PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO DEGAY Y UNDALOS @ CALDO, ACCUSED-APPELLANT.

G.R. No. 182526. August 25, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

This is an appeal from the Decision[1] dated 27 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02176 affirming the Decision[2] dated 24 March 2006 of the Regional Trial Court (RTC) of Bontoc Mountain Province, Branch 35. The RTC found accused-appellant Leonardo Degay guilty beyond reasonable doubt of three counts of statutory rape under Articles 266-A[3] and 266-B[4] of the Revised Penal Code and sentenced him to suffer the penalty of reclusion perpetua and to pay each of the victims P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Appellant was charged with three counts of statutory rape in three Informations all dated 16 June 2004, which read:

> Criminal Case No. 1849
>
> The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, alias CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:
>
> That on or about March 25, 2004, in the afternoon thereof, inside the at-atowan, XXX, barangay XXX, XXX, Mt. Province and within the jurisdiction of the Honorable Court, the above-name (sic) accused, with lewd design and with the use of force and intimidation, did then and there[,] willfully, unlawfully and feloniously remove the pant (sic) and panty of AAA[5] who is nine (9) years old, and thereafter have carnal knowledge of the latter, without the consent of and against her will, to the damage and prejudice of the said victim.[6]
>
> Criminal Case No. 1850
>
> The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, alias CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:
>
> That on or about and sometime [in] the second (2nd) week of March 2004, at just past mid-day, at Sitio XXX, barangay XXX, XXX, Mt. Province and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with the use of force and intimidation, [brought] to his house AAA who is nine (9) years old and once inside, accused removed his pant and brief and thereafter forcibly remove[d] the pant (sic) and panty of the victim, then touch and mash the vagina and breast of the latter several times and afterwards laid the victim on the sofa and, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA without her consent and against her will, to the damage and prejudice of the latter.[7]
>
> Criminal Case No. 1851

> The undersigned Provincial Prosecutor of Mt. Province, hereby accuses LEONARDO DEGAY, alias CALDO, of the crime of STATUTORY RAPE, defined and penalized under Arts. 266-A and 266-B of the Revised Penal Code, as amended, committed as follows:
>
> That on or about May 8, 2004, in the afternoon thereof at XXX, barangay XXX, XXX, Mt. Province and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and with the use of force and intimidation, called for and then h[e]ld the hand of BBB who is four (4) years old and afterwards brought her to a room inside his house where accused undressed himself, display (sic) his penis, then remove (sic) the pant (sic) and panty of BBB and then placed himself on top of her at the same time telling the victim that she (sic) will buy candies later on coupled with the threat upon the latter not to tell anybody and immediately thereafter did there and then willfully, unlawfully and feloniously have carnal knowledge of BBB without her consent and against her will, to the damage and prejudice of the latter.[8]

When arraigned on the 28 July 2000, the accused pleaded not guilty to the three charges against him.[9] Thereafter, a joint trial of the three cases ensued. The prosecution presented as witnesses Marivic Jacob Agaled, Corazon Panisoc, GGG, Myrna Isilen, BBB, Dr. Alma Lusad, SPO4 Norma Gut-Omen, Primitiva Tumayab, Lonjean Valdez and AAA.

Their version[10] of the facts is as follows:

Private complainant AAA is the first child of the spouses CCC and DDD. She was born to the couple on 22 September 1994. The family resides at Sitio XXX, XXX, XXX, where the accused is a neighbour with only five houses separating them. AAA was 9 years old and a grade III pupil at the XXX Central School at the time of the rapes complained of. One afternoon between the hours of 12:00 o'clock and 1:00 o'clock p.m. during the second week of March, 2004, AAA was on her way to school when she met the accused. The accused kissed AAA on the forehead several times, held her hand, and brought her inside his house. He removed his pants and brief and then forcibly removed the pants and underwear of AAA. He laid her on the sofa, mounted her, and inserted his hard penis into her vagina. AAA felt pain in her vagina. After satisfying himself, the accused gave AAA P5.00 and warned her not to tell her mother about what happened.

On 25 March 2004, in the afternoon thereof, the accused again sexually abused AAA. He brought AAA inside the "at-atoan" and after undressing her and himself, he mounted her. He pushed his erect penis into the girl's vagina after which the latter felt pain and something sticky in her private organ. The accused then put on his clothes and threatened AAA with harm if she would tell her mother about the incident.

