

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO DAHILIG Y AGARAN, ACCUSED-APPELLANT.

G.R. No. 187083. June 13, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the October 29, 2008 Decision [1] of the Court of Appeals (CA) in CA G.R. CR-H.C. No. 01488, which modified the July 19, 2005 Decision [2] of the Regional Trial Court, Branch 159, Pasig City (RTC), in Criminal Case No. 121472-H, by finding the accused guilty of child abuse, defined and penalized in Sec. 5(b) of Republic Act (R.A.) No. 7610, instead of the crime of rape.

The Information, dated August 6, 2001, indicting the accused for rape reads:

Criminal Case No. 121472-H

The undersigned 2[nd] Assistant Provincial Prosecutor accuses EDUARDO DAHILIG Y AGARAN, of the crime of Rape (Violation of Article 266-A par. 1 in relation to Article 266-B, 1[st] par. of the Revised Penal Code, as amended by RA 8353 and in further relation to Section 5(a) of RA 8369), committed as follows:

That on or about the 17[th] day of December 2000, in the municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, by means of force and intimidation, and taking advantage of night time and in the dwelling of complainant, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with one AAA, [3] sixteen (16) year old minor at the time of the commission of the offense, against her will and consent.

CONTRARY TO LAW. [4]

[Underscoring supplied]

During the trial, the prosecution presented AAA, the private complainant; and Police Senior Inspector Bonnie Y. Chua, the medico-legal officer, as its witnesses. The defense, on the other hand, presented the accused himself, Eduardo Dahilig (accused), as its sole witness.

Accused and AAA were both employed as house helpers by a certain Karen Gomez. AAA was only sixteen (16) years old at the time of the commission of the act, having been born on August 17, 1984. Their respective versions of the incident, as expected, were diametrically opposed.

Version of the Prosecution

On December 17, 2000, at around 4:00 o'clock in the morning, AAA was lying in bed with her fellow helper, Roxanne. As it was hot and humid that morning, AAA moved to the floor. While on the floor, she felt someone touching her. At that instant, she found out it was the accused. She tried to resist his advances, but he succeeded in pinning her down with his weight and he told her not to move. She shouted for help from Roxanne but to no avail because the latter was sound asleep. Eventually, the accused was able to remove her shirt, shorts and

undergarments and afterwards was able to get on top of her. Then, he forced his penis into her vagina which caused her pain. After he was done with her, he returned to his quarters on the third floor.

The following day, AAA angrily confronted the accused and asked him why he did such an act against her. He reacted by getting all his belongings and immediately left their employer's house. AAA then informed her employer what the accused did to her. Their employer immediately assisted her in filing a case against him. This caused the arrest of the accused and, at this point, he offered to marry her. His offer, however, was rejected because AAA was determined to seek justice for the ordeal she suffered in his hands.

A few days after the incident, AAA was medically examined. The medico-legal examination disclosed that there was a healing laceration in her hymen although no spermatozoa was found. It was also stated in the medico-legal report that AAA could have lost her virginity on or about December 17, 2000.

Version of the Accused

Accused denied having raped AAA. According to him, the sexual congress that transpired between them was consensual as she was then his girlfriend. He related that he came to know AAA sometime in July 2000 and after a month of courtship, they became sweethearts. In fact, on November 10, 2000, at around 9:00 o'clock in the evening, she went up to the floor where he was sleeping and had sex with him. Afterwards, she returned to her room which was located on the second floor. It was also in the same month that his former girlfriend, Roxanne, arrived and demanded that he choose between her and AAA.

On the day of the incident, he was very tired and decided to lie down on the floor where AAA and Roxanne were sleeping. AAA noticed him and moved beside him. At around 4:00 o'clock in the morning, they made love. He noticed during that time Roxanne was awake because her eyes were open. When their employer arrived at around 5:00 o'clock in the morning, she asked him to go upstairs to his room.

At around 8:00 o'clock of that same morning, the accused was fetched by her sister to attend a birthday party. When he returned at around 5:00 o'clock in the afternoon, AAA and Roxanne were quarrelling about their love making. The latter threatened to report the incident to their employer. He tried to ease the tension between the two but both refused to be pacified. In fact, Roxanne threatened to stab both of them. This prompted him to flee by taking his personal belongings and leaving their employer's premises. AAA wanted to join him but he told her that he would just return for her.

Accused went to Bulacan and stayed there for two (2) months. He then proceeded to Ilocos where he requested his grandfather and mother to fetch AAA because he wanted to marry her. She, however, refused to go with the two insisting that he personally fetch her.

Three weeks later, the accused returned to Manila together with his mother and grandfather to fetch AAA but again they failed. Instead, their employer sought the help of the police who invited him to the station to discuss the intended marriage. He was given two weeks to settle this matter. AAA said that she needed to call her parents first. In the meantime, he was allowed to go home to Ilocos. Subsequently, he received a call from their employer, telling him that her parents had already arrived in Manila. He could not, however, go to Manila because he had no money for transportation.

