

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMENIGILDO DELEN Y ESCOBILLA, ACCUSED-APPELLANT.

G.R. No. 194446. April 21, 2014

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

The accused-appellant Hermenigildo Delen y Escobilla seeks the reversal of his conviction for child abuse under Section 10(a), Article VI of Republic Act No. 7610 and qualified rape under Article 266-A, paragraph 1 in relation to Article 266-B of the Revised Penal Code. The Regional Trial Court (RTC) of Batangas City, Branch 1, adjudged the accused-appellant guilty of said crimes in a Consolidated Decision[1] dated January 29, 2008. The Court of Appeals affirmed the conviction in a Decision[2] dated February 17, 2010 in CA-G.R. CR.-H.C. No. 03324.

The accused-appellant was separately charged with child abuse under Section 10(a), Article VI of Republic Act No. 7610 and qualified rape in separate informations, respectively docketed as Criminal Case Nos. 13870 and 13932, before the RTC of Batangas City. Said crimes were alleged to have been committed against AAA[3] as follows:

[CRIMINAL CASE NO. 13870]

That on or about January 23, 2005 at around 6:00 o'clock (sic) in the evening at [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a hammer, without any justifiable cause, did then and there willfully, unlawfully and feloniously commit [a] cruel act against [AAA], a 12-year old girl, by violently striking her head with the said hammer, kicking her and smashing her head on a wooden post, thereby causing her physical injuries, which act debases, degrades or demeans the intrinsic worth and dignity of [AAA] as a human being, in violation of the aforecited law.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[4]

[CRIMINAL CASE NO. 13932]

That on or about January 17, 2005 at around 6:00 o'clock (sic) in the morning at [XXX] and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge on one [AAA], a 12-year old minor, against the latter's will.

That the aggravating circumstances of minority and relationship, the victim being then a 12-year old minor and daughter of the accused, are attendant in the commission of the offense.[5]

Upon arraignment, the accused-appellant pleaded not guilty to both charges.[6] On motion of the parties, the two cases were tried jointly.[7]

The Prosecution's Version of Events

AAA was born on March 29, 1992 to accused-appellant and BBB.[8] AAA's parents separated as the accused-appellant was beating BBB. AAA then lived with her aunt until the accused-appellant took her in. In the year 2000, AAA lived in the accused-appellant's house.[9] One day, she was awakened from her sleep when the accused-appellant removed her shorts and panty. The accused-appellant then removed his shorts and went on top of AAA. He inserted his penis into her organ and told her not to create any noise because their neighbors might hear them. He also warned AAA that he would kill her if she would report the incident. AAA could not do anything but cry. Subsequently, at around 6:00 a.m. on January 17, 2005, AAA woke up with her legs spread apart and tied to wooden panels on the wall. She was only wearing her upper clothing and was not wearing her shorts and panty anymore. The accused-appellant removed his shorts and only wore briefs. The accused-appellant then lay on top of her and began to insert his penis into her organ, which caused her pain. While the accused-appellant was doing said act, he told AAA not to report the incident; otherwise, he threatened to cut her tongue and kill her. Thereafter, the accused-appellant untied her.[10]

On January 23, 2005, the accused-appellant asked AAA to look for a lighter. When AAA failed to find one, the accused-appellant told her to go inside a room in their house. There, he kicked AAA in the buttocks, hit her head with a hammer and smashed her head on the wooden wall. She suffered injuries on her forehead and the back of her head. Afterwards, she told the accused-appellant that she was going to use the toilet so she was able to go out of their house. She ran to the street and went to the house of a neighbor, Ate Annie. The accused-appellant looked for her there so she hid under the bed. After the accused-appellant left, AAA was brought to the house of Nanay Loleng, a neighbor of Ate Annie. They treated AAA's wounds and put her to sleep. When she woke up, the barangay tanods were already at the place. They first talked to AAA then they called the police so that the accused-appellant could be apprehended. When the accused-appellant was arrested, AAA was brought to the police station where she gave her statement. AAA was then taken to the hospital where she was treated and examined by doctors.[11]

The Medico-Legal Certification executed by Dr. Rex B. Rivamonte and Dr. Aristotle R. Arellano of the Batangas Regional Hospital showed that AAA sustained the following injuries:

SURGICAL FINDINGS:

- (+) contusion hematoma right parietal area.
- (+) contusion hematoma left parietal area.
- (+) contusion hematoma right flank area.
- (+) contusion hematoma left flank area.
- (+) contusion hematoma with abrasion frontal area.
- (+) contusion hematoma right lumbar area.

Multiple physical injuries secondary to mauling.

OB-GYNE FINDINGS:

PHYSICAL EXAMINATION: (+) Physical injuries on time of examination.

