

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO DOMINGUEZ, JR., ALIAS "SANDY," ACCUSED-APPELLANT.

G.R. No. 180914. November 24, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02131 which affirmed with modifications the Decision[2] dated February 6, 2006 of Branch 65 of the Regional Trial Court (RTC) of Bulan, Sorsogon, convicting accused-appellant Domingo Dominguez, Jr., also known as "Sandy," of three counts of rape and two counts of attempted rape of his minor daughter.

Consistent with our ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstances or any other information tending to establish or compromise her identity. The initials AAA represent the private offended party, the initials BBB refer to her mother, and the initials CCC stand for one of her relatives.

Accused-appellant was indicted for four counts of rape and one count of attempted rape, all qualified by his relationship with and the minority of the private offended party. The criminal informations read:

Criminal Case No. 02-548 [Amended Information]

That on or about July 20, 2001 at more or less 7:00 o'clock in the evening, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[5]

Criminal Case No. 02-549 [Amended Information]

That on the 4[th] week of July 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim

is 12 years of age and the accused is the father.[6]

Criminal Case No. 02-550 [Amended Information]

That in the second week of August 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[7]

Criminal Case No. 02-551 [Amended Information]

That in the second week of September 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[8]

Criminal Case No. 02-552

That on or about November 20, 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously, commence the commission of the crime of Rape directly by overt acts upon the person of [AAA], a minor, 12 years of age, through force and intimidation taking advantage of his moral ascendancy being the father, to wit: by undressing the victim, thereby removing all her clothing apparel with the intention of having carnal knowledge, against her will and without her consent, but said accused did not however perform all the acts of execution which should have produced the crime of rape, as a consequence, by reason of some causes or accident other than his own spontaneous desistance, that is because somebody saw them, and said acts produced psychological and emotional trauma to said [AAA], to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.[9]

Upon arraignment, accused-appellant pleaded not guilty to all charges. A pre-trial conference[10] followed and, thereafter, the criminal charges were jointly tried.

The prosecution presented four witnesses, namely, the private offended party, AAA;[11] her mother, BBB;[12] her relative who claimed to be an eyewitness to the sexual abuse, CCC;[13] and the medico-legal who physically examined her for signs of sexual abuse, Dr. Irene V. Ella.[14] The documentary exhibits of the prosecution consisted of the Medico-Legal Report[15] dated November 23, 2001 issued by Dr. Ella; the Certificate of Live Birth of AAA[16] issued by the Office of the Municipal Civil Registrar, Magallanes, Sorsogon; and the Marriage Contract of AAA's parents.[17] The defense, on the other hand, presented the testimony of accused-appellant.[18]

Based on the combined testimonies of the witnesses and documentary evidence for the prosecution, the RTC accounted the prosecution's version of the facts as follows:

The evidence for the prosecution shows and as narrated in open court by the victim herself [AAA]; that the first incident of rape happened before the fiesta of Magallanes which was in the month of July 2001. Her small siblings were already asleep and she was about to go to sleep also, when she noticed her father (the accused) already beside her. Her father (accused) undressed her while he also undressed himself, and as he was about to mount her for the purpose of raping her, her mother arrived and inquired why she was naked. Because of fear of bodily harm brought about by the threat coming from the accused who was then holding a bolo, the victim did not say anything. She positively identified her father (the accused) inside the courtroom when asked to do so by the public prosecutor. The accused failed to consummate the rape during the first incident.

The second rape happened after a week from the first attempt, which could be between the fourth week of July or first week of August 2001 because the victim stated that it was no longer in the month of July 2001. It happened in a coconut farm in Anibong, Magallanes, Sorsogon. The victim was asked by her father to accompany him in getting coconut leaves because they are going to weave it in their house. When the two (2) of them reached the place, her father (accused) undressed her and thereafter undressed himself also and made her lie down then inserted his penis into her vagina. She felt weak and pain all over her body including her vagina which she felt to be swollen at that time. She tried to struggle but she was helpless, particularly so, that the accused was also armed with a bolo at that time. After the bestial act was consummated they proceeded home bringing with them the coconut leaves that they gathered. She did not tell anyone about the incident because of fear of the accused and the thought that they might not believe her.

The third incident of rape happened two (2) weeks after the second incident, which was sometime in the month of August 2001. While the fourth incident of rape happened three (3) weeks after the third incident which was sometime in the month of September 2001. The fifth and last incident of rape happened according to the victim sometime in the 20[th] of November 2001. All the 3[rd], 4[th] and 5[th] incidents of rape happened in the same coconut farm although in the different places of the farm. The same pattern of execution was adopted by the accused. He would ask the victim to go with him to the coconut farm to gather coconut leaves, and once they reached the place the accused would undress the victim then undress himself also and have sexual intercourse with her against her will. The victim could not refuse or disobey the command of the accused (her father) because he will scold and threaten her with punishment if she would not go with him. She could not also tell her mother about it because of fear. At the time of the first and second rapes the victim was only 12 years old. She was already 13 years old when the third, fourth, and fifth incidents of rape happened. Her date of birth was January 3, 1989.

