

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNABE PAREJA Y CRUZ, ACCUSED-APPELLANT.

G.R. No. 202122. January 15, 2014

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

The accused-appellant Bernabe Pareja y Cruz (Pareja) is appealing the January 19, 2012 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03794, which affirmed in toto the conviction for Rape and Acts of Lasciviousness meted out by Branch 113, Regional Trial Court (RTC) of Pasay City in Criminal Case Nos. 04-1556-CFM and 04-1557-CFM.[2]

On May 5, 2004, Pareja was charged with two counts of Rape and one Attempted Rape. The Informations for the three charges read as follows:

I. For the two counts of Rape:

Criminal Case No. 04-1556-CFM

That on or about and sometime in the month of February, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja y Cruz, being the common law spouse of the minor victim's mother, through force, threats and intimidation, did then and there wil[l]fully, unlawfully and feloniously commit an act of sexual assault upon the person of [AAA[3]], a minor 13 years of age, by then and there mashing her breast and inserting his finger inside her vagina against her will.[4]

Criminal Case No. 04-1557-CFM

That on or about and sometime in the month of December, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja y Cruz, being the stepfather of [AAA], a minor 13 years of age, through force, threats and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of said minor against her will.[5]

II. For the charge of Attempted Rape:

Criminal Case No. 04-1558-CFM

That on or about the 27th day of March, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, BERNABE PAREJA Y CRUZ, being the common law spouse of minor victim's mother by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously commence the commission of the crime of Rape against the person of minor, [AAA], a 13 years old minor by then and there crawling towards her direction where she was sleeping, putting off her skirt, but did not perform all the acts of execution which would have produce[d] the crime of rape for the reason other than his own spontaneous desistance, that is the timely arrival of minor victim's mother who confronted the accused, and which acts of child abuse debased, degraded and demeaned the

intrinsic worth and dignity of said minor complainant as a human being.[6]

On June 17, 2004, Pareja, during his arraignment, pleaded not guilty to the charges filed against him.[7] After the completion of the pre-trial conference on September 16, 2004,[8] trial on the merits ensued.

The antecedents of this case, as narrated by the Court of Appeals, are as follows:

AAA was thirteen (13) years of age when the alleged acts of lasciviousness and sexual abuse took place on three (3) different dates, particularly [in December 2003], February 2004, and March 27, 2004.

AAA's parents separated when she was [only eight years old[9]]. At the time of the commission of the aforementioned crimes, AAA was living with her mother and with herein accused-appellant Bernabe Pareja who, by then, was cohabiting with her mother, together with three (3) of their children, aged twelve (12), eleven (11) and nine (9), in x x x, Pasay City.

The first incident took place [i]n December 2003 [the December 2003 incident]. AAA's mother was not in the house and was with her relatives in Laguna. Taking advantage of the situation, [Pareja], while AAA was asleep, placed himself on top of [her]. Then, [Pareja], who was already naked, begun to undress AAA. [Pareja] then started to suck the breasts of [AAA]. Not satisfied, [Pareja] likewise inserted his penis into AAA's anus. Because of the excruciating pain that she felt, AAA immediately stood up and rushed outside of their house.

Despite such traumatic experience, AAA never told anyone about the [December 2003] incident for fear that [Pareja] might kill her. [Pareja] threatened to kill AAA in the event that she would expose the incident to anyone.

AAA further narrated that the [December 2003] incident had happened more than once. According to AAA, [i]n February 2004 [the February 2004 incident], she had again been molested by [Pareja]. Under the same circumstances as the [December 2003 incident], with her mother not around while she and her half-siblings were asleep, [Pareja] again laid on top of her and started to suck her breasts. But this time, [Pareja] caressed [her] and held her vagina and inserted his finger [i]n it.

With regard to the last incident, on March 27, 2004 [the March 2004 incident], it was AAA's mother who saw [Pareja] in the act of lifting the skirt of her daughter AAA while the latter was asleep. Outraged, AAA's mother immediately brought AAA to the barangay officers to report the said incident. AAA then narrated to the barangay officials that she had been sexually abused by [Pareja] x x x many times x x x.

Subsequently, AAA, together with her mother, proceeded to the Child Protection Unit of the Philippine General Hospital for a medical and genital examination. On March 29, 2004, Dr. Tan issued Provisional Medico-Legal Report Number 2004-03-0091. Her medico-legal report stated the following conclusion:

Hymen: Tanner Stage 3, hymenal remnant from 5-7 o'clock area, Type of hymen: Crescentic

x x x x

Genital findings show Clear Evidence of Blunt Force or Penetrating Trauma.

