

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVER MATIAS Y DELA FUENTE, ACCUSED-APPELLANT.

G.R. No. 186469. June 18, 2012

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This resolves the appeal from the August 19, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02781 filed by appellant Jover Matias y Dela Fuente which affirmed his conviction for the crime of “rape” under Sec. 5 (b), Article III of Republic Act (RA) No. 7610.[2]

The Factual Antecedents

Appellant Jover Matias y Dela Fuente and private complainant AAA[3] were neighbors at Sto. Niño St., Barangay San Antonio, Quezon City. In the evening of June 6, 2004, AAA, a minor, having been born on April 23, 1991, was on her way to the vegetable stall (“gulayan”) of a certain “Manuela” to buy something when, all of a sudden, appellant pulled her towards a house that was under construction. There, he forced her to lie on a bamboo bed (“papag”), removed her shorts and underwear, and inserted first, his finger, and then his penis into her vagina. Appellant threatened to kill her if she should report the incident to anyone.

When AAA arrived home, she narrated to her mother and aunt what appellant did to her. Together, they proceeded to the barangay to report the incident and, thereafter, to the Baler District Police Station to file a complaint. A physical examination was conducted by Police Chief Inspector Pierre Paul Figeroa Carpio upon AAA, who was found to have “[d]eep-healed lacerations at 3 and 7 o’clock positions” and was in a non-virgin state physically at the time of examination. Subsequently, appellant was charged with rape under Article 266-A of the Revised Penal Code (RPC) in an Amended Information[4] dated July 16, 2004.

In defense, appellant claimed that in the evening of the incident, he and his uncle, Romeo Matias, were doing construction work at the house of his aunt, also located at Sto. Nino St., Barangay San Antonio, Quezon City. He was therefore surprised when two policemen arrested him at around 6:30 in the evening of even date and detained him at the Baler Police Station.

The RTC Ruling

In its April 19, 2007 Decision,[5] the RTC convicted appellant for “rape” under Sec. 5 (b), Article III of RA 7610 and imposed the penalty of reclusion perpetua. The RTC likewise directed him to pay AAA the amount of P50,000 as civil indemnity and P30,000 as moral damages.

In convicting appellant, the RTC gave full credence to AAA's testimony, which was straightforward and positive. On the other hand, it found appellant's defenses of denial and alibi as weak, taking into consideration that his aunt's house where he was allegedly doing construction work was just a few meters away from the vegetable stall, clearly making it possible for him to be at the locus criminis at the time of the incident.

The CA Ruling

In its assailed Decision,[6] the CA affirmed the RTC Decision in toto, finding no compelling reason to depart from its findings and conclusions. The appellate court held that if the RTC found AAA's testimony to be credible, logical and consistent, then it should be given great respect, as the RTC had the ability to observe firsthand the demeanor and deportment of the witnesses on stand.

Moreover, for appellant's alibi to prosper, he should be able to show that he was a great distance away from the place of the incident and that it was impossible for him to be there or within its immediate vicinity at the time of the commission of the crime. The CA ruled that it is highly unlikely for a young girl to fabricate a story that would destroy her reputation and her family's life and endure the discomforts of trial.

Issue Before The Court

The sole issue to be resolved in this appeal is whether the CA committed reversible error in affirming in toto the Decision of the RTC, which convicted appellant of "rape" under Sec. 5 (b), Article III of RA 7610.

The Court's Ruling

Sec. 5 (b), Article III of RA 7610 provides:

Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

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

(a) x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; xxx[7]

In the case of *People v. Pangilinan*,[8] which affirmed the doctrines enunciated in the cases of *People v. Dahilig*[9] and *People v. Abay*,[10] the Court explained:

Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code and penalized with reclusion perpetua. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.

In this case, the RTC, as affirmed by the CA, convicted appellant for "rape" under Sec. 5 (b), Article III of RA 7610 and sentenced him to reclusion perpetua, upon a finding that AAA was a minor below 12 years old at the time of the commission of the offense on June 6, 2004. However, a punctilious scrutiny of the records shows that AAA was born on April 23, 1991, which would make her 13 years old at the time of the commission of the

offense on June 6, 2004. Thus, appellant can be prosecuted and convicted either under Sec. 5 (b), Article III of RA 7610 for sexual abuse, or under Article 266-A of the RPC, except for rape under paragraph 1(d).[11] It bears pointing out that the penalties under these two laws differ: the penalty for sexual abuse under Sec. 5 (b), Article III of RA 7610 is reclusion temporal medium to reclusion perpetua, while rape under Article 266-A of the RPC is penalized with reclusion perpetua.

On this score, it is worth noting that in its April 19, 2007 Decision,[12] the RTC concluded that AAA was the “victim of sexual abuse labeled 'rape',”[13] considering the established fact that there was sexual intercourse between him and AAA. Thus, appellant's conviction was clearly under Sec. 5 (b), Article III of RA 7610 or sexual abuse and not for rape under Article 266-A of the RPC.

In the light of all the foregoing, there is a need to modify the penalty imposed upon appellant. Following the pronouncement in the case of *Malto v. People*[14] for sexual abuse, and in the absence of any mitigating or aggravating circumstances, the Court finds it appropriate to impose the penalty of reclusion temporal in its maximum period, which has the range of 17 years, 4 months and 1 day to 20 years.

Applying the Indeterminate Sentence Law,[15] therefore, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is 17 years, 4 months and 1 day to 20 years of reclusion temporal, while the minimum term shall be within the range next lower in degree, which is prision mayor in its medium period to reclusion temporal in its minimum period, or a period ranging from 8 years and 1 day to 14 years and 8 months. Similarly, the award of moral damages is increased from P30,000.00 to P50,000.00, pursuant to the *Malto* case.

WHEREFORE, the appeal is DISMISSED. The August 19, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02781 finding appellant Jover Matias y Dela Fuente guilty beyond reasonable doubt of sexual abuse under Section 5 (b), Article III of Republic Act No. 7610 is AFFIRMED with MODIFICATIONS as to penalty and the amount of damages awarded. Appellant is sentenced to suffer the penalty of 12 years of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum, and ordered to pay the private complainant the amount of P50,000.00 as moral damages. The rest of the assailed Decision stands.

SO ORDERED.

Peralta, (Acting Chairperson),[*] Abad, Villarama, Jr.,[**] and Mendoza, JJ., concur.

[*] Per Special Order No. 1228 dated June 6, 2012.

[**] Designated acting member in lieu of Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

[1] Rollo, pp. 2-14.

[2] Otherwise known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” effective June 17, 1992.

[3] The real name of the minor victim is withheld and fictitious initials are used to represent her, consistent with the case of *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] RTC records, p. 26.

[5] CA rollo, pp. 22-30.

[6] Supra note 1.

[7] Underscoring ours.

[8] G.R. No. 183090, November 14, 2011.

[9] G.R. No. 187083, June 13, 2011.

[10] G.R. No. 177752, February 24, 2009, 580 SCRA 235.

[11] “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. xxx

b. xxx

c. xxx

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.”

[12] Supra note 12.

[13] Id. at p. 29.

[14] G.R. No. 164733, September 21, 2007.

[15] Republic Act No. 4103, as amended.

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