CCC, AAA's mother, came to know of what happened to her child from her neighbour, Primitiva Tumayab, to whom AAA revealed that the accused had sexually molested her. CCC also received related information from Leticia Bondad and Lonjean Valdez (Valdez). Valdez testified that sometime on the second week of March, 2004, while she was at their rooftop terrace harvesting sili, she saw the accused and AAA enter the house of the accused through the backdoor. The accused's house is only 1½ meters from Valdez's house.

On 15 May 2004, CCC confronted her daughter AAA about the information she received and AAA confirmed that the accused raped her. The following day, CCC reported the matter to the police who took her and AAA's sworn statements. On 17 May 2004, AAA and one BBB who would turn out to be another complainant, were examined at the Bontoc General Hospital by Dr. Alma T. Lusad (Dr. Lusad).

Regarding her findings on AAA, Dr. Lusad explained that there was erythema or redness at the area of the labia majora and labia minora but there were no hymenal lacerations. According to the doctor, the erythema or redness could have been caused by an erect penis that touched the labia.

With regard to her findings on BBB, Dr. Lusad testified that there was likewise no hymenal laceration but there

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was "erythema" of the perihymenal area at the 3:00 o'clock and 9:00 o'clock positions. The physician explained that the erythema could have been caused by a hard object including an erect penis.

BBB, the other complainant, is the four-year old daughter of the spouses EEE and FFF. She is the youngest of their six children. BBB's mother, EEE, is blind. The family resides at XXX, XXX, XXX, XXX.

In the afternoon of 8 May 2004, BBB and her neighbour, Myrna Isilen, were playing in the house of a certain Lola Pelaw when the accused whom BBB calls as "Lolo Caldo" came and told BBB to come with him so he will give her money to buy candy. The accused took BBB by the hand and brought her to the bedroom on the second floor of the house. He undressed himself and likewise removed BBB's shorts and panties. He laid her down on the bed and went on top of her. BBB felt pain when the accused put his hard penis on her vagina. Afterwards, the accused told BBB not to tell her parents about what he did. He got up and dressed himself when he heard a loud knocking on his door.

When BBB's playmate, Myrna Isilen (Myrna) saw the accused bring BBB inside his house, she went to tell Lola Pelaw about it. Myrna also relayed the information to BBB's mother, EEE, who was then washing dishes at their house. Myrna and EEE proceeded immediately to the house of the accused. GGG, BBB's sister followed them. They knocked loudly on the door of the accused but the latter did not open the door. It was only when GGG told Myrna to call the police that the accused opened the door, whereupon she entered the house and fetched BBB from the second floor. There was nobody in the house except BBB and the accused. GGG asked BBB what happened and the child replied that the accused removed her clothes, undressed himself, went on top of her, and inserted his penis inside her vagina. When GGG, who was carrying BBB, came out of the house, EEE asked BBB what the accused did to her. BBB replied that the accused removed her shorts and that the latter undressed himself and went on top of her. Upon hearing this, EEE went to report the matter to the police who took her and BBB's sworn statements.

The defense presented seven witnesses: Antonio Bolinget, Asuncion Galleo, Eugenia L. Roux, Nenita Daling, Felomina Gonzaga, Pablo Gogo (Gogo) and the accused himself. Based on their testimonies, the defense version[11] of the facts is as follows:

On the last week of February, 2004, the accused went to Caboan, Capangdanan, Sabangan and stayed there up to the first week of April, 2004, before he returned to Poblacion, Sabangan. The accused worked on his ricefields, preparing them for planting. He called fifteen people to help him work thereon. The accused stayed in his house which was made of wood and G.I. sheets. Pablo Gogo (Gogo) testified that he stayed at his farm in Caboan from 2 March 2004 to 4 April 2004, and likewise stayed in his "ab-abong" which is five meters from the shanty of the accused. Gogo declared that the shanties were made of cogon and not G.I. sheets. Caboan is about three kilometers from Poblacion, Sabangan, and it can be hiked in less than an hour. The testimony of Gogo likewise shows that some farmers work in their fields and then go back home to Sabangan at day's end. They do not spend the night there. Gogo avers that the accused was one of those who stayed at Caboan.

On 8 May 2004, the accused was at Kaaligan, Sabangan from 8:00 o'clock in the morning until 11:00 o'clock in the evening. He was there with many others to wait for the cadaver of one Rodrigo Galeo to be brought home from Cervantes, Ilocos Sur. Antonio Bolinget and Nenita Daling testified that indeed the accused was at Kaaligan on aforesaid date, and that the accused was one of those who brought Galeo's body to his house at Dogo, Sabangan at about 11:00 o'clock at night.

