

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN MEJIA, ACCUSED-APPELLANT.

G.R. No. 185723. August 04, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision[1] dated 14 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02533, entitled *People of the Philippines v. Edwin Mejia*, affirming, with modification, the Decision[2] rendered by the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57 in Criminal Cases No. SCC-4080-4081, finding accused-appellant Edwin Mejia guilty beyond reasonable doubt of the crimes of Rape and Acts of Lasciviousness.

On 2 March 2003, private complainant's (AAA's)[3] womanhood was allegedly violated by a man cohabiting with her mother (BBB) as common-law-spouse. BBB was already living separately from AAA's father at the time the crime were committed at BBB's and accused-appellant's residence. This dastardly act led to AAA's pregnancy.

Out of fear and shame, it took some time before AAA had the courage to report the incident to her relatives.

On 9 October 2003, after appropriate proceedings, the Office of the Provincial Prosecutor of Pangasinan filed, with the RTC of San Carlos City in Pangasinan, two separate informations for Rape under Article 266-A of the Revised Penal Code, docketed as Criminal Cases No. SCC-4080 and No. SCC-4081. The informations charging accused-appellant Edwin Mejia read:

CRIMINAL CASE NO. SCC-4080

That on or about 3:00 o'clock in the afternoon of March 2, 2003, in Barangay XXX, XXX City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation or violence, and with lewd designs, did then and there, willfully, unlawfully and feloniously, has (sic) carnal knowledge with his step-daughter AAA, against her will and consent.

Contrary to Article 266-A of the Revised Penal Code.[4]

CRIMINAL CASE NO. SCC-4081

That on or about 8:00 o'clock in the morning of March 2, 2003, in Barangay XXX, XXX City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation or violence, and with lewd design, did then and there, willfully, unlawfully and feloniously, has (sic) carnal knowledge with his step-daughter AAA, against her will and consent.

Contrary to Article 266-A of the Revised Penal Code.[5]

Both criminal cases were raffled to Branch 57, presided by Judge Anthony Sison, and thereafter consolidated and jointly tried. On arraignment, the Informations were read to accused-appellant in a dialect known to, and understood by, him; and with the assistance of his counsel, accused-appellant pleaded NOT GUILTY to both

charges.[6]

Pre-trial was conducted on 23 April 2004 but only the identities of the parties to the case were admitted therein.[7] Thereafter, trial on the merits commenced.

Two witnesses testified. Private complainant AAA testified for the prosecution. Accused-appellant Edwin Mejia testified for the defense.

AAA, 18 years old, single and a resident of Barangay XXX, XXX City in Pangasinan, testified that on 2 March 2003, she, who was less than 18 years old at that time, was fetched by her mother BBB from her grandmother's house where she lives. She was to take care of her two-month-old brother at BBB's house in Barangay XXX, XXX City, Pangasinan. Accused-appellant was BBB's live-in partner, who resided in the same house as BBB. BBB left for Dagupan City, where she sold vegetables at the market.

While AAA was babysitting her brother, accused-appellant, who was armed with a bolo, forcibly held her, laid her on the living room floor (sala) and with the use of threats, undressed her and removed her panty. He then removed his short pants and brief and placed himself on top of AAA. Appellant inserted his penis into AAA's vagina, and as he did, she felt pain. Satisfying his sexual desire after about three minutes of inserting his penis inside AAA's vagina, accused-appellant removed it from AAA's vagina and dressed up. Accused-appellant threatened to kill AAA and her mother should she leave the house and/or report the incident. Because she was afraid of the threat, AAA stayed inside the bedroom for several hours.

At 3:00 o'clock in the afternoon of the same day, accused-appellant went inside the bedroom where AAA was babysitting her brother. He pulled her hair and placed himself on top of her, but failed to insert his penis into her private part. Accused-appellant warned her not to tell anyone about the incident. AAA went back to her grandparents' house in XXX.

AAA did not inform her grandparents about the abominable act accused-appellant committed upon her person out of fear due to his threats. However, she told her aunt with whom she lived in XXX about her pregnancy, for she could no longer hide the change in her physical appearance. After telling her aunt, private complainant reported the incident to the police station, where she executed her sworn statement. AAA also underwent medical examination.