Sometime thereafter, he received a subpoena from the Office of the Prosecutor informing him that he had been charged with the crime of rape against AAA. For lack of funds, he was also not able to attend the hearings at the prosecutors' office either. Finally, after several months, he was arrested by virtue of a warrant of arrest issued against him.

Ruling of the Regional Trial Court

In convicting the accused, the RTC reasoned out that, in its observation, AAA never wavered in her assertion that the accused sexually molested her against her will. According to the trial court, her narration bore the earmarks of truth and was consistent throughout. As to his "sweetheart defense," the accused failed to prove it by clear and convincing evidence. What he laid before the court for its consideration was a mere self-serving claim of their relationship. It fell short of the rule that a sweetheart defense cannot be given credence in the absence of corroborative proof like love notes, mementos, and pictures, to name a few. Bolstering AAA's story was the medico-legal finding that there was a deep-healing laceration which was consistent with the charge that she had been raped. Thus, the dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, the Court finds the accused EDUARDO DAHILIG Y AGARAN GUILTY beyond reasonable doubt for the crime of Rape (Violation of Article 266-A par. 1 in rel. to Article 266-B, 1[st] par. of the Revised Penal Code, as amended by RA 8353 and in further relation to Section 5(a) of R.A. No. 8369) and the accused is hereby sentenced to suffer imprisonment of reclusion perpetua.

Accused EDUARDO DAHILIG Y AGARAN is hereby adjudged to pay AAA the amount of FIFTY THOUSAND PESOS (P50,000.00), as moral damages and FIFTY THOUSAND PESOS (P50,000.00), as civil indemnity.

SO ORDERED. [5] [Underscoring supplied]

Ruling of the Court of Appeals

On appeal, the CA affirmed the findings of fact of the RTC but clarified that the crime charged should have been "Child Abuse" as defined and penalized in Sec. 5 (b) of R.A. No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act." Its conclusion was based on the fact that the complainant was a minor, being 16 years of age at the time of the commission of the offense and, as such, was a child subject of sexual abuse. R.A. No. 7610 defines children as persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation, or discrimination because of her age. Considering that AAA was 16 years old at the time of the commission of the crime, having been born on August 17, 1984 and the accused had admitted having sexual intercourse with her, all the elements of child abuse were present. Thus, the decretal portion of the CA decision reads:

WHEREFORE, the DECISION DATED JULY 19, 2005 is MODIFIED, finding EDUARDO DAHILIG Y AGARAN guilty of child abuse as defined and penalized by Sec. 5, (b), Republic Act No. 7610, and, accordingly, sentencing him to suffer the indeterminate penalty of 11 years of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum; and to pay to AAA P50,000.00 as moral damages and P50,000.00 as civil indemnity.

The total period of the preventive detention of the accused shall be credited to him provided he has satisfied the conditions imposed in Art. 29, Revised Penal Code, as amended.

SO ORDERED. [6] [Underscoring supplied]

In this forum, both the prosecution and the accused opted not to file any supplemental briefs and manifested that they were adopting their arguments in their respective briefs filed before the CA. In his Appellant's Brief, the accused presented the following:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION'S WITNESSES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT. [7]

In advocacy of his position, the accused argues that the testimony of AAA was beclouded with inconsistencies and implausibility. He goes on to say that it was highly improbable for their co-worker, Roxanne, not to have been awakened despite AAA's shouts. He further argues that if the sex was not consensual, he would not have bothered removing her clothes considering that during the alleged time of commission, as recounted by AAA, she was shouting and struggling. With respect to the medico-legal's finding on forcible intercourse, it was not conclusive because he precisely admitted having consensual sex with her.

The accused insists that he and AAA were sweethearts and the sexual congress that took place between them on the evening of December 17, 2000 was but the result of their love for one another. Roxanne's threat to stab him with a knife and to report the love making that transpired the previous night, was actually the result of jealousy since she was his ex-girlfriend. This forced him to leave his employer's house. He further averred that the filing of the case was but an afterthought by AAA on her mistaken belief that he had abandoned her.

The Court finds no merit in the appeal.

Well-settled the rule that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court, whose findings are binding and conclusive on appellate courts. [8] Matters affecting credibility are best left to the trial court because of its unique opportunity to observe the elusive and incommunicable evidence of that witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case. [9]

In this case, the trial court observed that AAA never wavered in her assertion that she was molested by the accused. It even further wrote that "her narrations palpably bear the earmarks of truth and are in accord with the material points involved." [10]

There is no dispute that the accused had sexual intercourse with AAA, a fact which he clearly acknowledged. Contrary to his claim, however, the act was not consensual as proven by the convincing testimony of AAA who replied as follows:

Q:

Let's start from the beginning Miss witness. You said that you went down to the floor from the bed?

