

PEOPLE OF THE PHILIPPINES, Appellee, vs. JOHN MONTINOLA @ TONY MONTINOLA, Appellant.

G.R. No. 178061. January 31, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is an appeal from the 28 February 2007 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01440. The Court of Appeals affirmed without modification the 26 August 2005 Joint Decision[2] of the trial court finding John Montinola @ Tony Montinola (Montinola) guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness.

The Facts

In six informations,[3] the prosecution charged Montinola with raping his minor daughter, AAA,[4] on 29 October 1999, 19 December 1999, February 2000, March 2000, 4 November 2000, and January 2001. AAA was born on 12 October 1987.

In Criminal Case No. 02-720, AAA alleged that on 29 October 1999, at around 3:00 p.m., Montinola was inside the house and drunk. He allowed all his children to play outside, except AAA. While AAA was in the living room, Montinola came out of the bedroom wearing only his underwear. He approached AAA, forced her to remove her clothes, and raped her. She tried to resist but he strangled her and spread her legs. When he inserted his penis in her vagina, she felt pain. He threatened her that if she told anyone about what happened, he would cut her throat, as well as the throats of her siblings. AAA believed Montinola's threats. She was scared of him because he often beat her severely.[5]

AAA attempted to report the 29 October 1999 incident to her mother. However, whenever she tried to tell her mother, Montinola interrupted her and told her mother that, "Kasi ginulpi ko 'yan, kaya 'yan ganyan. x x x ginulpi ko 'yan dahil may ginawa 'yang kasalanan."[6]

In Criminal Case No. 02-721, AAA alleged that on 19 December 1999, at around 4:00 a.m., she and her siblings were preparing to attend the midnight mass. Montinola did not allow AAA to attend the midnight mass because, according to him, she was just flirting with boys at the church. After her siblings had left, he asked her why she failed to clean the house and bathe her siblings the night before. He then told her, "Alam mo na ang mangyayari sa 'yo." He forced her to remove her clothes and tried to insert his penis in her vagina. He told her that he would rape her every time she did something wrong. He failed to insert his penis because she resisted and kept on moving.[7]

AAA did not report the 19 December 1999 incident to her mother because her mother was at work most of the time and AAA was scared of Montinola, who always kept an eye on her.[8]

In Criminal Case No. 02-722, AAA alleged that on 15 February 2000, at around 1:00 a.m., Montinola ordered her to remove her clothes. Her sisters were sleeping and her mother was at work. During the trial, AAA stated that, “Ganoon pa rin po, pinahubad pa rin niya ako. Tapos ano po noong ginalaw na naman niya ako, pinahubad na naman niya ako.” She begged for mercy and asked Montinola why he would rape her. He told her that she was being punished because she did something wrong.[9]

In Criminal Case No. 02-723, AAA alleged that on 28 March 2000, at around 8:00 p.m., she was sleeping beside her three sisters. She awoke when Montinola started to remove her clothes. She pretended to be asleep, but when Montinola started to insert his penis in her vagina, she resisted and cried. She was not sure whether he was able to insert his penis. Then on 29 March 2000, at around 8:00 p.m., Montinola caressed AAA’s body. He said it was his gift to her because she had just graduated from elementary school. Again, she resisted and cried. He told her to stop resisting, fondled and kissed her breasts, and tried to insert his penis in her vagina. She thought he was able to insert his penis.[10]

In Criminal Case No. 02-724, AAA alleged that on 4 November 2000, at around 1:00 a.m., AAA was sleeping on the sofa in the living room. She awoke when Montinola touched her. He was drunk. He forcibly removed her shorts, pulled her underwear, tried to insert his penis in her vagina, and told her not to resist — as a birthday gift to him. She resisted and she was not sure whether Montinola was able to insert his penis.[11]