On cross-examination, AAA stated that BBB and accused-appellant started living as husband and wife in XXX, XXX City, Pangasinan when she was 16 years old. Her father (FFF) and her mother BBB had been living separately. Private complainant disclosed that she was under the care of her maternal grandparents and did not live with her mother BBB and accused-appellant.

Upon AAA's arrival at the house of BBB and accused-appellant, accused-appellant was out of town harvesting mangoes. Accused-appellant arrived after the harvest was done. She was taking some time to rest after doing household chores, and after the children of BBB with accused-appellant had already left for school. AAA said that when she arrived at the house of her mother, accused-appellant was still talking to Noel Soriano who just lived nearby.

The defense presented accused-appellant Edwin Mejia. Accused-appellant declared that at around 8:00 o'clock in the morning of 2 March 2003, he was not in their home in XXX. Accused-appellant insisted he was harvesting mango fruits in Barangay Casantiagoan in Manaoag, Pangasinan, from 1 March 2003 to 3 March 2003. He claimed it was impossible for him to have raped AAA, because he was in Manaoag, Pangasinan from 1 March 2003 at around 5:00 o'clock in the morning, with a certain Bong Estrada, and returned home only on 3 March 2003 at around 6:00 o'clock in the evening. He said he did not live with AAA, as the latter stayed in the house of

his brother-in-law in XXX town.

Accused-appellant explained that AAA was the daughter of his live-in partner/common-law-wife BBB by her husband. When AAA was only 10 years old, accused-appellant and BBB started to cohabit. He had five children with BBB, and they resided in XXX, XXX City, Pangasinan. Accused-appellant described his relationship with AAA as cold and aloof, primarily due to the fact that AAA hated him for hurting her mother because of his vicious lifestyle. He said that he had a good relationship with BBB despite the fact that her family and AAA disliked him.

Accused-appellant claimed the rape charges AAA filed against him were fabricated because he was in Manaoag, Pangasinan, harvesting mangoes at the time of the alleged incident. He, however, said that the distance from Manaoag, Pangasinan to XXX City, Pangasinan could be traveled for more or less one hour, using the same elf truck they used going to Manaoag and back to XXX City.

On 18 September 2006, the trial court[8] found accused-appellant guilty beyond reasonable doubt of the crimes of (a) Rape in Criminal Case No. SCC-4081; and (b) Acts of Lasciviousness in Criminal Case No. SCC-4080, ruling in this wise:

WHEREFORE, the Court finds accused Edwin Mejia, GUILTY beyond reasonable doubt for the crime of Rape as charged under Article 266-A of the Revised Penal Code in Criminal Case No. SCC-4081, and is hereby sentenced to suffer the penalty of Reclusion Perpetua. Accused is directed to pay the victim P50,000.00 as indemnity.

However, as to Criminal Case No. SCC-4080, it is settled that each charge of rape is a separate and distinct crime and each must be proven beyond reasonable doubt. Mere laying on top of the alleged victim even if naked does not constitute rape. The prosecution therefore failed to prove the essential elements of rape, but the Court finds accused GUILTY beyond reasonable doubt of the lesser offense of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of 6 months of arresto mayor, as minimum to 3 years of prision correctional, as maximum.

The court a quo gave more credence to the testimony of private complainant AAA, who charged accused-appellant with committing the bestial act resulting in her pregnancy. The trial court applied the principle that an affirmative testimony carries more weight than a mere denial. Accused-appellant's denial was found to be unsubstantiated and merely self-serving, vis-à-vis the positive declaration of AAA and the frank manner in which she recounted her ordeal. In fact, the defense of alibi put up by accused-appellant was uncorroborated. Finally, the element of hate was not given much weight by the trial court. It stated that, assuming this element was present, it did not detract from AAA's credibility.

The trial court appreciated the qualifying circumstance of minority and relationship, so that under Article 266-B of Republic Act No. 8353, the penalty would have been death. With the suspension of the death penalty due to the enactment of Republic Act No. 9346, the RTC imposed reclusion perpetua.

Insisting on his innocence and invoking the twin defenses of denial and alibi, accused-appellant elevated the case to the Court of Appeals via a notice of appeal.

