

PEOPLE OF THE PHILIPPINES, APPELLANT, VS. ROBERTO ABAY Y TRINIDAD, APPELLEE.

G.R. No. 177752. February 24, 2009

Ponente: CORONA, J.

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CORONA, J.:

On March 8, 2000, appellant Roberto Abay y Trinidad was charged with rape in relation to Section 5(b), Article III of RA 7610 in the Regional Trial Court (RTC) of Manila, Branch 4[1] under the following Information:

That sometime in December 1999, in the City of Manila, Philippines, [appellant] by means of force and intimidation, did then and there willfully, unlawfully and knowingly commit sexual abuse and lascivious conduct against [AAA], a minor, 13 years of age, by then and there kissing her breast and whole body, lying on top of her and inserting his penis into her vagina, thus succeeded in having carnal knowledge of her, against her will and consent thereafter threatening to kill her should she report the incident, thereby gravely endangering her survival and normal growth and development, to the damage and prejudice of [AAA].

CONTRARY TO LAW.

Appellant pleaded not guilty during arraignment.

During trial, the prosecution presented AAA, her mother BBB and expert witness Dr. Stella Guerrero-Manalo of the Child Protection Unit of the Philippine General Hospital as its witnesses.

AAA testified that appellant, her mother's live-in partner, had been sexually abusing her since she was seven years old. Whenever her mother was working or was asleep in the evening, appellant would threaten her with a bladed instrument[2] and force her to undress and engage in sexual intercourse with him.

BBB corroborated AAA's testimony. She testified that she knew about appellant's dastardly acts. However, because he would beat her up and accuse AAA of lying whenever she confronted him, she kept her silence. Thus, when she caught appellant in the act of molesting her daughter on December 25, 1999, she immediately proceeded to the police station and reported the incident.

According to Dr. Guerrero-Manalo, AAA confided to her that appellant had been sexually abusing her for six years. This was confirmed by AAA's physical examination indicating prior and recent penetration injuries.

The defense, on the other hand, asserted the incredibility of the charge against appellant. Appellant's sister, Nenita Abay, and appellant's daughter, Rizza, testified that if appellant had really been sexually abusing AAA, the family would have noticed. The rooms of their house were divided only by ¼-inch thick plywood "walls" that did not even reach the ceiling. Thus, they should have heard AAA's cries. Moreover, Nenita and Rizza claimed that they "often caught" AAA and her boyfriend in intimate situations.

According to the RTC, one wrongly accused of a crime will staunchly defend his innocence. Here, appellant kept his silence which was contrary to human nature. On the other hand, AAA straightforwardly narrated her

horrifying experience at the hands of appellant. The RTC concluded that appellant had indeed sexually abused AAA. A young girl would not have exposed herself to humiliation and public scandal unless she was impelled by a strong desire to seek justice.[3]

In a decision dated November 25, 2003,[4] the RTC found appellant guilty beyond reasonable doubt of the crime of rape:

WHEREFORE, finding [appellant] Roberto Abay y Trinidad guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of RA 7610 against [AAA], the Court imposes upon him the death penalty,[5] and to pay private complainant moral damages in the amount of Fifty Thousand (P50,000) Pesos.

SO ORDERED.

The Court of Appeals (CA), on intermediate appellate review,[6] affirmed the findings of the RTC but modified the penalty and award of damages.

In view of the enactment of RA 8353[7] and RA 9346,[8] the CA found appellant guilty only of simple rape and reduced the penalty imposed to reclusion perpetua. Furthermore, in addition to the civil indemnity ex delicto (which is mandatory once the fact of rape is proved)[9] granted by the RTC, it awarded P50,000 as moral damages and P25,000 as exemplary damages. Moral damages are automatically granted in rape cases without need of proof other than the commission of the crime[10] while exemplary damages are awarded by way of example and in order to protect young girls from sexual abuse and exploitation.[11]

We affirm the decision of the CA with modifications.