During the fifth incident of rape on November 20, 2001 the accused and the victim [were] again in the same coconut farm in order to get coconut leaves. Both of them were already naked and the accused was about to mount the victim when they were seen by prosecution eyewitness [CCC] who shouted at them, that's why the accused fled leaving the victim behind. Because of what happened the victim was able to gain enough courage to tell her mother and to report the incident to the barangay captain of their place, thus leading to the apprehension of the accused.[19] (Citations omitted.)

The RTC pointed out that on cross-examination, AAA again narrated straightforwardly how, when, and where she was sexually abused by her own father:

On cross-examination the credibility of the victim was even enhanced by her consistent and very candid answers to the very important questions propounded on her by the defense counsel. This notwithstanding some minor lapses on her part, which can be explained by her tender age and lack of exposure to a usually pressure packed court atmosphere. The minor-victim was consistent in her claim that accused Domingo Dominguez is her natural father; that she was raped by him; that nobody forced her to file these cases against her own father; that they are seven (7) children in the family; that the first attempted rape happened in the year 2001 before the fiesta in Magallanes at around 7:00 o'clock in the evening; their house is situated on a hill where there is no electricity and they are only using kerosene lamp in their house; there are no rooms in their house and usually sleep in one place; at the time of the first attempted rape she and her five small siblings together with her father

were the only ones present in their house; her mother went to her lola's house in order to get a viand; while she was attending to her five small siblings making them sleep the accused undressed her; when her mother arrived she was already naked but her father (the accused) made an alibi that he was just dressing her up because they were going to the market; when her mother asked her about it she did not give any answer; nothing happened during that time because of the timely arrival of her mother; the first consummated rape (the second incident) happened in the coconut farm in Anibong, Magallanes, Sorsogon, which is far from their house at around 1:00 o'clock in the afternoon; it was her first sexual experience and her private part bled; she could not refuse to go with her father to the coconut plantation because of fear of punishment if she will not go with him, her mother could not go against her father; she did not tell her mother about the rape for fear that she might not believe her, because the culprit is her own father who is her own blood; during the second incident she threw her panty away because it was already stained with blood and just used her shorts; the third incident of rape (second consummated rape) happened in the same coconut plantation; the accused told her brother to fetch the carabao, when they were already alone the accused raped her and after he was through with her they gathered coconut leaves and when her brother together with the carabao arrived later, they loaded them on the carabao and proceeded home; during the 3rd incident there was no more bleeding of her vagina unlike the second she did not throw her panty after the rape, she used it again; she did not tell her mother, not even her friends nor her teacher nor her lola about the rape because of fear that they might laugh at her; the fourth incident of rape (3rd consummated rape) happened in the same coconut plantation under the same pattern of execution with the accused succeeding in inserting his penis into her vagina; the fifth and last incident of attempted rape happened on November 20, 2001 in the same coconut farm when [CCC] saw her and her father (accused) both naked; because of what happened the victim gained courage to open up to her lola and reported the incident to their barangay captain, knowing that [CCC] will support her accusation; that even if her father will be meted out the penalty of death she will not withdraw the case against her father and will insist in her accusation that she was raped by him.[20] (Citation omitted.)

The RTC also summed up the corroborating evidence for the prosecution as follows:

The aforementioned testimony of the offended party, [AAA], was amply supported by the medical findings and the testimony made in open court by the medico-legal officer who physically examined her, Dr. Irene V. Ella, MHO - Magallanes, Sorsogon.

Dr. Ella declared, that the minor victim was brought to her office by the Barangay Captain of Anibong and the Municipal Social Welfare Development Officer of Magallanes, Mrs. Mercadero, for physical examination based on the alleged complaint of rape. Based on the result of the physical examination, it was found out that the vaginal canal of the victim admits 1 cm. in diameter test tube with no resistance. Meaning, that something has been inserted on it for several times that's why the vaginal canal admits very easily a 1 cm. in diameter test tube with no resistance. Accordingly, a girl without sexual experience would show some resistance if you insert on her vagina a 1 cm. in diameter test tube. Another finding was that the labia majora/minora was slightly gaping indicative of a sexual experience on the part of the victim. Normally, a girl without any experience in sex or sexual abuse would show a closely adherent labia majora/minora which is the covering of the vaginal canal. The medico legal officer concluded, that the above findings confirmed penile penetration for several times. Her basis is the laxity of the vaginal wall and the easy insertion of the 1 cm. test tube. Accordingly, if the penetration only happened once it will not cause such laxity or it might cause a laxity but not as manifest as what was reflected in her findings.