EXTERNAL GENITALIA: well coaptated labia majora (-) pubic hair.

HYMEN: (+) complete healed laceration at 1, 3, 6, 9 o'clock position[s].

INTERNAL FINDINGS: Admits 2 fingers with ease, cervix closed, firm, uterus not enlarge, no adnexal mass (-) tenderness.

LABORATORY RESULT: SPERM CELL DETERMINATION: No sperm cell seen.

PREGNANCY TEST: Negative.

In the opinion of the undersigned, these injuries will incapacitate or require medical attendance for a period of less than nine (9) days barring complications; otherwise, this period of healing will vary accordingly.[12]

The Defense's Version of Events

For his part, the accused-appellant testified that he has been residing at XXX since 1999. He lived in a house shared with his eldest brother and his family. On January 17, 2005, he was at his house together with AAA and the family of his brother but he left early at about 6:00 a.m. He denied that he raped AAA on said date. He claimed that AAA might have been raped at her grandparents' house where she lived prior to January 17, 2005. He alleged that there was a person with a mental defect living in said house. He further asserted that the charge of rape was instigated by the sibling of AAA's mother who was angry with him because he separated from his wife. Moreover, the barangay kagawad who lodged a complaint against him was also angry with him as he was a guard at the cockpit and the kagawad did not want a cockpit in their barangay.[13]

On January 23, 2005, the accused-appellant was also at his house with AAA and the family of his brother. He denied causing the contusions on the different parts of AAA's body. He stated that AAA was injured when she fell in a canal at the side of their house and this fact was witnessed by his brother and AAA's cousin. He even brought AAA to the barangay health center for treatment. The accused-appellant admitted, however, that he did hit AAA on her buttocks on January 23, 2005. He explained that he asked her to cook rice but because she played with her playmates, the rice was overcooked.[14]

The Judgment of the RTC

In a Consolidated Decision dated January 29, 2008, the RTC handed down a judgment of conviction against the accused-appellant. The trial court ruled that AAA's testimony against the accused-appellant was sufficiently conclusive, logical and probable to overcome the presumption of innocence in favor of the latter. According to the trial court, AAA's testimony that she was physically and sexually abused by the accused-appellant was amply corroborated by the medical findings of Dr. Arellano and Dr. Rivamonte. As such, the trial court concluded that the accused-appellant was indeed guilty beyond reasonable doubt of the crimes charged. The trial court, thus, decreed:

WHEREFORE, premises considered, finding the Accused Hermenigildo Delen y Escobilla guilty beyond reasonable doubt, as principal, of the crimes of Child abuse (by infliction of physical injury) defined under Section 3, Article I and penalized under Section 10, Article VI of Republic Act No. 7610 in relation to Section 2(b) of its Implementing Rules and Regulations and rape defined and penalized under Article 266-A and Article 266-B of the Revised Penal Code, in relation to Republic Act 9346 he is hereby sentenced to suffer an indeterminate sentence of imprisonment ranging from FOUR (4) YEARS, TWO (2) MONTHS and One (1) DAY of Prison Correccional, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Prison Mayor, as maximum, and to pay the costs, in [C]riminal [C]ase [N]o. 13870 and [the] penalty of Reclusion Perpetua, in [C]riminal [C]ase [N]o. 13932, respectively.

Further, for the rape committed the accused is ordered to indemnify [AAA] the sum of Seventy-Five Thousand (Php75,000.00) Pesos as civil indemnity plus the sum of Fifty Thousand (Php50,000.00) Pesos, as moral damages, the sum of Thirty Thousand (Php30,000.00) Pesos, as moral damages of [AAA]'s mother, and the sum of Thirty Thousand (Php30,000.00) Pesos, as exemplary damages, and to pay the costs.

Considering that Accused Hermenigildo Delen y Escobilla has undergone preventive imprisonment, being a detention prisoner, and there being no evidence to show that he is a recidivist, he shall be credited in the service of sentence with the full time during which he has undergone preventive imprisonment, had he agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited only with four-fifths (4/5) of the time during which he has undergone preventive imprisonment, as provided for in Article 29 of the Revised Penal Code, as amended.[15]

The Decision of the Court of Appeals

On appeal, the Court of Appeals affirmed the above ruling of the RTC in a Decision dated February 17, 2010. The appellate court ruled that the RTC correctly appreciated the evidence and properly concluded that the accused-appellant indeed committed the acts of child abuse and rape against AAA. The appellate court likewise found AAA's testimony straightforward, candid and clear. In contrast, the appellate court rejected the unsubstantiated defenses of denial and alibi put forth by the accused-appellant. The Court of Appeals disposed of the case in this wise:

WHEREFORE, the challenged Consolidated Decision dated January 29, 2008 in Criminal Case Nos. 13870 and 13932 is AFFIRMED with MODIFICATION, that the moral damages awarded to the victim is INCREASED to P75,000.00, while the award of moral damages in the amount of P30,000.00 to the victim's mother is DELETED.[16]

The Ruling of the Court

On appeal to this Court, the accused-appellant seeks the reversal of the allegedly erroneous judgment of the trial court.

