

JOJIT GARINGARAO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 192760. July 20, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 26 November 2009 Decision[2] and 22 June 2010 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 31354. The Court of Appeals affirmed with modifications the decision of the Regional Trial Court of San Carlos City, Pangasinan, Branch 56 (trial court), finding Jojit Garingarao (Garingarao) guilty beyond reasonable doubt of the crime of acts of lasciviousness in relation to Republic Act No. 7610 (RA 7610).[4]

The Antecedent Facts

The facts of the case, as can be gleaned from the decision of the Court of Appeals, are as follows:

On 28 October 2003, AAA[5] was brought to the Virgen Milagrosa Medical Center by her father BBB and mother CCC due to fever and abdominal pain. Dr. George Morante (Dr. Morante), the attending physician, recommended that AAA be confined at the hospital for further observation. AAA was admitted at the hospital and confined at a private room where she and her parents stayed for the night.

On 29 October 2003, BBB left the hospital to go to Lingayen, Pangasinan to process his daughter's Medicare papers. He arrived at Lingayen at around 8:00 a.m. and left the place an hour later. CCC also left the hospital that same morning to attend to their store at Urbiztondo, Pangasinan, leaving AAA alone in her room.

When BBB returned to the hospital, AAA told him that she wanted to go home. Dr. Morante advised against it but due to AAA's insistence, he allowed AAA to be discharged from the hospital with instructions that she should continue her medications. When AAA and her parents arrived at their house around 11:30 a.m., AAA cried and told her parents that Garingarao sexually abused her. They all went back to the hospital and reported the incident to Dr. Morante. They inquired from the nurses' station and learned that Garingarao was the nurse on duty on that day.

On 20 January 2004, the City Prosecutor filed an Information against Garingarao for acts of lasciviousness in relation to RA 7610, as follows:

That on or about the 29[th] day of October 2003, at Virgen Milagrosa University Hospital, San Carlos City, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously touched the breast of AAA, 16 years of age, touched her genitalia, and inserted his finger into her vagina, to the damage and prejudice of said AAA who suffered psychological and emotional disturbance, anxiety, sleeplessness and humiliation.

Contrary to Article 336 of the Revised Penal Code in relation to RA 7610.[6]

During the trial, AAA testified that on 29 October 2003, between 7:00 a.m. and 8:00 a.m., Garingarao, who was wearing a white uniform, entered her room and asked if she already took her medicines and if she was still experiencing pains. AAA replied that her stomach was no longer painful. Garingarao then lifted AAA's bra and touched her left breast. Embarrassed, AAA asked Garingarao what he was doing. Garingarao replied that he was just examining her. Garingarao then left the room and returned 15 to 30 minutes later with a stethoscope. Garingarao told AAA that he would examine her again. Garingarao lifted AAA's shirt, pressed the stethoscope to her stomach and touched her two nipples. Garingarao then lifted AAA's pajama and underwear and pressed the lower part of her abdomen. Garingarao then slid his finger inside AAA's private part. AAA instinctively crossed her legs and again asked Garingarao what he was doing. She asked him to stop and informed him she had her monthly period. Garingarao ignored AAA and continued to insert his finger inside her private part. Garingarao only stopped when he saw that AAA really had her monthly period. He went inside the bathroom of the private room, washed his hands, applied alcohol and left. When BBB arrived at the hospital, AAA insisted on going home. She only narrated the incident to her parents when they got home and they went back to the hospital to report the incident to Dr. Morante.

Dr. Morante testified on AAA's confinement to and discharge from the hospital.

The prosecution presented the following documents before the trial court:

- (a) AAA's birth certificate to establish that she was 16 years old at the time of the incident;
- (b) AAA's medical records establishing her confinement to and discharge from Virgen Milagrosa Medical Center;
- (c) the schedule of duties of the nurses at the hospital showing that Garingarao was on duty from 12:00 a.m. to 8:00 a.m. on 29 October 2003;
- (d) a certificate from the Department of Education Division Office showing that BBB was present at the office from 8:00 a.m. to 9:00 a.m. on 29 October 2003;
- (e) AAA's Medical Payment Notice;
- (f) the incident report filed by AAA's parents with the police; and
- (g) a letter from the hospital administrator requiring Garingarao to explain why no administrative action should be filed against him in view of the incident.