In Criminal Case No. 02-725, AAA alleged that in the last week of January 2001, at around 5:30 a.m., she was sleeping on the sofa in the living room. Montinola roused her from her sleep wearing only his underwear. He caressed her right thigh, slipped his hand under her shorts, and touched her vagina. Suddenly, AAA’s mother walked in on them. After seeing what was happening, AAA’s mother asked Montinola, “Anong ginagawa mo?” AAA’s parents then went inside the bedroom and argued heatedly.[12]

In the first week of March 2001, AAA ran away and went to her friends for help. She told them that she was being beaten at home, but did not say anything about the sexual abuses. When asked why she did not tell her friends about the incidents, AAA stated that, “Ano naman po ang magagawa nila at saka iniisip ko po baka ipagsabi nila sa ibang kapitbahay namin.”[13]

One of her friends’ older sister, Cheche, accompanied AAA to the Makati office of the Department of Social Welfare and Development (DSWD). There, AAA talked to a social worker about Montinola’s physical and sexual abuses. The DSWD kept AAA in its custody for one week then returned her to her parents after they explained to the DSWD that AAA was just being disciplined at home.[14]

Thereafter, AAA ran away again and went to her friend’s cousin’s house in Pasay. She went to Batangas with her friend’s cousin’s aunt and did not return home for two weeks. She learned that her parents were looking for her when she saw a notice in the newspaper saying that she was missing.[15]

Cheche referred AAA to one Atty. Crystal Tenorio for legal assistance. On 26 March 2001, AAA went to the National Bureau of Investigation (NBI) where she executed affidavits. Dr. Maria Salome Fernandez of the NBI examined AAA and found a healed hymenal laceration:

Q What about x x x the genital examination, Dra., what was the result?

x x x x

A x x x I was able to note the presence of hymenal laceration which was already healed at the 6 o’clock position of the hymen. The edges are already rounded and non-coactable.

x x x x

Q In layman's language, Dra., could you explain to us the result of the genital examination?

A This means that [AAA] has had injuries before around probably more than two (2) weeks before the examination was done because the laceration has already showed signs of healing. That means that it does not bleed anymore. The edges of the laceration are already rounded. Meaning, bleeding has already taken place.

Q And what was your conclusion regarding these cases of [AAA]?

A x x x It would fall under conclusive evidence of injury secondary to intravaginal penetration by a blunt object.

x x x x

Q Could you say with certainty that [AAA] is a victim of sexual abuse?

x x x x

A Yes.[16]

Montinola was charged with six counts of rape. He pleaded not guilty to all of them.[17] He claimed that AAA made up the accusations against him because he often beat her. Moreover, he claimed that, if it were true that he raped her, (1) he would have been caught by people outside the house, if there were any; and (2) she would have sustained injuries in her vagina because his penis has pellets embedded in it.[18] AAA's mother, two brothers, and sister corroborated Montinola's claim that he did not rape AAA.[19]

The Trial Court's Ruling

In its 26 August 2005 Joint Decision, the trial court found Montinola guilty beyond reasonable doubt of rape, three counts of attempted rape, and acts of lasciviousness:

WHEREFORE, premises considered:

- In Criminal Case No. 02-720, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Rape, defined and punished under Article 266(a) of the Revised Penal Code, as amended by RA 8353 in relation to RA 7610, said accused is hereby sentenced to suffer the penalty of reclusion perpetua, with all the accessories of law.

The accused is further ordered to pay the offended party, [AAA], the amount of P75,000.00 as indemnity for the loss of her honor plus moral damages in the amount of P50,000.00 and exemplary damages of P50,000.00. With cost against the accused.

- In Criminal Case No. 02-721, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape and not as consummated rape as charge [sic], said accused is hereby sentenced to an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum plus P10,000.00 as moral damages, with all the accessories of law. With cost against the accused.

- In Criminal Case No. 02-722, and finding accused JOHN MONTINOLA @ TONY MONTINOLA not to be [sic] guilty of the crime of Rape on the ground of reasonable doubt, he is hereby ACQUITTED.

- With respect to Criminal Case No. 02-723, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum plus P10,000.00 as moral damages to be paid to [AAA]. With cost against the accused.