Eugenia L. Roux testified that she was the teacher of complainant AAA in grade III at the XXX Central School during the school year 2003-2004. She claimed that AAA was present during the entire second week of March 2004 and on 25 March 2004 as per her record. She further testified that she has not observed any behavioral

changes in or unusual behavior of her pupil.

The accused denied knowing the complainants and avers he came to know them only when he was detained at the Bauko Municipal Jail.

On 24 March 2006, the RTC rendered a consolidated judgment finding the accused guilty of three counts of statutory rape as follows:

> WHEREFORE, finding the accused Leonardo Degay alias Caldo guilty beyond reasonable doubt of three (3) counts of STATUTORY RAPE, a Consolidated Judgment is hereby rendered sentencing him to suffer -
>
> 1. The penalty of reclusion perpetua and ordering him to pay AAA the sum of Fifty Thousand (P50,000.00) PESOS as civil indemnity and another Fifty Thousand (P50,000.00) PESOS as moral damages for each count of STATUTORY RAPE in Crim. Cases No. 1849 and 1850.
>
> 2. The penalty of reclusion perpetua and ordering him to pay the private complainant BBB, the sum of Fifty Thousand (P50,000.00) PESOS as indemnity ex delicto and another Fifty Thousand (P50,000.00) PESOS as moral damages in Crim. Case No. 1851 for Statutory Rape.[12]

On 27 September 2007, the Court of Appeals affirmed the decision of the RTC.[13]

Before this Court now on appeal, the parties opted to no longer file supplemental briefs, manifesting that they had exhaustively discussed their arguments in the briefs they filed before the Court of Appeals.[14]

In his Brief,[15] the accused assigns the following errors:

> I.
>
> THE COURT A QUO, GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THREE (3) COUNTS OF STATUTORY RAPE.
>
> II.
>
> THE COURT A QUO, OVERWHELMED BY THE NUMBER OF PROSECUTION WITNESSES GRAVELY ERRED IN FINDING THE ACCUSED CULPABLE FOR THREE (3) COUNTS OF STATUTORY RAPE.
>
> III.
>
> THE COURT A QUO, GRAVELY ERRED IN FINDING THE PLAUSIBLE ALIBI OF THE ACCUSED-APPELLANT NOT WORTHY OF CREDENCE.[16]

Did the Court of Appeals err in affirming the RTC decision convicting the accused of three counts of statutory rape?

The accused argues that his acts of showing his penis to BBB and the touching of AAA's vagina, mashing of her breasts and letting his penis touch her vagina constitute lascivious conduct and not statutory rape, citing Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, Republic Act No. 7610,[17] which defines lascivious conduct as "the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals on pubic area of a person." He cites that the lascivious conduct is supported by the medico-legal findings on AAA and BBB, when it was found that there was no hymenal laceration on their organs. The accused further faults the RTC for not giving credence to his plausible alibi that he was in another place on 8 May 2004 and it was

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impossible for him to have brought BBB to his house and raped her.

On the other hand, the prosecution, through the Office of the Solicitor General, in its brief[18] argues that it had proven beyond reasonable doubt that the accused committed statutory rape and not just acts of lasciviousness. It cited the categorical and straightforward testimonies of AAA and BBB as corroborated by the medical findings showing both victims suffered erythema or redness in the areas of their labias minora and majora. It pointed out that this Court had held in People v. De la Cuesta,[19] that absence of hymenal lacerations on the private organs of the victims does not negate rape. It stressed that the RTC correctly convicted the accused of three counts of statutory rape since the accused had sexual intercourse with the victims who are both under 12 years of age. It finally argued that the accused cannot exculpate himself from liability by alleging that from the last week of February, 2004 to the first week of April, 2004, he was in Caboan, Capangdanan because Caboan is only three kilometers away from Sabangan and could be traversed in an hour or less. It was therefore not physically impossible for the accused to be at the crime scenes.

After review, we uphold the rulings of the appellate court and the RTC.