Under Section 5(b), Article III of RA 7610[12] in relation to RA 8353,[13] if the victim of sexual abuse[14] 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[15] and penalized with reclusion perpetua.[16] On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse[17] 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[18] 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.[19] 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),[20] a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.[21]

In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation[22] by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.[23]

Indeed, the records are replete with evidence establishing that appellant forced AAA to engage in sexual intercourse with him on December 25, 1999. Appellant is therefore found guilty of rape under Article 266-A(1)(a) of the Revised Penal Code and sentenced to reclusion perpetua. Furthermore, to conform with existing jurisprudence, he is ordered to pay AAA P75,000 as civil indemnity ex-delicto[24] and P75,000 as moral damages.[25]

WHEREFORE, the January 18, 2007 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01365 is hereby AFFIRMED with modification. Appellant Roberto Abay y Trinidad is hereby found GUILTY of simple rape and is sentenced to suffer the penalty of reclusion perpetua. He is further ordered to pay AAA P75,000 as civil indemnity ex-delicto, P75,000 as moral damages and P25,000 as exemplary damages.

Costs against appellant.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Leonardo-De Castro, and Brion,[*] JJ., concur.

* Per Special Order No. 570 dated February 12, 2009.

[1] Docketed as Criminal Case No. 00182097.

[2] The nature of the bladed weapon was not specified in the records.

[3] Citing *People v. Arves*, 397 Phil. 137, 148 (2000).

[4] Penned by Judge Socorro B. Inting. CA rollo, pp. 15-21.

[5] The imposition of the death penalty was prohibited by RA 9346 which took effect on June 30, 2006.

[6] Docketed as CA-G.R. CR-H.C. No. 01365.

[7] ANTI-RAPE LAW OF 1997.

[8] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[9] *People v. Talavera*, 461 Phil. 883, 891 (2003).

[10] *People v. Alvarez*, 461 Phil. 188, 209 (2003).

[11] Decision penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Rodrigo V. Cosico (retired) and Lucas P. Bersamin. Dated January 18, 2007. Rollo, pp. 3-11.

[12] RA 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Art. III, Sec. 5(b) provides:

Section 5. Child Prostitution and Other Sexual Abuse. x x x

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x x 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 old shall be reclusion temporal in its medium period; (emphasis supplied)

x x x x x x x x

[13] RA 8353 (which took effect on October 22, 1997) reclassified rape as a crime against person and repealed Article 335 of the Revised Penal Code. The new provisions on rape are found in Articles 266-A to 266-D of the said code.

Article 335, paragraph 3 is now Article 266-A(1)(d) of the Revised Penal Code.

[14] Sexual abuse includes coercing a child to engage in sexual intercourse or lascivious conduct. See Rules and Regulation on the Reporting and Investigation of Child Abuse Cases, Sec. 2(g) cited in *People v. Malto*, G.R. No. 164733, 21 September 2007, 533 SCRA 643, 659.

[15] REVISED PENAL CODE, Art. 266-A. Rape; When And How Committed. — Rape is Committed —

- By a man who shall have carnal knowledge of a woman under any of the following circumstances:
- Through force, threat, or intimidation;
- When the offended party is deprived of reason or otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority; and
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
- By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (emphasis supplied)

[16] REVISED PENAL CODE, Art. 266-B. Penalties.—Rape under paragraph 1 of [Art. 266-A] shall be punished by reclusion perpetua.

x x x x x x x x

[17] Sexual intercourse with a child subjected to abuse.

[18] See *People v. Optana*, 404 Phil. 316 (2001).

[19] See CONSTITUTION, Art. III, Sec. 21 which provides:

Section 21. No person shall be put twice in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

[20] Under Article 48 of the Revised Penal Code, there are two kinds of complex crimes: one, a single act that constitutes two or more grave or less grave felonies and two, an offense is a necessary means for committing another.

[21] See *People v. Araneta*, 48 Phil. 650 (1926).

[22] In contrast, Section 5(b) of RA 7610 requires coercion or influence.

[23] While BBB testified that AAA was more than 12 years old at the time the offense was committed, her exact age was not proven.

[24] *People v. Pioquinto*, G.R. No. 168326, 11 April 2007, 520 SCRA 712, 724.

[25] *People v. Balonzo*, G.R. No. 176153, 21 September 2007, 533 SCRA 760, 775.

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