The claim of the offended party, [AAA], that the last attempt to rape her was committed by her father (accused) on November 20, 2001 at around 1:00 o'clock in the afternoon was supported by the very candid and credible testimony of prosecution eyewitness [CCC] who declared that on November 20, 2001 at more or less 1:00 o'clock in the afternoon he was at the forest of Anibong, Magallanes, looking for snails when he chanced upon father and daughter, Sandy (accused) and [AAA], standing close to each other totally naked. [AAA] was crying while Sandy was standing. He did not go near them because of fear of Sandy who had a bolo with him,

so he left the place and went home. He related the incident to his cousin x x x. Both Sandy and [AAA] saw him when he chanced upon them.

On cross-examination, the aforementioned witness was able to clarify further his position when he stated, that he was about 3 to 4 meters away from the two when he first saw them standing both naked. He took two steps forward closer to them that's why he was able to confirm that it was his Manoy Sandy (Domingo Dominguez, Jr./Accused) and his daughter [AAA] who were standing. [AAA] was shouting for help but the witness could not come to her aid because of fear of Sandy who was carrying a bolo. What was made clear however from the testimony of said witness was the fact, that he did not witness any sexual intercourse between the two thus implying in all probability that the rape was just in its attempted stage.[21] (Citations omitted.)

The RTC then summarized the evidence for the defense, based on the denial and alibi of accused-appellant, as follows:

Accused Domingo Dominguez, Jr. admitted during his testimony on direct examination, that he is the father of the victim [AAA]; that his wife is [BBB]; that they have seven (7) children; three of them were girls, the eldest is x x x while the youngest is [AAA]; his main occupation is that of a farmer who works in the rice field; all his children are in school and he provides for their education and daily sustenance; that he loves his children and just wanted to discipline them but he was placed into this kind of situation; he cannot afford to do to [AAA] the charges that were filed against him; he cannot say whether he still loves [AAA] considering that he is presently incarcerated; he had no bad record in the barangay and had never been charged of a similar case before; he likewise scold his two other daughters if they commit a wrong.

On cross-examination, the accused further stated, that he spansks or maltreats his children whenever they commit mistakes as a form of discipline; that whenever he physically maltreats or disciplines his children they suffer injuries, although he do[es] it only when he is angry; sometime when he arrived from work and nobody is around he gets mad; that his children [have] developed that fear of him because of his way of disciplining them even his wife is afraid of him; he claims that all the charges filed against him were fabricated by members of his family because they wanted to show other people that he is bad, but he denied having done those criminal acts; that [AAA] filed this case against him because he scolded her; that if he really planned to rape somebody he could have done it to other persons but not to [AAA]; in 1999, [AAA] was about ten (10) years old and [had] many male friends who are her classmates but had no boyfriend.[22] (References to case records deleted.)

In its Decision dated February 6, 2006, the RTC found accused-appellant guilty beyond reasonable doubt of three counts of qualified rape in Criminal Case Nos. 02-549, 02-550 and 02-551, and two counts of attempted rape in Criminal Case Nos. 02-548 and 02-552. The dispositive portion of said RTC judgment reads as follows:

WHEREFORE, premises considered, the GUILT of accused Domingo Dominguez, Jr. alias "Sandy" having been established beyond reasonable doubt, sentence is hereby pronounced against him as follows:

- a) In Criminal Case No. 02-548, above-named accused who is found guilty only of Attempted Rape, defined and penalized under Article 6 of the Revised Penal Code, as amended, is sentenced to an indeterminate penalty of 10 years and 1 day of Prison Mayor to 20 years of Reclusion Temporal, present the aggravating circumstances of minority and relationship without any mitigating circumstance;
- b) In Criminal Case No. 02-549, above-named accused having been found guilty of Qualified Rape is sentenced to indivisible penalty of death, to indemnify [AAA] in the amount of Php75,000.00 as indemnity ex delicto; another Php75,000.00 as moral damages and another Php50,000.00 as exemplary damages, with no subsidiary imprisonment in case of insolvency;
- c) In Criminal Case Nos. 02-550 and 02-551, above-named accused is likewise found guilty of Qualified Rape in each case and sentenced to an indivisible penalty of death for each count of Qualified Rape, to indemnify

[AAA] in the amount of Php150,000.00 as indemnity ex delicto; another Php150,000.00 as moral damages; and another Php100,000.00 as exemplary damages, with no subsidiary imprisonment in case of insolvency;

d) In Criminal Case No. 02-552, above-named accused is likewise found guilty of Attempted Rape, defined and penalized under Article 6 of the Revised Penal Code, as amended, and is sentenced to an indeterminate penalty of 10 years and 1 day of Prison Mayor to 20 years of Reclusion Temporal, present the aggravating circumstances of minority and relationship without any mitigating circumstance.