After the results of the medico-legal report confirmed that AAA was indeed raped, AAA's mother then filed a complaint for rape before the Pasay City Police Station.

To exculpate himself from liability, [Pareja] offered both denial and ill motive of AAA against him as his defense. He denied raping [AAA] but admitted that he knew her as she is the daughter of his live-in partner and that they all stay in the same house.

Contrary to AAA's allegations, [Pareja] averred that it would have been impossible that the alleged incidents happened. To justify the same, [Pareja] described the layout of their house and argued that there was no way that the alleged sexual abuses could have happened.

According to [Pareja], the house was made of wood, only about four (4) meters wide by ten (10) meters, and was so small that they all have to sit to be able to fit inside the house. Further, the vicinity where their house is located was thickly populated with houses constructed side by side. Allegedly, AAA also had no choice but to sleep beside her siblings.

All taken into account, [Pareja] asseverated that it was hard to imagine how he could possibly still go about with his plan without AAA's siblings nor their neighbors noticing the same.

Verily, [Pareja] was adamant and claimed innocence as to the imputations hurled against him by AAA. He contended that AAA filed these charges against him only as an act of revenge because AAA was mad at [him] for being the reason behind her parents' separation.[10]

Ruling of the RTC

On January 16, 2009, the RTC acquitted Pareja from the charge of attempted rape but convicted him of the crimes of rape and acts of lasciviousness in the December 2003 and February 2004 incidents, respectively. The dispositive portion of the Decision[11] reads as follows:

WHEREFORE, the herein accused Bernabe Pareja y Cruz is hereby acquitted from the charge of attempted rape in Crim. Case No. 04-1558, for want of evidence.

In Crim. Case No. 04-1556, the said accused is CONVICTED with Acts of Lasciviousness and he is meted out the penalty of imprisonment, ranging from 2 years, 4 months and 1 day as minimum to 4 years and 2 months of prison [correccional] as maximum.

In Crim. Case No. 04-1557, the said accused is CONVICTED as charged with rape, and he is meted the penalty of reclusion perpetua.

The accused shall be credited in full for the period of his preventive imprisonment.

The accused is ordered to indemnify the offended party [AAA], the sum of P50,000.00, without subsidiary imprisonment, in case of insolvency.[12]

The RTC, in convicting Pareja of the crime of Rape and Acts of Lasciviousness, gave more weight to the prosecution's evidence as against Pareja's baseless denial and imputation of ill motive. However, due to the failure of the prosecution to present AAA's mother to testify about what she had witnessed in March 2004, the RTC had to acquit Pareja of the crime of Attempted Rape in the March 2004 incident for lack of evidence. The RTC could not convict Pareja on the basis of AAA's testimony for being hearsay evidence as she had no personal knowledge of what happened on March 27, 2004 because she was sleeping at that time.

Ruling of the Court of Appeals

Wanting to reverse his two convictions, Pareja appealed[13] to the Court of Appeals, which on January 19, 2012, affirmed in toto the judgment of the RTC in Criminal Case Nos. 04-1556 and 04-1557, to wit:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby DENIED and, consequently, DISMISSED. The appealed Decisions rendered by Branch 113 of the Regional Trial Court of the National Capital Judicial Region in Pasay City on January 16, 2009 in Criminal Cases Nos. 04-1556 to 04-1557 are hereby AFFIRMED in toto.[14]

Issues

Aggrieved, Pareja elevated his case to this Court[15] and posited before us the following errors as he did before the Court of Appeals:

I

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING [PAREJA] OF THE CRIMES CHARGED NOTWITHSTANDING THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [PAREJA] BASED SOLELY ON THE PROSECUTION WITNESS' TESTIMONY.[16]

In his Supplemental Brief[17] Pareja added the following argument:

The private complainant's actuations after the incident negate the possibility that she was raped.[18]

Pareja's main bone of contention is the reliance of the lower courts on the testimony of AAA in convicting him for rape and acts of lasciviousness. Simply put, Pareja is attacking the credibility of AAA for being inconsistent. Moreover, he claimed, AAA acted as if nothing happened after the alleged sexual abuse.

Ruling of this Court

This Court finds no reason to reverse Pareja's conviction.

