

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. REYNANTE SALINO Y MAHINAY, APPELLANT.

G.R. No. 188854. August 22, 2012

Ponente: ABAD, J.

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ABAD, J.:

This Court sets aside in this case the finding of the lower courts that the accused committed rape. Still it finds him guilty of child abuse, given the circumstances.

The Facts and the Case

The public prosecutor charged the accused Reynante M. Salino (Salino) with rape under the Revised Penal Code (RPC) in relation to Republic Act (R.A.) 7610[1] before the Regional Trial Court (RTC) of Las Pinas City. The prosecution presented the testimonies of complainant JS,[2] witness Ernesto Acogido, and Dr. Mamerto S. Bernabe, Jr.

JS was a 14-year-old high school student[3] when she got romantically involved with Salino. JS testified that at around 3:00 p.m. on December 19, 2005, she, Salino, Ernesto Acogido, and Jenny Rose Custodio were at Salino's house, drinking liquor. After an hour or so, Jenny Rose left, having been called by her mother. Ernesto followed, leaving JS alone with Salino. Having consumed half a bottle of liquor, JS fell asleep. She regained consciousness on hearing and seeing Ernesto return. She was surprised to see Salino mounted on her but she felt so weak to resist him. The liquor she took made her drift back to sleep.

When JS woke up at around 6:00 p.m., her hair and clothes were in shambles and she felt pain in her genitalia. Salino asked her to stay the night but she refused. She went home with Jenny Rose who had returned to fetch her. Jenny Rose noticed kiss marks on her neck and told her. JS fell asleep on getting home. Her father tried to wake her up at around 7:30 p.m., demanding where she had been. When she did not answer, he slapped her.

Ernesto testified that on Salino's instruction, he gave JS more than the usual amount of liquor and then left them. He feared what Salino might do to him had he refused. Thus, Ernesto whiled away time at a nearby store. After growing impatient, he went back to Salino's house, picked the door's lock, and entered. He saw Salino atop JS who appeared unconscious, sexually ravishing her. Ernesto told Salino to stop it but the latter paid no attention to him.[4]

Ernesto turned around and left for home. On getting there, he told his mother about the incident. Later, JS's parents came and inquired about what happened to their daughter. Ernesto's mother told them that Salino had raped her.

Dr. Bernabe testified that he examined JS on December 20, 2005 and found ecchymoses on JS's neck and both a deep healed and fresh lacerations on her genital organ. He concluded that his findings are consistent with probable recent vaginal penetration.[5]

Salino denied raping JS. He claimed that she agreed to have sex with him as in fact they had prior sexual relation on December 7, 2005 to celebrate their one-month relationship. JS initiated sex by embracing him and holding his penis. She asked him to put kiss marks on her neck. He was shocked to learn that JS filed a complaint for rape against him.

On November 19, 2007 the RTC found Salino guilty of rape under Article 266-A, paragraph 1(b)[6] of the RPC and sentenced him to suffer the penalty of reclusion perpetua. The RTC held that the alcohol JS took rendered her unconscious, enabling Salino to rape her. Being a minor, JS could not also give a valid consent. The court ordered Salino to indemnify JS of P50,000.00 and pay her P50,000.00 as moral damages.

On May 7, 2009,[7] the Court of Appeals (CA) affirmed in CA-G.R. CR-HC 03 111 the decision of the RTC in its entirety, prompting Salino to appeal to this Court.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in affirming the RTC decision which found Salino guilty of the rape of JS, given the circumstances that attended the sexual act between them.

The Ruling of the Court

The CA agreed with the RTC that Salino took advantage of JS's drunkenness that rendered her unconscious during the time he had carnal knowledge of her. JS testified that she had no recollection of Salino forcing himself into her because she was drunk. She was only awoken by the sound that Ernesto made when he entered the room.

But this makes no sense. If she had indeed passed out, how could she be roused from sleep by the noise that Ernesto made when he entered the room and not by Salino's ongoing physical assault of her? Surely, the pain of physical violence, more than footsteps and a creaking door, should have awakened her.