Thus, on 14 July 2008, the Court of Appeals affirmed accused-appellant's guilt in the two cases, but modified the decision of the court a quo by disregarding the qualifying circumstance of minority and awarding moral damages, to wit:

WHEREFORE, the decision of the trial court in Crim Case No. 6295 is hereby AFFIRMED with MODIFICATION, to wit:

(1) In Criminal Case No. SCC-4081, appellant Edwin Mejia is hereby found guilty of simple rape and is sentenced to suffer the penalty of reclusion perpetua. Appellant is further ORDERED to indemnify AAA in the amount of P50,000 as civil indemnity and P50,000 as moral damages.

(2) In Criminal Case No. SCC-4080, appellant Edwin Mejia is guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of Six (6) months of arresto mayor, as minimum to three (3) years of prision correctional, as maximum.[9]

The Court of Appeals was not persuaded by accused-appellant's contention that hatred caused AAA to concoct rape charges against him. This attempt to discredit AAA failed. The Court of Appeals ruled that the hate element was too petty a cause for the victim's family to fabricate allegations of rape. Motive is not necessary when the identity of the wrongdoer is positively identified by the victim herself. In giving full credit to AAA's testimony, the appellate court affirmed the dictum that the assessment of trial courts is generally viewed as correct and entitled to great weight.

The Court of Appeals opposed the trial court's appreciation of the qualifying circumstance of minority of the victim in view of the information's failure to allege such circumstance and the prosecution's failure to adduce proof as to the age of AAA at the time the alleged rape took place. The qualifying circumstance of minority was not sufficiently established by independent proof during trial. Thus, the qualifying circumstances of minority and relationship were not appreciated by the Court of Appeals.

Hence, this appeal before this Court.

On 4 February 2009, the Court required the parties to simultaneously submit their respective supplemental briefs, if they so desired.[10] Both defense and prosecution manifested that they would adopt their briefs filed before the Court of Appeals in order to avoid repetition of the arguments and to expedite the resolution of the instant case.[11] The case was thereafter deemed submitted for decision.

Asking for his acquittal, accused-appellant raises the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN CONSIDERING THE QUALIFYING CIRCUMSTANCE OF MINORITY OF THE VICTIM ALTHOUGH THE INFORMATION DOES NOT ALLEGE SUCH CIRCUMSTANCE AND THAT THE PROSECUTION INTRODUCED NO PROOF AS TO THE AGE OF THE VICTIM AT THE TIME THE ALLEGED RAPE INCIDENT HAPPENED.

The defense argues that it was impossible for accused-appellant to have raped AAA, for two reasons. First, he and AAA did not reside at the same place. Second, at the time the alleged rape incident took place, accused-appellant was harvesting mangoes in Casantiagoan, Pangasinan. Accused-appellant attempts to discredit AAA by showing that AAA was actuated by ill motives. Accused-appellant asserts that AAA had a very strong motive against him, elucidating that AAA and BBB's family hated him because he hurt BBB. The defense also questions the trial court's appreciation of the qualifying circumstance of minority when the information failed to allege such circumstance and the prosecution did not present proof pertaining to the age of the victim at the time the alleged rape took place.

On the side of the prosecution, the Office of the Solicitor General (OSG) supports accused-appellant's conviction. However, it agrees that accused-appellant should only be convicted of Simple Rape in Criminal Case No. SCC-4081, because the qualifying circumstance of minority was neither alleged in the information nor proved in the trial.

The appeal fails.

The Informations charge accused-appellant with the crime of Rape, defined and penalized under the provisions of Article 266-A of the Revised Penal Code, viz:

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.

The prosecution must be able to establish the following essential elements under Article 266-A(1)(a) of the Revised Penal Code, as amended, namely: (a) that the offender had carnal knowledge of a woman; and (b) that the same was committed by using force and intimidation.

Accused-appellant anchors his claim of innocence on two defenses, denial and alibi. At the same time, accused-appellant impugns the credibility of AAA.

In resolving rape cases, this Court is guided by the following principles: (a) an accusation for rape can be made with facility; it is difficult to prove but even more difficult for the accused, though innocent, to disprove; (b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense; and (d) the evaluation of the trial court judges regarding the credibility of witnesses deserves utmost respect on the ground that they are in the best position to observe the demeanor, act, conduct, and attitude of the witnesses in court while testifying.[12]

In light of these principles and considering the gravity of the offense charged and the severity of the penalty that may be imposed, this Court has meticulously evaluated the entire records and transcript of stenographic notes, and find no reason to deviate from the appellate court's findings.