The period of preventive imprisonment already served by the accused shall be credited in the service of his sentences pursuant to Article 29 of the Revised Penal Code, as amended.

The above-mentioned penalties shall be served by the accused in the order of succession provided for in Article 70 of the same Code.[23] (Emphases ours.)

Accused-appellant interposed his appeal from the judgment of the RTC to the Court of Appeals. On April 11, 2006, the trial court transmitted the records of the cases to the appellate court. Accused-appellant filed his Brief[24] on November 21, 2006 while the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed its Brief[25] on March 21, 2007.

In his appeal before the Court of Appeals, accused-appellant cited the following assignment of errors:

I

The trial court gravely erred in convicting the accused-appellant of the crime of attempted rape in Criminal Case Nos. 02-548 and 02-552.

II

Granting arguendo that the accused-appellant is guilty of attempted rape in Criminal Case Nos. 02-548 and 02-552, the penalty imposed was not proper.

III

The trial court gravely erred in convicting the accused-appellant of the crime of rape in Criminal Case Nos. 02-549, 02-550 and 02-551 thereby imposing upon him the supreme penalty of death.

Accused-appellant asserted his innocence and asked for his acquittal from all the charges.

On the two counts of attempted rape, accused-appellant claimed that the prosecution failed to show any overt act which would prove his intent to rape AAA. AAA's claims during her testimony that accused-appellant was "about to rape her" or "about to go on top of her" were it not for the timely arrival of her mother, BBB, in Criminal Case No. 02-548, or were it not for the fortunate appearance of a relative, CCC, in Criminal Case No. 02-552, were allegedly so vague that one cannot make a clear conclusion whether the accused-appellant really intended to rape AAA.

Accused-appellant also noted that should his conviction for the crime of attempted rape be sustained, the trial court committed an error in the imposition of the proper penalty. With the abrogation of the death penalty, the imposable penalty for the crime of rape committed in the attempted stage, which must be two degrees lower than that of the penalty imposed for the crime intended to be committed, should be prison mayor.

Anent the three counts of qualified rape, accused-appellant denied the accusations and questioned the motive of AAA in charging him with said crime. Accused-appellant pointed out that it was implausible that AAA would not tell her mother and siblings about the alleged rapes. It was also incredible that AAA would still accompany accused-appellant repeatedly to the coconut farm despite her having been previously sexually assaulted by him,

with AAA knowing that their seclusion was another opportunity for accused-appellant to sexually assault her again. Accused-appellant averred that AAA's unexplained silence and continuous acquiescence to the sexual abuses supposedly committed against her made her accusations dubious.

Plaintiff-appellee, on the other hand, claimed that accused-appellant was properly convicted in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape. Citing settled jurisprudence, plaintiff-appellee argued that the appreciation by the trial court of all the evidence on the rape charges deserved great weight and respect. AAA's consistent, candid, and straightforward narrations that she was raped for several times by her own father were duly supported by the medico-legal findings of sexual abuse. Accused-appellant's bare denials and ascription of ill motive on AAA's part in filing the criminal charges were allegedly untenable.

In Criminal Case Nos. 02-548 and 02-552, however, plaintiff-appellee posited that accused-appellant should be held criminally liable for two counts of acts of lasciviousness instead of attempted rape. Plaintiff-appellee noted that the most significant element of attempted rape is the intent of the offender to penetrate the sexual organ of his victim.[26] In the aforesaid cases, accused-appellant was able to do nothing more than undress AAA and himself.

After its review of the evidence, the Court of Appeals affirmed accused-appellant's conviction in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape; while it modified the RTC judgment in Criminal Case Nos. 02-548 and 02-552 and convicted accused-appellant for two counts of acts of lasciviousness. The appellate court also modified the penalties and damages imposed against accused-appellant as follows:

WHEREFORE, the appealed Decision dated February 6, 2006 is AFFIRMED with the following MODIFICATIONS:

(1)

In Criminal Cases Nos. 02-549; 02-550; and 02-551, the penalty of death imposed on the accused-appellant for each count of qualified rape is hereby reduced to reclusion perpetua, pursuant to Republic Act No. 9346 without eligibility for parole. The award of exemplary damages for each count of qualified rape committed, is reduced to P25,000.00.

(2)

In Criminal Cases Nos. 02-548 and 02-552, the accused-appellant is found GUILTY beyond reasonable doubt of acts of lasciviousness and is hereby sentenced to suffer the indeterminate penalty of six (6) months of arresto mayor as minimum penalty to six (6) years of prision correccional as maximum penalty for each count of the acts of lasciviousness committed. The accused-appellant is likewise ordered to pay private complainant the amount of P30,000.00 as moral damages and P25,000.00 as exemplary damages for each count of the acts of lasciviousness committed.[27]

Thereafter, accused-appellant appealed his convictions before us.