- With respect to Criminal Case No. 02-724, and finding accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of the crime of Attempted Rape, said accused is hereby sentenced to suffer an indeterminate penalty of from 4 years and 2 months of prision correccional as minimum to 10 years of prision mayor as maximum, and to pay [AAA] the sum of P10,000.00 as moral damages. With cost against the accused.

- And finally, in Criminal Case No. 02-725, and finding the accused JOHN MONTINOLA @ TONY MONTINOLA guilty beyond reasonable doubt of Acts of Lasciviousness resulting to Child Abuse of a Minor, who is over 12 years of age, as defined and punished under Article 336 of the Revised Penal Code, as amended by RA 7610, said accused is hereby sentenced to suffer an indeterminate penalty of from 2 years and 4 months of prision correccional as minimum to 6 years and 1 day of prision mayor as maximum, with all the accessories of law.[20]

The trial court held that (1) AAA's testimony was categorical, straightforward, and consistent; (2) her failure to immediately report the incidents to her relatives or to the proper authorities did not affect her credibility; and (3) rape can be committed even in places where there are other people.[21]

On appeal, Montinola contended that the trial court erred in giving full weight and credence to AAA's testimony and finding him guilty beyond reasonable doubt of the crimes charged.[22] He claimed that AAA was not credible: (1) her testimony was inconsistent, (2) her testimony was not in accord with human experience, (3) she failed to immediately report the incidents to her relatives or to the proper authorities, (4) she admitted that there were other people in the house when the alleged incidents took place yet she did not ask them for help, and (5) the medical report did not prove that Montinola was the one who raped AAA.[23]

The Court of Appeals' Ruling

In its 28 February 2007 Decision, the Court of Appeals affirmed the trial court's decision without modification: "WHEREFORE, in view of the foregoing, the assailed judgment dated August 26, 2005 of the Regional Trial Court of Makati City, Branch 144, is AFFIRMED in TOTO." [24]

The Court of Appeals held that (1) AAA's testimony was candid, straightforward, spontaneous, honest, sincere, and categorical; (2) the minor inconsistency in AAA's testimony did not affect her credibility; (3) AAA's failure to immediately report the incidents to her relatives or to the proper authorities did not affect her credibility; and (4) rape can be committed even in places where there are other people.[25]

Hence this appeal.

The Court's Ruling

The Court finds the appeal unmeritorious. AAA is credible and the lower courts did not err.

An appeal in a criminal case opens the entire case for review. The Court can correct errors unassigned in the appeal.[26]

The Court is not impressed with Montinola's claim that AAA's testimony is not credible because it contains an inconsistency. Montinola pointed out that, on direct examination, AAA stated that she was not sure whether Montinola was able to insert his penis in her vagina during the 28 March 2000, 29 March 2000, and 4 November 2000 incidents. Then, on cross examination, she stated that Montinola was able to insert his penis during those instances. The Court of Appeals held that this minor inconsistency was expected and did not destroy AAA's credibility:

[M]inor lapses should be expected when a person is made to recall minor details of an experience so

humiliating and so painful as rape. After all, the credibility of a rape victim is not destroyed by some inconsistencies in her testimony. Moreover, testimonies of child victims are given full faith and credit.[27]

Indeed, a minor inconsistency, instead of suggesting prevarication, indicates spontaneity. It is expected from a witness of tender age who is unaccustomed to court proceedings.[28] In *People v. Bejic*,[29] the Court held that:

Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape. In addition, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.

In the instant case, a minor inconsistency is expected especially because (1) AAA was a child witness, (2) she was made to testify on painful and humiliating incidents, (3) she was sexually abused several times, and (4) she was made to recount details and events that happened several years before she testified.

The Court is not impressed with Montinola's claim that AAA's testimony is not credible because one part of it is not "in accord with human experience." In his Brief, he stated that:

It could not be over-emphasized x x x that the testimony of [AAA] was not even totally in accord with human experience and thus inspired disbelief.