AAA's testimony, quoted hereunder, indubitably shows that accused-appellant had carnal knowledge of her by using force and intimidation, thus:

Pros. Taminaya

Q. Do you know accused Edwin Mejia?

A. Yes, sir.

Q. Why do you know Edwin Mejia?

A. He is my stepfather, sir.

Q. Is he in the Court room now?

A. Yes, sir.

Q. Will you kindly point to him?

Interpreter

Witness pointed to a man wearing blue green t-shirt and he responded that he is Edwin Mejia when he was asked of his name.

Pros. Taminaya

Q. Some time on March 2, 2003 at 8:00 o'clock in the morning, where were you?

A. I was at the house of my mother, sir.

Q. Where is the house of your mother located?

A. In XXX, XXX, Pangasinan, sir.

Q. Why were you there in the house of your mother?

A. I was asked to take care of my younger brother, sir.

Q. What is the name of your brother?

A. CCC, sir.

Q. How old is CCC you are taking care of?

A. More than two (2) months, sir.

Q. While you were taking care of your younger brother in the morning of March 2, 2003 at 8:00 o'clock in the morning in the house of your mother, was there any unusual incident that happened?

A. Yes, sir.

Q. What is that unusual incident?

A. He threatened me with a bolo, sir. (Inangatan to ak na barang)

Q. Who threatened you with a bolo?

A. Edwin, sir.

Q. After he threatened you with a bolo, what did he do to you?

A. He laid me down, sir.

Q. What part of the house were you laid down?

A. In the sala, sir.

Q. Where was your mother?

A. She was selling, sir.

Q. After he forced you down, what did Edwin Mejia do?

A. He undressed me and removed my panty, sir.

Q. After Edwin Mejia removed your dress and your panty, what did he do next?

A. He removed his short pants and brief and he went on top of me, sir.

Q. When he was on top of you, what did he do?

A. That I will never go down and went out or else he will kill me, sir.

Q. While on top, what happened to you?

A. Painful, sir.

Q. What is painful to you?

A. My vagina, sir.

Q. Why is your vagina painful?

A. Very painful, sir.

Q. Why, what did you feel to (sic) your vagina that caused the pain?

A. He forcefully inserted his penis on (sic) my vagina sir.

Q. How long did he enter his penis into your vagina.

A. He inserted it very well, sir.

Q. How long?

A. About three (3) minutes, sir.

Q. What did he do while his penis was inside your vagina for 3 minutes?

A. After that he removed it, sir.

Q. When he removed his penis, what did he tell you?

A. That I will not go down from the house because he will kill me and he will kill my mother sir.

x x x x

Q. At around 3:00 o'clock in the afternoon of the same date, March 2, 2003 while you were with your brother CCC, was there any unusual incident that happened to you again?

A. Yes, sir.

Q. What is that unusual incident?

A. He pulled my hair, sir.

Q. Who pulled your hair?

A. Edwin Mejia, sir.

x x x x

Q. After pulling your hair, what did Edwin Mejia do?

A. He laid me down and then he raped me, sir.

Q. After laiding (sic) you down, what did Edwin Mejia do?

A. He removed my dress and my panty, sir.

Q. After Edwin Mejia removed your dress and your panty, what did he do next?

A. He went on top of me again, sir.

Q. Was he able to insert again his penis into your vagina?

A. Not anymore, sir.

Q. After that what transpired next?

A. He told me not to report, sir.

Q. Were you able to wait for your mother that afternoon of March 2, 2003?

A. No, sir.

Q. Where did you go?

A. In our house, sir.

Q. Where is your house located?

A. In XXX, Pangasinan.

Q. Whose house is that?

A. My grandparents, sir.

Q. When you reached your grandparents' house that afternoon, did you tell to (sic) your grandparents what happened to you?

A. No, sir.

Q. Why did you not tell your grandparents of what happened to you?

A. Because he threatened me with a bolo, sir.

Q. How about to your mother, were you able to tell the incident to your mother?

A. Yes, sir.

Q. When did you tell your mother what happened to you?

A. When I was already pregnant, sir.[13]

Indeed, at the heart of almost all rape cases is the issue of credibility of witnesses, where conviction or acquittal of the accused may depend entirely on the credibility of the victim's testimony, as only the participants therein can testify to its occurrence. By the nature of rape, the only evidence that oftentimes is available is the victim's own declaration. The rule is clear that the lone testimony of the victim in the crime of rape, if credible, is sufficient to sustain a conviction.