In a Minute Resolution[28] dated February 4, 2008, we required the parties to file their respective supplemental briefs. The parties, however, manifested that they had exhausted their arguments before the Court of Appeals and, thus, would no longer file any supplemental brief.[29]

We sustain the findings of the Court of Appeals and affirm accused-appellant's conviction in Criminal Case Nos. 02-549, 02-550, and 02-551 for three counts of qualified rape.

Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination

or grave abuse of authority; and (4) 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 v. Orillosa*,^[30] we held that in incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.

In this case, the prosecution has established beyond reasonable doubt that the accused-appellant, through force, threat or intimidation, had carnal knowledge of his daughter, AAA, who was then only 12 to 13 years old.

AAA recounted in sufficient detail the rape incidents as follows:

[Criminal Case No. 02-549]

Q:

Now after that incident, was it repeated?

A:

Yes, ma'am.

Q:

And when did it happen?

A:

That second time happened after a week.

Q:

A week after the first incident?

A:

Yes, ma'am.

Q:

Where did it happen?

A:

In a coconut farm.

Q:

In what place?

A:

Anibong, Magallanes, Sorsogon.

Q:

Now why were you in that farm at that time?

A:

He told me to accompany him to get coconut leaves because we were going to weave it in our house.

Q:

Who is that "he" who told you to accompany him?

A:

My father.

Q:

Now when you reached the place, what happened?

A:

He undressed me and after undressing me he also undressed himself.

Q:

You were at that coconut plantation, only the two of you?

A:

Yes, ma'am.

Q:

After you were undressed and after he also undressed himself, what happened next?

A:

His penis was inserted inside my vagina.

Q:

Were you made to lie down?

A:

Yes, ma'am.

Q:

Now, what did you feel when his penis [was] inserted [into] your vagina?

A:

I felt weak and I felt pain in all of my body and even my vagina felt pain and I felt it is swollen.

Q:

Now, did you see your father holding anything at that time?

A:

There was.

Q:

What was that?

A:

It was also a bolo because we were about to get coconut leaves.

Q:

Now did you not struggle or fight him back?

A:

Yes, I tried to struggle.

x x x x

Q:

Now, after your father inserted his penis in your private organ, what happened next?

A:

After that we proceeded home because we brought home the coconut leaves that we gathered.

Q:

Now did you not tell anyone about the incident?

A:

None.

Q:

Why not?

A:

I was afraid and that they might not believe me.[31]

[Criminal Case No. 02-550]

Q:

Now [AAA], after that second incident, was it again repeated for the third time?

A:

Yes, ma'am.

Q:

Do you remember the date when it was repeated?

A:

I cannot recall the exact date but I could remember that it was two (2) weeks after the second incident and I was free then because I didn't have any classes.

Q:

Now where did it happen?

A:

At the coconut farm also.

Q:

The same coconut farm where the second incident took place?

A:

Yes, ma'am.

Q:

And how did it happen?

A:

The same, he undressed me and he undressed himself and he made me [lie] down.

Q:

Now why were you with him on that particular date?

A:

The same, I helped him in getting coconut leaves.

Q:

Now why did you go with him considering the second incident of rape that happened to you?

A:

Of course, because he was threatening me that I went with him.

Q:

What did he exactly tell you that made you fear [him]?

A:

Because he scolded us why we were not going with him.

Q:

Now when he undressed himself and you were also undressed, what happened next?

A:

He again inserted his penis inside my vagina.

Q:

And afterwards, what happened next?

A:

We proceeded home and again we brought with us the coconut leaves.

Q:

Did you not tell your mother or anyone about the third incident that happened?

A:

Yes, ma'am.

Q:

Why not?

A:

Because I was still afraid.[32]

[Criminal Case No. 02-551]

Q:

Now after this third incident, [AAA], do you still remember of another incident that took place?

A:

Yes, ma'am.

Q:

And do you still remember when it happened?

A:

Yes, ma'am.

Q:

When?

A:

Three (3) weeks after the third incident.

Q:

Now where did it happen?

A:

The same place, coconut farm.

Q:

Now why were you with him at that time?

A:

Still to gather coconut leaves.

Q:

So when you reached the place, what happened?

A:

The same happened, he undressed me and he also undressed himself.

Q:

And what happened next after both of you were already undressed?

A:

He again inserted his penis to my vagina.

Q:

And what did you feel at that time?

A:

I felt weak and my body felt pain.

Q:

By the way [AAA], do you know how old were you at that time of the first incident?

A:

Yes, ma'am.

Q:

How old were you then?

A:

Twelve.

Q:

The second time, how old were you?

A:

Twelve.

Q:

Until the fourth time, you were still 12 years old when the incident happened?

A:

During the third time I was already 13 years old.

Q:

Now after your father inserted his penis on your vagina the fourth incident, what happened next?