During the alleged October 29, 1999 rape x x x, which according to [AAA] was perpetrated when [Montinola] ordered his other children to go out of the house, it must be considered that [AAA] herself revealed that it was raining at that time. Despite that, we are still being made to believe that her other siblings, three (3) of whom were below nine years old x x x at that time, were driven out of the house by [Montinola] so that the latter could perpetuate his bestial desire?[30]

The Court believes AAA. This is a very futile attempt to discredit AAA's testimony. Allowing young children to go outside the house while the rain is pouring is not unbelievable, especially when one is overcome by lust.

The Court is not impressed with Montinola's claim that AAA's failure to immediately report the incidents to her relatives or to the proper authorities affected her credibility. AAA's failure to report the incidents immediately was justifiable: (1) Montinola threatened her that he would cut her throat, as well as the throats of her siblings, if she told anyone about the incidents; (2) her mother was at work most of the time; (3) Montinola had moral and physical control over her, kept an eye on her, and interrupted her whenever she attempted to report the incidents to her mother; (4) even if she told her mother, her mother would not have believed her; (5) she was overwhelmed by fear and confusion; (6) telling people that one has been raped by her own father is not easy to do; and (7) a 14-year-old child cannot be expected to know how to go about reporting crimes to the proper authorities. In *People v. Bugarin*,[31] the Court held that:

[D]elay in making a criminal accusation [does not] impair the credibility of a witness if such delay is satisfactorily explained. In *People v. Coloma*, x x x the Court adverted to the father's moral and physical control over the young complainant in explaining the delay of eight years before the complaint against her father was made. In this case, [complainant] must have been overwhelmed by fear and confusion, and shocked that her own father had defiled her. x x x She also testified that she was afraid to tell her mother because the latter might be angered x x x. Indeed, a survey conducted by the University of the Philippines Center for Women's Studies showed that victims of rape committed by their fathers took much longer in reporting the incidents to the authorities than did other victims. Many factors account for this difference: the fact that the father lives with the victim and constantly exerts moral authority over her, the threat he might make against her, the victim's fear of her mother and other relatives. (Emphasis ours)

The Court is not impressed with Montinola's claim that he could not have raped AAA because there were other people in the house when the incidents took place. There is no rule that rape can only be committed in seclusion.[32] AAA's siblings were sleeping when the incidents took place. In Bugarin,[33] the Court held that, "Suffice it to state that lust is no respecter of time and place. Our cases record instances of rape committed inside family dwellings when other occupants are asleep." In *People v. Alarcon*,[34] the Court held that:

[The accused's] argument that rape could not have been committed due to the presence of AAA's siblings by her side is x x x bereft of merit. Rape is not a respecter of place or time. It is not necessary that the place where the rape is committed be isolated. There have been too many instances when rape was committed under circumstances as indiscreet and audacious as a room full of family members sleeping side by side. Rape is not rendered impossible simply because the siblings of the victim who were with her in that small room were not awakened during its commission. (Emphasis ours)

The Court is not impressed with Montinola's claim that AAA did not adduce evidence "sufficient to pass the test of moral certainty." In rape cases, the credibility of the complainant's testimony is almost always the single most important issue. When the complainant's testimony is credible, it may be the sole basis for the accused's conviction.[35]

In the instant case, both the trial court and the Court of Appeals found AAA's testimony credible. The trial court held that, "The Court is impressed with the testimony of [AAA] who testified in categorical and straightforward manner and remained consistent throughout her testimony." [36] On the other hand, the Court of Appeals held that:

The x x x testimony of the complainant reveals that the same was marked by spontaneity, honesty and sincerity. It is a cardinal rule that when the testimony of the victim is simple and straightforward, the same must be given full faith and credit. We reiterate the rule that the accused could be convicted solely on the basis of the victim's testimony if credible. Contrary to appellant's submission that the testimony of complainant is not credible and reasonable in itself, We see no reason to deviate from the trial court's determination as to the credibility of complainant's testimony.[37] (Emphasis ours)

The evaluation of the witnesses' credibility is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings, unless it overlooked or misconstrued substantial facts which could have affected the outcome of the case.[38] In *People v. Abellano*,[39] the Court held that:

The trial court's evaluation of a witness' credibility is accorded the highest respect because it had the direct and singular opportunity to observe the facial expression, gesture, and tone of voice of a witness while testifying. The trial court has the strategic position to determine whether a witness is telling the truth and its findings thereon are accorded finality, unless there appears on record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and, if properly considered, would alter the results of the case. (Emphasis ours)

The Court finds no reason to disturb the findings of the trial court. The trial court did not overlook or misconstrue any substantial fact which could have affected the outcome of the case. Montinola's claims involve minor or trifling matters that do not affect the outcome of the case. AAA's testimony was clear, positive, convincing, and consistent:

Q Do you remember what unusual incident that [sic] happened to you last October 29, 1999?

A 'Yon po ang unang panggagahasa sa akin ng Papa ko noong October 29 ng hapon. Umuulan pa po noon mga bandang alas tres hanggang alas kuwatro ng hapon. Bigla po siyang lumabas doon sa kuwarte x x x tapos naka-underwear lang po siya. Pinipilit po niyang ipahubad sa akin 'yong damit ko po at saka 'yong short [sic]

ko po. Tapos ‘yon, wala na po akong magawa kasi sinasakal na po niya ako at saka pinipilipit niya po ang paa ko para hindi ako makagalaw.

x x x x

Q And according to you you were raped by the accused here. Did you not resist?

A x x x Pumapalag po ako sa kanya pero sinasakal na po niya ako tapos pinipilipit po ‘yong paa ko eh.

Q And after he did that to you, what happened next, if any?

A x x x [P]inasok na po niya ‘yong ari niya sa akin, sa ari ko rin po.

Q Okay, after he inserted his penis in your vagina, what did you feel?

A Nasaktan po.

Q And after that, what did he do, if there was any?

A x x x [S]inabi na lang niya sa akin na huwag daw akong magsusumbong. Pag nagsumbong daw ako, x x x papatayin daw po niya ‘yong mga kapatid ko x x x — gigilitan daw po niya ng leeg kami ng mga kapatid ko.

x x x x

Q Did you believe the threat of your father that he will kill these sisters and brothers of yours if you report the incident to your mother?

A x x x [S]a mga kapatid ko pong maliliit x x x hindi po ako naniniwala na magagawa po niya sa [kanila] pero sa amin po ng mga kuya ko, naniniwala po ako kasi grabe po siya kung manggulpi sa amin eh. Halos patayin na po niya kami.[40]

AAA revealed that her own father raped her, allowed the examination of her vagina, and willingly underwent a public trial where she divulged in detail her painful experiences. She wanted Montinola imprisoned. She wanted to kill him.[41] In Bejic,[42] the Court held that:

[N]o young woman, especially of tender age, would concoct a story of defloration at the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is [sic] not true. This is more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law. Thus, it is against human nature for a x x x girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father. (Emphasis ours)

In Criminal Case No. 02-723, Montinola was charged of raping AAA in March 2000. The Court notes that Montinola attempted to rape AAA twice in March 2000 — once on 28 March 2000 and again on 29 March 2000.[43] The trial court and the Court of Appeals held Montinola liable for the offense committed on 28 March 2000 only. The Court agrees. Since only one information[44] was filed for the period of March 2000, he cannot be held liable for both offenses.

In Criminal Case No. 02-725, both the trial court and the Court of Appeals convicted Montinola for acts of lasciviousness and punished him under Section 10(a) of Republic Act No. 7610. Section 10(a) provides:

SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development.—

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

The Court sustains Montinola's conviction for acts of lasciviousness. However, he should be punished under Section 5(b) of Republic Act No. 7610. Section 5(b) covers acts of lasciviousness while Section 10(a) covers other acts of abuse. Section 5(b) provides:

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 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. (Emphasis ours)

In *Navarrete v. People*,^[45] the Court held that sexual abuse under Section 5(b) has three elements: (1) the accused commits an act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child is below 18 years old.