In challenging the credibility of AAA's accusations against him, accused-appellant points out the confusion in her testimony as to the exact time of the alleged rape to show that AAA was concocting the charges. He claims that AAA was moved by hatred, as accused-appellant often hurt AAA's mother BBB.

However, time and again, this Court has emphasized that the manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality. The assessment made by the trial court is even more enhanced when the Court of Appeals affirms the same, as in this case.

Moreover, although AAA's testimony was allegedly marred by confusion as to the time of the rape, the supposed inconsistency refers to a minor detail, which cannot affect the credibility of the testimony as a whole.

On accused-appellant's claim -- that he could not have raped AAA since 2 March 2003 was a Sunday; thus, his five children were home -- is of no merit, as lust is no respecter of time and place. This Court has repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, and even inside a house where there are other occupants or where other members of the family are also sleeping. Thus, it is an accepted rule in criminal law that rape may be committed even when the rapist and the victim are not alone. The fact is, rape may even be committed in the same room while the rapist's spouse is asleep, or in a small room where other family members also sleep.[14]

Accused-appellant relies on his averment that he was harvesting mangoes in Casantiagoan, Pangasinan when the incidents occurred. For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.[15] No other principle in criminal law jurisprudence is more settled than that alibi is the frailest of all defenses as it is prone to fabrication.

The defense failed to prove the physical impossibility of his presence at the scene of the crime. As testified to by accused-appellant, the distance from Casantiagoan, Pangasinan to the house of BBB in XXX town, which was the scene of the crime, can be traversed by ordinary commute in a span of one hour.[16] It was thus not physically impossible for him to have been at the locus criminis.

Accused-appellant's defense of denial is inherently weak. Jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Mere denial, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. While accused-appellant claimed to be in the company of a group of men during those times, the defense could not present even a single corroborative testimony. Appellant's denial and alibi cannot prevail over the affirmative testimony of AAA, more so when the records lack any suggestion that AAA's testimony should be seen in a suspicious light.

In all, the totality of the evidence presented by the prosecution proves beyond reasonable doubt that accused-appellant is guilty of Rape in Criminal Case No. SCC-4081.

Simple rape is punished under Article 266-A of the Revised Penal Code by the single indivisible penalty of reclusion perpetua. Article 266-B of the Revised Penal Code mandates that the death penalty shall 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

Although the qualifying circumstances of minority and relationship were appreciated by the trial court, the Court of Appeals correctly disregarded them. These qualifying circumstances cannot be considered in fixing the penalty because minority, though proved, was not alleged in the information. As regards relationship, the same was alleged and proved. Pursuant, however, to Section 266-B of the Revised Penal Code, in order to fall within subparagraph 1 of said provision, both circumstances of minority and relationship must be alleged in the information and proved during trial. In *People v. Tabanggay*, [17] we held:

Jurisprudence dictates that when the law specifies certain circumstances that will qualify an offense and thus

attach to it a greater degree of penalty, such circumstances must be both alleged and proven in order to justify the imposition of the graver penalty. Recent rulings of the Court relative to the rape of minors invariably state that in order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.

In the instant case, we find insufficient the bare testimony of private complainants and their mother as to their ages as well as their kinship to the appellant. x x x [We] cannot agree with the solicitor general that appellant's admission of his relationship with his victims would suffice. Elementary is the doctrine that the prosecution bears the burden of proving all the elements of a crime, including the qualifying circumstances. In sum, the death penalty cannot be imposed upon appellant.[18]

The twin circumstances of minority of the victim and her relationship to the offender must concur to qualify the crime of rape.[19] In the instant case, only relationship was duly alleged and proved.

As amended, and effective 1 December 2000, Secs. 8 and 9, Rule 110 of the Revised Rules on Criminal Procedure now provide that aggravating as well as qualifying circumstances must be alleged in the information and proven during trial; otherwise they cannot be considered against the accused. Proof of the age of the victim cannot consist merely of testimony. Neither can a stipulation of the parties with respect to the victim's age be considered sufficient proof of minority.[20] Thus, the same cannot be used to impose the higher penalty of capital punishment on the accused-appellant.