The appeal lacks merit.

The RTC unequivocally ruled that the testimony of AAA passed the test of credibility. The Court of Appeals thereafter upheld the trial court's assessment of AAA's testimony. After thoroughly reviewing the records of the present case, the Court similarly finds worthy of credence the testimony of AAA that the accused-appellant is guilty of physically and sexually abusing her. We, thus, find no reason to disturb, much less overturn, the trial court's reliance on the testimony of AAA. Verily, in *People v. Leonardo*,^[17] the Court had occasion to reiterate that:

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the Court of Appeals. This Court has repeatedly recognized that the trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath. These are significant factors in evaluating the sincerity of witnesses, in the process of unearthing the truth. The appellate courts will generally not disturb such findings unless it plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (Citations omitted.)

In Criminal Case No. 13870, the RTC and the Court of Appeals found the accused-appellant guilty beyond reasonable doubt of committing child abuse by infliction of physical injury against AAA. Under Section 3(b), Article I of Republic Act No. 7610,^[18] the term "child abuse" is defined as the maltreatment of a child, whether habitual or not, which includes the physical abuse of a child, among other acts.

In this case, AAA positively identified the accused-appellant as the person who kicked her in the buttocks, hit her head with a hammer, and smashed her head on the wall on January 23, 2005. Because of the said brutal and inhumane acts of the accused-appellant, AAA suffered bruises and contusions in different parts of her body. The Medico-Legal Certification of Dr. Rivamonte and Dr. Arellano clearly reflected the fact that AAA indeed sustained contusions, coupled with a finding that she suffered multiple physical injuries secondary to mauling.

In Criminal Case No. 13932, the accused-appellant was also found guilty beyond reasonable doubt of qualified rape.

Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows:

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;
 - b. When the offended party is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - 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.

Thus, for a charge of rape to prosper under the above provision, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

In the instant case, the prosecution was able to establish that the accused-appellant had carnal knowledge of AAA on January 17, 2005. AAA narrated in a straightforward manner the harrowing details of how the accused-appellant had sexual intercourse with her. Again, the RTC found credible and convincing AAA's testimony on this matter. Likewise, the Court finds no cogent reason to disbelieve AAA's testimony, which was corroborated by the medical findings of Dr. Rivamonte and Dr. Arellano that the victim's hymen had "complete healed lacerations at 1, 3, 6, 9 o'clock position[s]." We held in *People v. Oden*[19] that the "eloquent testimony of the victim, coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges." As to the manner by which the rape was committed, the accused-appellant's moral ascendancy over AAA takes the place of the force and intimidation that is required in rape cases.[20]

To exculpate himself from the charges of child abuse and rape, the accused-appellant merely denied the accusations of AAA. The Court finds that the RTC and the Court of Appeals were correct in rejecting the accused-appellant's bare denials. Undeniably, the accused-appellant did not present any clear and convincing evidence to substantiate his claims that another person with mental defect could have raped AAA and that her injuries were caused when she fell in a canal beside their house. The accused-appellant also failed to present any evidence to prove that AAA was impelled by ill motive to testify against him. Settled is the rule that where no evidence exists to show any convincing reason or improper motive for a witness to falsely testify against an accused, the testimony deserves faith and credit.[21]

The Proper Penalties

Under Article 266-B of the Revised Penal Code, the minority of a rape victim and her relationship to the accused-appellant qualify the charge of rape in this wise:

Art. 266-B. Penalties. — x x x.

x x x x

The death penalty shall also 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.

For the charge of rape in Criminal Case No. 13932, the qualifying circumstances of minority and relationship

attended the commission of the crime. Not only were the said circumstances specifically alleged in the information, the same were sufficiently proved during the trial of the case. The fact that AAA was only 12 years old when she was raped by the accused-appellant on January 17, 2005 was established by the certification[22] issued by the Office of the Local Civil Registrar of x x x, Batangas, which stated that AAA was born on March 29, 1992. Moreover, said certification stated that AAA's biological father is none other than the accused-appellant Hermenigildo Delen. The accused-appellant likewise admitted this fact when he testified in court. Still, notwithstanding the provisions of Article 266-B of the Revised Penal Code, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon the accused-appellant is reclusion perpetua. This is in accordance with the provisions of Republic Act No. 9346, which prohibits the imposition of the death penalty.