A:

We again gathered coconut leaves in order to bring to our house.[33]

The birth certificate of AAA shows that she was born on January 3, 1989. Medical examination revealed AAA's old hymenal laceration and the examining physician concluded penile penetration for several times. These support AAA's claim that she was repeatedly raped when she was only 12 to 13 years old.

We also affirm the convictions of accused-appellant in Criminal Case Nos. 02-548 and 02-552, for two counts of acts of lasciviousness and not for attempted rape.

The Court of Appeals aptly cited *Perez v. Court of Appeals*[34] in which we ruled:

[A] careful review of the records of the case shows that the crime committed by petitioner was acts of lasciviousness not attempted rape.

Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.

There is no showing in this case that petitioner's sexual organ had ever touched complainant's vagina nor any part of her body. x x x.[35] (Emphasis ours.)

We also reiterated in *Perez* our pronouncements in *People v. Caingat*,[36] that the offender's acts of lying on top of the victim, embracing and kissing her, massaging her breasts, inserting his hand inside her panty, and touching her sexual organ, which were interrupted were it not for the timely arrival of the victim's mother, do not constitute the crime of attempted rape, absent any showing that the offender actually commenced to force his penis into the victim's sexual organ, and that said acts rather constitute the crime of acts of lasciviousness punishable under Article 336 of the Revised Penal Code.

In Criminal Case Nos. 02-548 and 02-552, there is a similar dearth of evidence that accused-appellant was able to commence penetration of his penis into AAA's vagina. What the evidence on record established was that during these two occasions, accused-appellant was only able to undress himself and his daughter before the arrival of BBB and CCC. As AAA testified:

[Criminal Case No. 02-548]

Q:

Can you still remember the first incident that happened?

A:

Yes, ma'am.

Q:

And what happened at that time?

A:

The first incident happened before the Fiesta of Magallanes during which my siblings, small ones, were already asleep and I was also about to go to sleep and then I suddenly noticed that my father was beside me and then he undressed me and he also undressed himself and when he was about to rape me my mother arrived and she asked me why I was naked. I was afraid then.

Q:

Now what did you observe in the person of your father at that time that he undressed you?

A:

Because he was about to rape me.

Q:

Why were you afraid of your father at that time?

A:

Of course, because he was threatening me and I was before already afraid of him.

Q:

And how did he threaten you?

A:

That he was going to kill everyone of us.

Q:

Now at the time of the incident, did you see him holding anything?

A:

There was.

Q:

And what was that?

A:

Bolo.[37] (Emphasis supplied.)

[Criminal Case No. 02-552]

Q:

Now after that fourth incident, do you still remember of any other incident?

A:

Yes, ma'am.

Q:

And do you still remember when did it happen?

A:

November 20, 2001.

Q:

Fifth?

A:

Yes, ma'am.

Q:

Are you sure?

A:

Yes, ma'am.

Q:

Where did it happen?

A:

The same place, coconut farm.

Q:

And why were you at that time also with him?

A:

We were still going to get coconut leaves.

Q:

And after reaching the coconut plantation, what happened next?

A:

He undressed me and he undressed himself also.

Q:

Then after both of you were already undressed, what happened next?

A:

When he was about to go on top of me he suddenly saw [CCC] and I saw also [CCC]. What he did was to flee.

Q:

Both of you were already undressed from top to your drawers?

A:

During that time I was only using shorts and my shorts [were] already taken off but I had [a] shirt [on] my body.

Q:

How about your panty, was it still on your body?

A:

Yes, ma'am.

x x x x

Q:

Now at that time, when [CCC] witnessed you and your father, was your father still wearing an upper apparel?

A:

Only upper apparel.

Q:

What about his underwears and his shorts?

A:

He was only wearing brief[s] but his shorts [were] already taken off.

Q:

Was your father able to mount on your top?

A:

No, he was about to go on top of me.

Q:

Now when [CCC] witnessed you and your father in that position, what happened next?

A:

My father hid from [CCC] and what I did was to leave the place. So what [CCC] did was to go home.[38]
(Emphases supplied.)

We cannot simply assume in Criminal Case Nos. 02-548 and 02-552 that accused-appellant was intending to rape AAA simply because accused-appellant undressed himself and AAA during these two instances, plus the fact that accused-appellant did rape AAA on three other occasions. Such a presumption hardly constitutes proof beyond reasonable doubt of the crime of attempted rape. The gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, i.e., penetration of the penis into the vagina, before the interruption.

As the Court of Appeals found, it has been established beyond reasonable doubt in Criminal Case Nos. 02-548 and 02-552 that accused-appellant committed the crime of acts of lasciviousness.

The elements of acts of lasciviousness, punishable under Article 336 of the Revised Penal Code, are:

- (1) That the offender commits any act of lasciviousness or lewdness;
- (2) That it is done under any of the following circumstances:
 - By using force or intimidation; or
 - When the offended party is deprived of reason or otherwise unconscious; or
 - When the offended party is under 12 years of age; and
- (3) That the offended party is another person of either sex.[39]

All elements are present in Criminal Case Nos. 02-548 and 02-552.

