 236-45.

[9] TSN, December 1, 2011, records, pp. 251-8.

[10] Records, pp. 272-9.

[11] G.R. No. 195239, March 7, 2012.

[12] *People vs. Bernesto Dela Cruz @ Berning*, G.R. No. 183091, June 19, 2013.

[13] TSN, October 25, 2006, pp. 15-6.

[14] TSN, August 22, 2007, pp. 6-7.

[15] TSN, October 25, 2006, p. 11.

[16] Primo C. Miro, in his capacity as Deputy Ombudsman for the Visayas vs. Marilyn Mendoza vda. De Erederos, Catalina Alingasa and Porferio I. Mendoza, G.R. Nos. 172532 172544-45, November 20, 2013.

[17] People vs. Rey Monticalvo y Magno, G.R. No. 193507, January 30, 2013.

[18] G.R. No. 187083, June 13, 2011.

[19] G.R. No. 177752, February 24, 2009.

[20] People vs. Jesus Perez y Sebunga, G.R. No. 142556, February 5, 2003.

[21] SEC. 4. Pre-trial order. - After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice. (Emphasis supplied)

[22] People vs. Eduardo Dahilig y Agaran, G.R. No. 187083, June 13, 2011.

[23] People vs. Patricio Rayon, Sr., G.R. No. 194236, January 30, 2013.

[24] People vs. Dina Dulay y Pascual, G.R. No. 193854, September 24, 2012.

[25] Id.

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