A:

Yes, ma'am.

Q:

Was there anybody in the floor when you went down?

A:

None.

Q:

When you went down and there was no person there in the floor, what did you do?

A:

I continued sleeping on the floor.

Q:

Were you awakened by anything while you were sleeping on the floor?

A:

Yes ma'am.

Q:

What awakened you?

A:

I felt that somebody was lying beside me on the floor.

Q:

What was this person doing, if any?

A:

"Pinaghihipuan po ako."

xxx xxx xxx

Q:

What did you do when you were awakened when you felt that somebody was touching your breast, your face, and your legs?

A:

I struggled. [11]

xxx xxx xxx

Q:

When you were undressed, what did the accused do?

A:

He kissed me on the face and on my lips.

Q:

And while he was doing that, what were you doing?

A:

I was resisting him ma'am.

Q:

What happened after that?

A:

He inserted his penis in my vagina.

Q:

While he was inserting his organ in your vagina, what were you doing?

A:

I was pleading to him and begging him not continue.

Q:

What was the position of your hands at that time

A:

When he was inserting his organ to my vagina, he was holding my both hands very tightly. [12]

Moreover, the accused argues that AAA should not be believed because her narration of facts was inconsistent and highly improbable. The points he has raised, however, have no controlling significance and do not seriously affect the findings of the courts below.

The fact that Roxanne was not awakened by the cries for help of AAA does not negate her categorical and consistent assertion that the accused forcibly defiled her. It is not unnatural that some persons are simply deep sleepers who cannot easily be awakened even by loud noises.

The sweetheart defense proffered by the accused likewise deserves scant consideration. For the said theory to prosper, the existence of the supposed relationship must be proven by convincing substantial evidence. Failure to adduce such evidence renders his claim to be self-serving and of no probative value. For the satisfaction of the Court, there should be a corroboration by their common friends or, if none, a substantiation by tokens of such a relationship such as love letters, gifts, pictures and the like. [13]

Clearly, the accused sexually abused AAA.

The question now is what crime has been committed? Is it Rape (Violation of Article 266-A par. 1 in relation to Article 266-B, 1[st] par. of the Revised Penal Code, as amended by R.A. No. 8353), or is it Child Abuse, defined and penalized by Sec. 5, (b), R.A. No. 7610?

As elucidated by the RTC and the CA in their respective decisions, all the elements of both crimes are present in this case. The case of *People v. Abay*, [14] however, is enlightening and instructional on this issue. It was stated in that case that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 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. [15] A person cannot be subjected twice to criminal liability for a single criminal act. [16] Specifically, *Abay* reads:

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 victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.

Accordingly, the accused can indeed be charged with either Rape or Child Abuse and be convicted therefor. Considering, however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1[st] par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he was convicted therefor, the CA should have merely affirmed the conviction.

For said reason, the Court sets aside the October 29, 2008 CA decision and reinstates the July 19, 2005 RTC Decision. In line with prevailing jurisprudence, however, the accused should also be made to pay the victim exemplary damages in the amount of ₱30,000.00. [17]

WHEREFORE, the October 29, 2008 Decision of the Court of Appeals is SET ASIDE and the July 19, 2005 Decision of the Regional Trial Court is REINSTATED with MODIFICATION in that the accused is also ordered to pay AAA the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro, [*] Peralta, and Abad, JJ., concur.

[*] Designated as acting member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[1] Rollo, pp. 3-14.

[2] CA rollo, pp. 16-25.

[3] The name of the victim, her personal circumstances and other information which tend to establish or compromise her identity are not disclosed to protect her privacy. Fictitious initials are used instead. (People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419; People v. Gardon, G.R. No. 169872, September 27, 2006, 503 SCRA 757).

[4] CA rollo, pp. 8-9

[5] Id. at 24-25.

[6] Rollo, p. 13.

[7] CA rollo, p. 38.

[8] People v. Dimacuha, 467 Phil. 342, 349 (2004).

[9] People v. Del Mundo, Jr., 408 Phil. 118, 129 (2001).

[10] CA rollo, p. 22.

[11] TSN, August 27, 2002, pp. 9-10.

[12] TSN, August 12, 2003, p. 4.

[13] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 609.

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

[15] *People v. Optana*, 404 Phil. 316, 351 (2001).

[16] Constitution, Art. III, Sec. 21 which provides: Section 21. No person shall be put twice in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

[17] *People v. Antonio Otos*, G.R. No. 189821, March 23, 2011; *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437; and *People v. Macapanas*, G.R. No. 187049, May 4, 2010, 620 SCRA 54.

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