For the defense, Garingarao gave a different version of the incident. Garingarao alleged that on 29 October 2003, he and his nursing aide Edmundo Tamayo (Tamayo) went inside AAA's room to administer her medicines and check her vital signs. BBB then accused them of not administering the medicines properly and on time. Garingarao told BBB that they should not be told how to administer the medicines because they knew what they were doing and that they would be accountable should anything happen to AAA. A heated argument ensued between BBB and Garingarao. BBB told Garingarao he was an arrogant nurse. Garingarao replied that if BBB had any complaint, he could report the matter to the hospital. Garingarao denied that he inserted his finger into AAA's private part and that he fondled her breasts. Garingarao alleged that the filing of the case was motivated by the argument he had with BBB.

Tamayo testified that he was with Garingarao when they went to AAA's room between 7:00 a.m. and 8:00 a.m. of 29 October 2003. He alleged that BBB was present and he accused Garingarao of not administering the medications properly. Tamayo alleged that Garingarao and BBB had an argument. Tamayo stated that he would

always accompany Garingarao whenever the latter would visit the rooms of the patients.

The Decision of the Trial Court

In its Decision^[7] dated 5 November 2007, the trial court found Garingarao guilty as charged. The trial court gave credence to the testimony of AAA over Garingarao's denial. The trial court ruled that Garingarao was positively identified by AAA as the person who entered her room, touched her breasts and inserted his finger into her private part. The trial court also found that the prosecution was able to establish that BBB and CCC were not in the room when Garingarao went inside.

The trial court found as baseless Garingarao's defense that the case was only motivated by the argument he had with BBB. The trial court ruled that it was illogical for BBB to convince his daughter to fabricate a story of sexual abuse just to get even at Garingarao over a heated argument.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Jojit Garingarao GUILTY beyond reasonable doubt of the crime of acts of lasciviousness in relation to Republic Act 7610, and sentencing him to suffer the penalty of imprisonment ranging from 12 years to 1 day of Reclusion Temporal as minimum to 14 years and 8 months of Reclusion Temporal as maximum.

The accused is ordered to pay to the minor victim [AAA] P20,000.00 as moral damages and P10,000.00 as fine.

SO ORDERED.^[8]

Garingarao appealed from the trial court's Decision.

The Decision of the Court of Appeals

In its 26 November 2009 Decision, the Court of Appeals affirmed the trial court's decision with modifications.

The Court of Appeals ruled that while Garingarao was charged for acts of lasciviousness in relation to RA 7610, he should be convicted under RA 7610 because AAA was 16 years old when the crime was committed. The Court of Appeals ruled that under Section 5(b) of RA 7610, the offender shall be charged with rape or lascivious conduct under the Revised Penal Code (RPC) only if the victim is below 12 years old; otherwise, the provisions of RA 7610 shall prevail.

The Court of Appeals ruled that based on the evidence on record and the testimony of AAA, the decision of the trial court has to be affirmed. The Court of Appeals ruled that under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, the introduction of any object into the genitalia of the offended party as well as the intentional touching of her breasts when done with the intent to sexually gratify the offender qualify as a lascivious act. AAA's testimony established that Garingarao committed the lascivious acts.

The Court of Appeals found no reason for AAA or her family to fabricate the charges against Garingarao. The Court of Appeals ruled that Garingarao's claim that the case was filed so that BBB could get even with him because of the argument they had was too shallow to be given consideration. The Court of Appeals likewise rejected Garingarao's defense of denial which could not prevail over the positive testimony of AAA.

The Court of Appeals modified the penalty imposed by the trial court. The Court of Appeals ruled that the duration of reclusion temporal in its maximum period should be 17 years, 4 months and 1 day to 20 years and not 14 years and 8 months as imposed by the trial court. The Court of Appeals also raised the award of moral

damages and fine, which was deemed as civil indemnity, to conform with recent jurisprudence.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, in view of the foregoing, the Decision dated November 5, 2007 of the Regional Trial Court of San Carlos City, Pangasinan in Criminal Case No. SCC-4167 is hereby AFFIRMED with the following MODIFICATIONS:

- The penalty imposed on the accused-appellant is 14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum[;]
- The award of moral damages is raised from P20,000.00 to P50,000.00; and
- The award of indemnity is raised from P10,000.00 to P50,000.00.

SO ORDERED.[9]

Garingarao filed a motion for reconsideration. In its 22 June 2010 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The only issue in this case is whether the Court of Appeals committed a reversible error in affirming with modifications the trial court's decision.

The Ruling of this Court

The petition has no merit.

Garingarao alleges that the Court of Appeals erred in affirming the trial court's decision finding him guilty of acts of lasciviousness in relation to RA 7610. Garingarao insists that it was physically impossible for him to commit the acts charged against him because there were many patients and hospital employees around. He alleges that AAA's room was well lighted and that he had an assistant when the incident allegedly occurred. Garingarao further alleges that, assuming the charges were correct, there was only one incident when he allegedly touched AAA and as such, he should have been convicted only of acts of lasciviousness and not of violation of RA 7610.