Besides, it is not disputed that she and Salino were lovers. Left alone and having taken liquor, it was not unlikely for them to lose self-restraint. Notably, the medico-legal's finding of an old, healed laceration in JS supports Salino's claim that he had once had sexual relation with her. Still, JS came with friends to his house and partook of liquor, indicating that she did not mind the risk of a renewed tryst with him.

While Salino apparently committed no rape, he can nonetheless be held liable for violating Section 5(b), Article III of R.A. 7610 included in the charge. Under this sub-section, a person who commits sexual intercourse or lascivious conduct with a child exploited in prostitution and other sexual abuses is liable for child abuse.

Notably, the criminal information accused Salino of "rape in relation (with violation of R.A. 7610)." Thus-

That on or about 19[th] day of December 2005, in the City of Las Pinas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously commit sexual abuse against one "AAA", a 14-year old minor, by then and there molesting the latter by inserting his penis into the victim's genitalia and licking it against her will and consent.

CONTRARY TO LAW.[8]

As the Court held in *People v. Abay*,[9] if the minor victim is more than 12 years old but below 18 when the crime is committed, the accused may be prosecuted either for rape under the RPC or child abuse under R.A. 7610. A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.[10]

Obviously, Salino, an adult, used wiles and liquor to influence JS into yielding to his sexual desires. He took

advantage of her immaturity and adventurism, mindless of the psychological trauma that she would have to bear for the rest of her life when she grows old enough to appreciate its consequences.

The penalty prescribed for violation of the provisions of Section 5(b), Article III of R.A. 7610 is reclusion temporal in its medium period to reclusion perpetua. In the absence of any mitigating or aggravating circumstance, the proper imposable penalty is reclusion temporal in its maximum period, which is the medium of the penalty prescribed by law.

Applying the Indeterminate Sentence Law,[11] 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. Therefore, Salino should be meted the indeterminate penalty of 10 years, 2 months and 21 days of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum.

Since every person criminally liable is civilly liable, the award of civil indemnity ex delicto of P50,000.00 to JS is in order. As to moral damages, JS testified that the incident traumatized her. She had difficulty concentrating on her studies and to avoid gossip, her family moved to another place. To the Court, this entitles her to moral damages of P50,000.00.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated May 7, 2009 in CA-GR. CR-HC 03111, is **AFFIRMED** with **MODIFICATIONS**. Accused Reynante Salino y Mahinay is found **GUILTY** of Child Abuse under Section 5(b), Article III of Republic Act 7610, and is sentenced to suffer the indeterminate penalty of 10 years, 2 months and 21 days of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum. He is likewise ordered to indemnify the private complainant the amounts of P50,000.00 as civil indemnity ex delicto and P50,000.00 as moral damages.

The time during which the accused had been under preventive imprisonment shall be credited in his favor.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act"

[2] Pursuant to Republic Act 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, are withheld and fictitious initials instead are used to represent her. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA419, 421-426.

[3] JS's age is proven by the submission of her Certificate of Live Birth (Exhibit "E") stating that she was born on May 14, 1991, records, p. 165.

[4] TSN, April 25, 2007, p, 14.

[5] Dr. Bernabe's findings are stated in Medico-Legal Report No. M-4715-05 (Exhibit "G"), records, p. 567.

[6] Article 266-A. Rape; When And How Committed.-Rape is committed -

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

x x x x

b) When the offended party is deprived of reason or otherwise unconscious; x x x.

[7] Penned by Justice Remedios A. Salazar-Femando with the concurrence of Justices Magdangal M. De Leon and Ramon R. Garcia, rollo, pp. 2-26.

[8] Records, p. 1.

[9] GR. No. 177752, February 24, 2009, 580 SCRA 235, 239-240.

[10] *People v. Larin*, 357 Phil. 987, 998 (1998).

[11] Section 1 of the Indeterminate Sentence Law provides:

Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

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