Lewdness is defined as an "obscene, lustful, indecent, and lecherous" act which signifies that form of immorality carried on a wanton manner.[40] It is morally inappropriate, indecent, and lustful for accused-appellant to undress himself and his own daughter (who was completely capable of dressing or undressing herself), while his wife was away and his other children were asleep; or doing the same acts in an isolated coconut farm where only the two of them were present.

We find completely understandable AAA's silence and apparent assent to the sexual abuses of her father for a

period of time. No standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. [41] More importantly, in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants.[42] Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[43] AAA sufficiently explained that fear of her father's authority and shame kept her from revealing to others her ghastly ordeal at the hands of her own father. Moreover, AAA's fear of physical harm if she defied her father was real. By accused-appellant's own admission, on cross examination, he had used physical force to discipline his children whenever he was angry or mad.[44]

We find no reason to doubt AAA's credibility, and accord great weight and respect to the findings of the trial and appellate courts that her testimonies are consistent, candid, and straightforward. Accused-appellant's bare denial, as opposed to AAA's positive testimonies, and accused-appellant's uncorroborated allegation of ill motive on AAA's part in filing the criminal charges, are bereft of evidentiary value.

Jurisprudence has decreed that the issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which opportunity is denied to the appellate courts"[45] and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." [46] This rule is even more stringently applied if the appellate court concurred with the trial court.

In *People v. Nieto*, [47] we stressed further that the bare denial and uncorroborated alibi of the accused cannot overcome his positive identification by the victim and straightforward recounting of his commission of a crime:

It is an established jurisprudential rule that a mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the identity and involvement of appellant in the crimes attributed to him. The defense of alibi is likewise unavailing. Firstly, alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Secondly, alibi is unacceptable when there is a positive identification of the accused by a credible witness. Lastly, in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[48]

This is even more particularly true in rape cases where the accused and the victim are father and daughter, respectively. We declared in *People v. Mendoza* [49] that:

It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness. Accused-appellant's bare assertion that private complainant was just "using" him to allow her to freely frolic with other men, particularly with a certain Renato Planas, begs the credulity of this Court. This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the dire consequence of a rape charge - unless she is, in fact, a rape victim." More in point is our pronouncement in *People v. Canoy*, to wit:

... It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even

ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.[50]

Finally, we adopt the penalties imposed by the Court of Appeals upon accused-appellant, but modify the damages awarded in AAA's favor.

Given the enactment of Republic Act No. 9346, the Court of Appeals properly reduced the penalty of death and, instead, imposed upon accused-appellant the penalty of reclusion perpetua without eligibility for parole for each count of his three convictions for qualified rape in Criminal Case Nos. 02-549, 02-550, and 02-551.

The appellate court also correctly ordered accused-appellant to pay the victim for each count of qualified rape, the amount of Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (P75,000.00) as moral damages, consistent with current jurisprudence on qualified rape. However, the exemplary damages in the amount of Twenty-Five Thousand Pesos (P25,000.00) should be increased to Thirty Thousand Pesos (P30,000.00) in line with recent case law.[51]

We likewise affirm the penalty imposed by the Court of Appeals upon accused-appellant for his conviction on two counts of acts of lasciviousness in Criminal Case Nos. 02-548 and 02-552. Under Article 336 of the Revised Penal Code, the crime of acts of lasciviousness is punishable by prision correccional. With the alternative circumstance of relationship taken as an aggravating circumstance in the commission of the crime, the penalty prescribed by law shall be imposed in its maximum period following Article 64(3) of the said Code, or four (4) years, two (2) months and one (1) day to six (6) years. Applying the indeterminate sentence law, the said penalty shall constitute the maximum term while the minimum term shall be within the range of the penalty next lower in degree to that of the penalty provided by law which is arresto mayor or one (1) month and one (1) day to six (6) months. Thus, accused-appellant is hereby sentenced to suffer, for each count of acts of lasciviousness, the penalty of imprisonment for six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum.