Anent the award of damages, civil indemnity ex delicto is mandatory upon a finding of the fact of rape, while moral damages are awarded upon such finding without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[21] The Court of Appeals correctly awarded (a) P50,000.00 as civil indemnity and (b) P50,000.00 as moral damages to the victim, pursuant to prevailing jurisprudence.[22] Exemplary damages are not awarded in light of the absence of proven aggravating circumstances.

With respect to Criminal Case No. SCC-4080, we are in full agreement with the trial court and Court of Appeals in downgrading the crime from rape to acts of lasciviousness inasmuch as carnal knowledge was not established. The mere act of lying on top of the alleged victim, even if naked, does not constitute rape.

Instead, the Court finds accused-appellant guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code. The felony of acts of lasciviousness, a crime included in rape, is defined and penalized by Article 336 of the Revised Penal Code, as amended, thus:

ART. 336. Acts of lasciviousness. - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.

Its elements are as follows:

- That the offender commits any act of lasciviousness or lewdness.
- 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.

- That the offended party is another person of either sex.[23]

The Court finds accused-appellant guilty beyond reasonable doubt of the lesser offense of acts of lasciviousness with the presence of the foregoing elements, specifically: (1) the acts of lasciviousness or lewdness and (2) the fact that these were done by using force or intimidation.

The penalty for the felony of acts of lasciviousness is prision correccional in its full range. Reducing the penalty by one degree to determine the minimum of the indeterminate penalty, such penalty is arresto mayor, which has a range of one (1) month and one (1) day to six (6) months. The minimum of the indeterminate penalty shall be taken from the full range of arresto mayor. Absent any modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of prision correccional. Accordingly, accused-appellant is hereby meted an indeterminate penalty of six months of arresto mayor, as minimum, to three years of prision correccional, as maximum in Criminal Case No. SCC-4080. Moreover, the amount of P30,000.00 as moral damages is awarded to the victim.[24]

WHEREFORE, premises considered, the decision of the Court of Appeals finding accused-appellant Edwin Mejia, GUILTY beyond reasonable doubt of the crime of Simple Rape and Acts of Lasciviousness is hereby AFFIRMED with the MODIFICATION that in Criminal Case No. SCC-4080, the amount of P30,000 is awarded to the victim as moral damages. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Leonardo-De Castro,[*] JJ., concur.

[*] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 28 July 2009.

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican concurring; rollo, pp. 2-18.

[2] CA rollo, pp. 11-16.

[3] Private complainant is referred to as AAA. In view of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Section 29 of Republic Act No. 7610, otherwise known as the Anti-violence Against Women and Their Children Act of 2004.

[4] Records, Volume I, pp. 1-2.

[5] Records, Volume I-A, pp. 1-2.

[6] Id. at 18.

[7] Records, Volume I, p. 43; Records, Volume I-A, p. 28.

[8] CA rollo, pp. 11-16.

[9] Id. at 141.

[10] Rollo, p. 24.

[11] Id. at 25-29.

[12] People v. Miñon, G.R. Nos. 148397-400, 7 July 2004, 433 SCRA 671, 680.

[13] TSN, 12 July 2004, pp. 3-7.

[14] *People v. Castel*, G.R. No. 171164, 18 November 2008, citing *People v. Evina*, 453 Phil. 25, 41 (2003), citing *People v. Perez*, 357 Phil. 17, 29 (1998).

[15] *People v. Gonzales*, G.R. No. 141599, 29 June 2004, 433 SCRA 102, 116.

[16] TSN, 15 August 2005, p. 9.

[17] 390 Phil. 67 (2000).

[18] *Id.* at 91-92.

[19] *People v. Espino, Jr.*, G.R. No. 176742, 17 June 2008, 554 SCRA 682, 704.

[20] *People v. Lopit*, G.R. No. 177742, 17 December 2008.

[21] *People v. Sabardan*, G.R. No.132135, 21 May 2004, 429 SCRA 9, 28-29

[22] *People v. Corpuz*, G.R. No. 178536, 30 January 2009; *People v. Lopit*, *supra* note 20.

[23] *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 291-292.

[24] *People v. Ceballos, Jr.*, G.R. No. 169642, 14 September 2007, 533 SCRA 493, 514; *People v. Abulon*, G.R. No. 174473, 17 August, 2007, 530 SCRA 675, 705.

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