The Court of Appeals properly upheld the trial court's award of P75,000.00 as civil indemnity and P30,000.00 as exemplary damages in favor of AAA, as well as the increase of the award of moral damages in favor of AAA from P50,000.00 to P75,000.00, in accordance with current jurisprudence. The appellate court's removal of the separate award of moral damages in favor of AAA's mother is also in accordance with our ruling in *People v. Alajay*[23] where we held that "the prevailing jurisprudence is that the award of moral damages should be granted jointly to both the victim and her parents. Stated differently, the parents are not entitled to a separate award of moral damages."

For the charge of child abuse in Criminal Case No. 13870, the RTC found the accused-appellant guilty of violating Section 10(a), Article VI of Republic Act No. 7610, which states:

SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period. (Emphasis ours.)

The Court of Appeals upheld the ruling of the RTC, which imposed against the accused-appellant an indeterminate sentence of imprisonment ranging from 4 years, 2 months and 1 day of prision correccional, as minimum, to 6 years, 8 months and 1 day of prision mayor, as maximum. The trial court imposed the above penalty as it found no modifying circumstance that attended the commission of the aforesaid crime charged.

The Court, however, disagrees. We find that the penalty imposed by the trial court needs to be modified since, as previously discussed, the alternative circumstance of relationship, i.e., that the accused-appellant is the father of AAA, has been duly established by the prosecution.

In this case, the impossible penalty is prision mayor minimum, the range of which is from 6 years and 1 day to 8 years. In the imposition of the penalty herein, Section 31(c), Article XII of Republic Act No. 7610[24] expressly provides that the penalty provided therein shall be imposed in its maximum period when the perpetrator is a parent of the victim. Now then, applying the Indeterminate Sentence Law and taking into consideration the circumstance of relationship, the maximum term of the sentence shall be taken from the maximum period of prision mayor minimum, which is 7 years, 4 months and 1 day to 8 years. The minimum term of the sentence shall be taken from the penalty next lower in degree, which is prision correccional maximum, the range of which is from 4 years, 2 months and 1 day to 6 years. Thus, in Criminal Case No. 13870, considering the gravity of the physical abuse committed against AAA, the Court imposes upon the accused-appellant the indeterminate sentence of imprisonment ranging from 6 years of prision correccional, as minimum, to 8 years of prision mayor, as

maximum.

WHEREFORE, the Court AFFIRMS with MODIFICATIONS the Decision dated February 17, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03324. The accused-appellant Hermenigildo Delen y Escobilla is hereby sentenced as follows:

1. In Criminal Case No. 13932, the accused-appellant is found GUILTY beyond reasonable doubt of one count of qualified rape and is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, in lieu of death. The accused-appellant is ORDERED to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision.

2. In Criminal Case No. 13870, the accused-appellant is found GUILTY beyond reasonable doubt of committing child abuse in violation of Section 10(a), Article VI of Republic Act No. 7610 and is sentenced to suffer imprisonment ranging from 6 years of prision correccional, as minimum, to 8 years of prision mayor, as maximum.

Costs against the accused-appellant.

SO ORDERED.

Sereno, CJ., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] Records (Criminal Case No. 13870), pp. 136-145; penned by Presiding Judge Florencio S. Arellano.

[2] CA rollo, pp. 117-132; penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Rosmari D. Carandang and Amy C. Lazaro-Javier, concurring.

[3] The real name of the private complainant and those of her immediate family members are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC effective 15 November 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records (Criminal Case No. 13870), p. 1.

[5] Records (Criminal Case No. 13932), p. 1.

[6] Records (Criminal Case No. 13870), pp. 13, 21.

[7] *Id.* at 27.

[8] *Id.* at 76.

[9] TSN, August 11, 2005, pp. 20-22.

[10] *Id.* at 8-11.

[11] *Id.* at 11-15.

[12] Records (Criminal Case No. 13870), p. 75.

[13] TSN, September 7, 2006, pp. 5-8, 17.

[14] Id. at 8-10, 15.

[15] Records (Criminal Case No. 13870), p. 145.

[16] CA rollo, p. 131.

[17] G.R. No. 181036, July 6, 2010, 624 SCRA 166, 193.

[18] Section 3(b) of Republic Act No. 7610 states:

SEC. 3. Definition of Terms. –

x x x x

b. “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

1. Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
2. Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
4. Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

[19] 471 Phil. 638, 667 (2004).

[20] People v. Matrimonio, G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 631.

[21] People v. Rayon, Sr., G.R. No. 194236, January 30, 2013, 689 SCRA 745, 756.

[22] Records (Criminal Case No. 13870), p. 76.

[23] 456 Phil. 83, 96 (2003).

[24] Section 31(c), Article XII of Republic Act No. 7610 states:

SEC. 31. Common Penal Provisions. –

x x x x

c. The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked[.]

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