The award by the Court of Appeals of moral damages to AAA in the amount of Thirty Thousand Pesos (P30,000.00), for each count of acts of lasciviousness, is appropriate, in the same way that moral damages are awarded to victims of rape even without need of proof because of the presumption that the victim has suffered moral injury, rests on settled jurisprudence.[52] We also deem that AAA is further entitled to an award of civil indemnity in the amount of Twenty Thousand Pesos (P20,000.00), for each count of acts of lasciviousness.[53] The amount of exemplary damages should also be increased from the Twenty-Five Thousand Pesos (P25,000.00) awarded by the Court of Appeals, to Thirty Thousand Pesos (P30,000.00), for each count of acts of lasciviousness, considering the presence of the aggravating circumstance of relationship in the commission of the crime. Exemplary damages should be awarded "in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters." [54]

WHEREFORE, in view of the foregoing, the Decision dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02131, which affirmed with modifications the Decision dated February 6, 2006 of the Regional Trial Court, Branch 65, of Bulan, Sorsogon, is hereby AFFIRMED with MODIFICATION, to read as follows:

(1) In Criminal Case Nos. 02-549, 02-550 and 02-551, accused Domingo Dominguez, Jr. is hereby held GUILTY beyond reasonable doubt for three counts of qualified rape and that, for each count, he is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000.00), moral damages also in the

amount of Seventy-Five Thousand Pesos (P75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00);

(2) In Criminal Case Nos. 02-548 and 02-552, accused Domingo Dominguez, Jr. is hereby held GUILTY beyond reasonable doubt for two counts of acts of lasciviousness and that, for each count, he is hereby sentenced to suffer the penalty of imprisonment for six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay the private offended party civil indemnity in the amount of Twenty Thousand Pesos (P20,000.00), moral damages in the amount of Thirty Thousand Pesos (P30,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00); and

(3) Accused Domingo Dominguez, Jr. is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Peralta,* and Perez, JJ., concur.

[*] Per Special Order No. 913 dated November 2, 2010.

[1] Rollo, pp. 2-39; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring.

[2] CA rollo, pp. 25-41.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597.

[5] Records, Vol. 1, p. 41.

[6] Records, Vol. 2, p. 39.

[7] Records, Vol. 3, p. 24.

[8] Records, Vol. 4, p. 27.

[9] Records, Vol. 5, p. 1.

[10] Records, Vol. 1, pp. 57-58.

[11] TSN, June 22, 2004 and August 10, 2004.

[12] TSN, December 14, 2004, pp. 7-19.

[13] TSN, September 21, 2004 and December 14, 2004, pp. 1-7.

[14] TSN, March 9, 2004.

[15] CA rollo, p. 46.

[16] *Id.* at 47 and 49.

[17] *Id.* at 48.

[18] TSN, September 6, 2005.

[19] CA rollo, pp. 29-30.

[20] Id. at 30-31.

[21] Id. at 31-32.

[22] Id. at 32-33.

[23] Id. at 40-41.

[24] Id. at 59-77.

[25] Id. at 101-137.

[26] Citing *People v. Campuhan*, 385 Phil. 912, 927 (2000) and *People v. Collado*, 405 Phil. 880, 896 (2001).

[27] Rollo, pp. 38-39.

[28] Id. at 44-45.

[29] Id. at 52-56 and 57-59.

[30] G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[31] TSN, June 22, 2004, pp. 6-8.

[32] Id. at 8-10.

[33] Id. at 10-11.

[34] 431 Phil. 786 (2002).

[35] Id. at 793.

[36] 426 Phil. 782 (2002).

[37] TSN, June 22, 2004, pp. 4-6.

[38] Id. at 11-13.

[39] *Ampluyo v. People*, 496 Phil. 747, 755 (2005).

[40] *People v. Lizada*, 444 Phil. 67, 97 (2003).

[41] *People v. Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 637.

[42] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 598.

[43] *People v. Orillosa*, supra note 29 at 698.

[44] Pertinent portion of TSN dated September 6, 2005, pp. 5-6, are quoted as follows:

Q: Mr. Witness when you said that you are disciplining your children you mean to say that you always spank or physically maltreat them whenever they [commit] mistakes?

A: Yes, sir I was put to this situation because of disciplining my children.

Q: Now, looking at your size Mr. Witness the bigness of your body one would assume that whenever you

physically maltreated or discipline your daughter or your children they would receive severe injuries brought by the discipline that you are trying to tell us, am I correct?

A: Yes, but I seldom do it. It is only when I am angry. (Kung nababaldi lang ako.)

Q: Now, Mr. Witness, how often would you get irritated?

A: Sometimes when I arrive at our house coming from work and nobody is around that is the time I get mad.

Q: And that often happens, am I correct?

A: It seldom happens.

Q: Now, Mr. Witness because of your habit of disciplining your children of course they develop fear from you, am I correct?

A: Yes.

Q: Even your wife is also afraid of you because of your tendency to inflict physical harm on your children, am I correct?

A: Yes.

Q: Is it not a fact Mr. Witness that your wife is also afraid of you because you also inflict physical injury on her person whenever you are mad?

A: I do not harm her if she is doing right.

[45] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 527-528.

[49] 490 Phil. 737 (2005).

[50] *Id.* at 746-747.

[51] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

[52] *Amployo v. People*, 496 Phil. 747, 761-762 (2005).

[53] *People v. Poras*, G.R. No. 177747, February 16, 2010.

[54] *People v. Blancaflor*, 466 Phil. 87, 103 (2004).

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