As correctly assessed by the Court of Appeals:

> Dr. Alma Lusad testified that erythema or redness of the labia minora and labia majora shows that there is an inflammation or infection in said areas, as the normal color thereof is pinkish, which could have been caused by the rubbing of [a] hard object, like an erect penis, on the area. In People v. Pruna,[20] it was held that the absence of hymenal laceration does not preclude the finding of rape, especially when the victim is of tender age. Rape is consummated by the slightest penile penetration of the labia or pudendum of the female. The presence of hyperemia in the vaginal opening is a clear indication that the penis of the accused indeed touched the labia or pudendum of the complainants.
>
> As explained in People v. Boromeo:[21]
>
> Proof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. To sustain a conviction for rape, full penetration of the female genital organ is not necessary. It is enough that there is proof of entry of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape. As long as the attempt to insert the penis results in contact with the lips of the vagina, even without rupture or laceration of the hymen, the rape is consummated. x x x.
>
> The defense of alibi interposed by accused-appellant cannot prevail over the positive identification by AAA and BBB that he was the one who raped them. Accused-appellant admitted that Caboan, Capangdanan, where he allegedly stayed from the last week of February 2004 until the first week of April, 2004, is only about three (3) kilometers away from Sabangan, while Kaaligan, where he stayed from morning until evening of May 8, 2004, is only one (1) kilometer away from Sabangan. Pablo Gogo, who was allegedly with accused-appellant in Caboan from March 2, 2004 to April 4, 2004, stated that the distance of three (3) kilometers from said place to Sabangan could be negotiated in less than one hour. It was not, therefore, physically impossible for accused-appellant to be in Sabangan on the dates and time of the incidents complained of by AAA and BBB. As between the accused-appellant's denial and his positive identification by AAA and BBB as the person who raped them, the court a quo did not err in according weight to the latter.[22]

In line with recent jurisprudence, however, the awards of moral and exemplary damages are increased to P75,000.00 and P30,000.00, respectively.[23]

WHEREFORE, the Decision dated 27 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 02176 affirming the Decision dated 24 March 2006 of the Regional Trial Court of Bontoc Mountain Province, Branch 35

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is AFFIRMED with MODIFICATION. This Court finds appellant guilty beyond reasonable doubt of three counts of statutory rape and sentences him to suffer the penalty of reclusion perpetua for each rape and to indemnify the victims the sums of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages for each count of rape. No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Del Castillo, JJ., concur.

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[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan-Castillo, concurring. CA rollo, pp. 90-100.

[2] Penned by Presiding Judge Joseph A. Patnaan. Records, Criminal Case No. 1849, pp. 143-154.

[3] ART. 266-A. Rape, When and How Committed.--Rape is committed.--

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

a) Through force, threat or intimidation;
b) When the offended party is deprived of reason or is otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority;
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) 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.

[4] ART. 266-B. Penalties. -- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion perpetua to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the

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third civil degree of consanguinity.

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5) When the victim is a child below seven (7) years old.

6) When the offender knows that he is afflicted with Human Immune-Deficiency Virus (HIV) / Acquired Immune-Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.

[5] Pursuant to Section 44 of Republic Act No. 9262, otherwise known as The Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing Republic Act No. 9262, the real names of the victims are withheld to protect their privacy. Fictitious initials are used instead to represent them. Likewise, the personal circumstances or any other information tending to establish or compromise their identities, as well as those of their family members shall not be disclosed. (see People v. Cabalquinto, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426).

[6] Records, Criminal Case No. 1849, p. 20.

[7] Records, Criminal Case No. 1850, p. 19.

[8] Records, Criminal Case No. 1851, p. 18.

[9] Records, Criminal Case No. 1849, p. 37; Criminal Case No. 1850, p. 21; and Criminal Case No. 1851, p. 22.

[10] Records, Criminal Case No. 1849, pp. 145-148.

[11] Id. at 148-149.

[12] Id. at 154.

[13] CA rollo, p. 99.

[14] Rollo, pp. 27, 32-33.

[15] CA rollo, pp. 32-48.

[16] Id. at 32.

[17] The SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT, approved on 17 June 1992.

[18] CA rollo, pp. 67-85.

[19] 396 Phil. 330, 337 (2000).

[20] 439 Phil. 440, 462-463 (2002).

[21] G.R. No. 150501, 3 June 2004, 430 SCRA 533, 542.

[22] Rollo, pp. 8-10.

[23] People v. Sia, G.R. No. 174059, 27 February 2009, 580 SCRA 364, 367 citing People v. Abellera, G.R. No. 166617, 3 July 2007, 526 SCRA 329, 343.

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