We do not agree.

Credibility of Witnesses

The Court has ruled that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[10] In this case, both the trial court and the Court of Appeals found the testimony of AAA credible over Garingarao's defense of denial and alibi. It is a settled rule that denial is a weak defense as against the positive identification by the victim.[11] Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[12] Garingarao's defense of denial and alibi must fail over the positive and straightforward testimony of AAA on the incident. Further, like the trial court and the Court of Appeals, we find incredible Garingarao's defense that the case was an offshoot of a heated argument he had with AAA's father over the manner Garingarao was giving AAA's medications. It is hard to believe that AAA's parents would expose her to a public trial if the charges were not true.[13] In addition, the prosecution was able to establish that, contrary to Garingarao's allegation, both BBB and CCC were not in AAA's room at the time of the incident.

Violation of RA 7610

Section 5, 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; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3 for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be; Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period, x x x

(c) x x x

The elements of sexual abuse under Section 5, Article III of RA 7610 are the following:

- The accused commits the act of sexual intercourse or lascivious conduct;
- The said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
- The child, whether male or female, is below 18 years of age.[14]

Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows:

[T]he 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 the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.[15]

In this case, the prosecution established that Garingarao touched AAA's breasts and inserted his finger into her private part for his sexual gratification. Garingarao used his influence as a nurse by pretending that his actions were part of the physical examination he was doing. Garingarao persisted on what he was doing despite AAA's objections. AAA twice asked Garingarao what he was doing and he answered that he was just examining her.

The Court has ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult.[16] In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will.[17] In this case, Garingarao coerced AAA into submitting to his lascivious acts by pretending that he was examining her.

Garingarao insists that, assuming that the testimonies of the prosecution witnesses were true, he should not be convicted of violation of RA 7610 because the incident happened only once. Garingarao alleges that the single incident would not suffice to hold him liable under RA 7610.

Garingarao's argument has no legal basis.

The Court has already ruled that it is inconsequential that sexual abuse under RA 7610 occurred only once.[18] Section 3(b) of RA 7610 provides that the abuse may be habitual or not.[19] Hence, the fact that the offense occurred only once is enough to hold Garingarao liable for acts of lasciviousness under RA 7610.

Indemnity and Moral Damages

In view of recent jurisprudence, we deem it proper to reduce the amount of indemnity to P20,000[20] and moral damages awarded by the Court of Appeals to P15,000.[21] We also impose on Garingarao a fine of P15,000.[22]

WHEREFORE, we DENY the petition. We AFFIRM the 26 November 2009 Decision and 22 June 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31354 with MODIFICATIONS. The Court finds Jojit Garingarao GUILTY beyond reasonable doubt of acts of lasciviousness in relation to Republic Act No. 7610. He is sentenced to suffer the penalty of 14 years and 8 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum and ordered to pay AAA P20,000 as civil indemnity, P15,000 as moral damages and a fine of P15,000.

SO ORDERED.

Leonardo-De Castro,[*] Brion, Peralta,**] and Perez, JJ., concur.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

[**] Designated acting member per Special Order No. 1040 dated 6 July 2011.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2]Rollo, pp. 42-62. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion, concurring.

[3] Id. at 63-64.

[4] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes.

[5] The real names of the victim and her family were not disclosed pursuant to the ruling of this Court in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[6] Rollo, p. 43.

[7] Id. at 68-76. Penned by Presiding Judge Hermogenes C. Fernandez.

[8] Id. at 75-76.

[9] Id. at 61.

[10] *People v. Mendoza*, G.R. No. 180501, 24 December 2008, 575 SCRA 616.

[11] *People v. Fetalino*, G.R. No. 174472, 19 June 2007, 525 SCRA 170.

[12] *People v. Candaza*, G.R. No. 170474, 16 June 2006, 491 SCRA 280.

[13] *People v. Ortoa*, G.R. No. 174484, 23 February 2009, 580 SCRA 80.

[14] *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[15] Id. at 431-432. Emphasis in the original text.

[16] Olivarez v. Court of Appeals, *supra* note 14.

[17] People v. Abello, G.R. No. 151952, 25 March 2009, 582 SCRA 378.

[18] Olivarez v. Court of Appeals, *supra* note 14.

[19] Id.

[20] Flordeliz v. People, G.R. No. 186441, 3 March 2010, 614 SCRA 225.

[21] Id.; People v. Montinola, G.R. No. 178061, 31 January 2008, 543 SCRA 412.

[22] Id.

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