Under Section 32 of the Implementing Rules and Regulations of Republic Act No. 7610, lascivious conduct includes the intentional touching, either directly or through clothing, of the genitalia and inner thigh, with an intent to arouse or gratify the sexual desire of any person. In *Navarrete*,^[46] the Court held that 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 *Amployo v. People*,^[47] the Court held that:

[I]ntimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could [sic] not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

All three elements are present in the instant case: (1) Montinola caressed AAA's right thigh, slipped his hand under her shorts, and touched her vagina; (2) AAA indulged in lascivious conduct under Montinola's coercion; and (3) AAA was below 18 years old.

In *Navarrete*,^[48] the Court punished the accused under Section 5(b) for touching the complainant's vagina and poking her vagina with a cotton bud. In *People v. Candaza*,^[49] the Court punished the accused under Section 5(b) for kissing the lips, licking the vagina, and massaging the breasts of the complainant. In *Amployo*,^[50] the Court punished the accused under Section 5(b) for touching the breasts of the complainant. In keeping with jurisprudence, Montinola is liable under Section 5(b) for caressing the thigh and touching the vagina of AAA.

In Criminal Case No. 02-725, the alternative circumstance of relationship under Article 15 of the Revised Penal

Code[51] should be considered against Montinola. In *People v. Fetalino*,[52] the Court held that, “in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating.” In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that the complainant was his daughter. In the instant case, the information[53] expressly states that AAA is Montinola’s daughter, and Montinola openly admitted this fact:

Q x x x [D]o you know [AAA]?

A Opo.

Q Why do you know her?

A She is my daughter.[54]

Accordingly, the Court modifies the penalty imposed in Criminal Case No. 02-725. Section 5(b) of Republic Act No. 7610 prescribes the penalty of reclusion temporal in its medium period to reclusion perpetua. Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period — reclusion perpetua. Also, the Court orders Montinola to indemnify AAA P15,000 as moral damages and pay a fine of P15,000.[55]

The Court sustains Montinola’s conviction for rape in Criminal Case No. 02-720. However, the Court modifies his civil liability. He is ordered to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P25,000 as exemplary damages.[56]

The Court sustains Montinola’s conviction for attempted rape in Criminal Case Nos. 02-721, 02-723, and 02-724. However, the Court modifies his civil liability. He is ordered to pay AAA P30,000 as civil indemnity, P25,000 as moral damages, and P10,000 as exemplary damages for each count of attempted rape.[57]

WHEREFORE, the Court AFFIRMS the 28 February 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01440 with some MODIFICATIONS. The Court finds appellant John Montinola @ Tony Montinola:

(1) GUILTY of RAPE in Criminal Case No. 02-720. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P25,000 as exemplary damages.

(2) GUILTY of ATTEMPTED RAPE in Criminal Case No. 02-721. He is sentenced to suffer the minimum penalty of 4 years and 2 months of prision correccional to the maximum penalty of 10 years of prision mayor and ordered to pay AAA P30,000 as civil indemnity, P25,000 as moral damages, and P10,000 as exemplary damages.

(3) NOT GUILTY in Criminal Case No. 02-722.

(4) GUILTY of ATTEMPTED RAPE in Criminal Case No. 02-723. He is sentenced to suffer the minimum penalty of 4 years and 2 months of prision correccional to the maximum penalty of 10 years of prision mayor and ordered to pay AAA P30,000 as civil indemnity, P25,000 as moral damages, and P10,000 as exemplary damages.

(5) GUILTY of ATTEMPTED RAPE in Criminal Case No. 02-724. He is sentenced to suffer the minimum penalty of 4 years and 2 months of prision correccional to the maximum penalty of 10 years of prision mayor and ordered to pay AAA P30,000 as civil indemnity, P25,000 as moral damages, and P10,000 as exemplary damages.

(6) GUILTY of ACTS OF LASCIVIOUSNESS in Criminal Case No. 02-725, with relationship as an aggravating circumstance. He is sentenced to suffer the penalty of reclusion perpetua and ordered to pay AAA

P15,000 as moral damages and a fine of P15,000.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Sesonando E. Villon, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.

[2] Penned by Acting Presiding Judge Oscar B. Pimentel.

[3] CA rollo, pp. 14-25.

[4] The real name of the victim is withheld per Republic Acts No. 7610 and 9262.

[5] CA rollo, p. 48.

[6] Id.

[7] Id. at 48-49.

[8] Id. at 49.

[9] Id. at 49-50.

[10] Id. at 50.

[11] Id. at 51.

[12] Id. at 52.

[13] TSN, 2 April 2003, p. 46.

[14] CA rollo, p. 52.

[15] Id.

[16] TSN, 14 January 2004, pp. 6-8.

[17] CA rollo, p. 109.

[18] Id. at 148-149.

[19] Id. at 143-153.

[20] Id. at 176-178.

[21] Id. at 71-73.

[22] Id. at 108.

[23] Id. at 121-124.

[24] Rollo, p. 15.

[25] Id. at 11-15.

[26] Manaban v. Court of Appeals, G.R. No. 150723, 11 July 2006, 494 SCRA 503, 516.

[27] Rollo, pp. 13-14.

[28] *People v. Bugarin*, 339 Phil. 570, 584 (1997).

[29] G.R. No. 174060, 25 June 2007, 525 SCRA 488, 508-509.

[30] CA rollo, pp. 122-123.

[31] *Supra* note 28, at 585-586.

[32] *People v. Abellera*, G.R. No. 166617, 3 July 2007, 526 SCRA 329.

[33] *Supra* at 585.

[34] G.R. No. 174199, 7 March 2007, 517 SCRA 778, 787.

[35] *People v. Abulon*, G.R. No. 174473, 17 August 2007; *People v. Jalbuena*, G.R. No. 171163, 4 July 2007, 526 SCRA 500; *People v. Bejic*, *supra* note 29; *People v. Suyat*, G.R. No. 173484, 20 March 2007, 518 SCRA 582, 591; *People v. Bugarin*, *supra* note 28, at 580-581.

[36] CA rollo, p. 71.

[37] Rollo, p. 13.

[38] *People v. Fernandez*, G.R. No. 176060, 5 October 2007; *People v. Abulon*, *supra* note 35; *People v. Bejic*, *supra* note 29.

[39] G.R. No. 169061, 8 June 2007, 524 SCRA 388, 399-400.

[40] TSN, 18 March 2003, pp. 8-11.

[41] CA rollo, p. 50.

[42] *Supra* note 29, at 503.

[43] CA rollo, pp. 50-51.

[44] The information provides:

That on or about March, 2000 at West Rembo, Makati City, Philippines, and within the jurisdiction of this Honorable Court, the said accused John Montinola @ Tony Montinola with lewd design and with force and intimidation did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of minor, AAA, his own daughter, to the latter's damage and prejudice.

Contrary to law.

[45] G.R. No. 147913, 31 January 2007, 513 SCRA 509, 521.

[46] *Id.* at 522.

[47] G.R. No. 157718, 26 April 2005, 457 SCRA 282, 295-296.

[48] *Supra* note 45, at 525.

[49] G.R. No. 170474, 16 June 2006, 491 SCRA 280, 299.

[50] *Supra* note 47, at 300.

[51] Article 15 of the Revised Penal Code provides:

Art. 15. Their Concept. — Alternative circumstances are those things which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degree of the offender.

[52] G.R. No. 174472, 19 June 2007, 525 SCRA 170.

[53] The information provides:

That on or about January, 2001 at West Rembo, Makati City, Philippines and within the jurisdiction of this Honorable Court, the said accused John Montinola @ Tony Montinola with lewd design and with force and intimidation did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of minor, AAA, his own daughter, to the latter's damage and prejudice.

Contrary to law.

[54] TSN, 7 March 2005, p. 3.

[55] Supra note 49, at 299.

[56] Supra note 35.

[57] People v. Bon, G.R. No. 166401, 30 October 2006, 506 SCRA 168, 217.

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