Core Issue: Credibility of AAA

Pareja claims that AAA's testimony cannot be the lone basis of his conviction as it was riddled with inconsistencies.[19]

We find such argument untenable.

When the issue of credibility of witnesses is presented before this Court, we follow certain guidelines that have overtime been established in jurisprudence. In *People v. Sanchez*,[20] we enumerated them as follows:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC. (Citations omitted.)

The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts-and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court." [21] While there are recognized exceptions to the rule, this Court has found no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.

Besides, inaccuracies and inconsistencies in a rape victim's testimony are generally expected.[22] As this Court stated in *People v. Saludo*[23]:

Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is

something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. (Citation omitted.)

Since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[24] The inconsistencies mentioned by Pareja are trivial and non-consequential matters that merely caused AAA confusion when she was being questioned. The inconsistency regarding the year of the December incident is not even a matter pertaining to AAA's ordeal.[25] The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the "date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime." [26] Moreover, the date of the commission of the rape is not an essential element of the crime.[27]

In this connection, Pareja repeatedly invokes our ruling in *People v. Ladrillo*, [28] implying that our rulings therein are applicable to his case. However, the factual circumstances in *Ladrillo* are prominently missing in Pareja's case. In particular, the main factor for *Ladrillo*'s acquittal in that case was because his constitutional right to be informed of the nature and cause of the accusation against him was violated when the Information against him only stated that the crime was committed "on or about the year 1992." We said:

The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. More importantly, it runs afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him. The Information is not sufficiently explicit and certain as to time to inform accused-appellant of the date on which the criminal act is alleged to have been committed.

The phrase "on or about the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, e.g., 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to allege with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.

x x x x

Indeed, the failure of the prosecution to prove its allegation in the Information that accused-appellant raped complainant in 1992 manifestly shows that the date of the commission of the offense as alleged was based merely on speculation and conjecture, and a conviction anchored mainly thereon cannot satisfy the quantum of evidence required for a pronouncement of guilt, that is, proof beyond reasonable doubt that the crime was committed on the date and place indicated in the Information.[29] (Citation omitted.)

In this case, although the dates of the December 2003 and February 2004 incidents were not specified, the period of time Pareja had to account for was fairly short, unlike "on or about the year 1992." Moreover, *Ladrillo* was able to prove that he had only moved in the house where the rape supposedly happened, in 1993, therefore negating the allegation that he raped the victim in that house in 1992.[30]

While it may be true that the inconsistencies in the testimony of the victim in *Ladrillo* contributed to his eventual

acquittal, this Court said that they alone were not enough to reverse Ladrillo's conviction, viz:

Moreover, there are discernible defects in the complaining witness' testimony that militates heavily against its being accorded the full credit it was given by the trial court. Considered independently, the defects might not suffice to overturn the trial court's judgment of conviction, but assessed and weighed in its totality, and in relation to the testimonies of other witnesses, as logic and fairness dictate, they exert a powerful compulsion towards reversal of the assailed judgment.[31] (Emphasis supplied.)

It is worthy to note that Ladrillo also offered more than just a mere denial of the crime charged against him to exculpate him from liability. He also had an alibi, which, together with the other evidence, produced reasonable doubt that he committed the crime as charged. In contrast, Pareja merely denied the accusations against him and even imputed ill motive on AAA.

As regards Pareja's concern about AAA's lone testimony being the basis of his conviction, this Court has held:

Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. No law or rule requires the corroboration of the testimony of a single witness in a rape case.[32] (Citations omitted.)

Improbability of sexual abuse
in their small house and in the
presence of AAA's sleeping siblings

Pareja argues that it was improbable for him to have sexually abused AAA, considering that their house was so small that they had to sleep beside each other, that in fact, when the alleged incidents happened, AAA was sleeping beside her younger siblings, who would have noticed if anything unusual was happening.[33]

This Court is not convinced. Pareja's living conditions could have prevented him from acting out on his beastly desires, but they did not. This Court has observed that many of the rape cases appealed to us were not always committed in seclusion. Lust is no respecter of time or place,[34] and rape defies constraints of time and space. In *People v. Sangil, Sr.*,[35] we expounded on such occurrence in this wise:

In *People v. Ignacio*, we took judicial notice of the interesting fact that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. Considering the cramped space and meager room for privacy, couples perhaps have gotten used to quick and less disturbing modes of sexual congresses which elude the attention of family members; otherwise, under the circumstances, it would be almost impossible to copulate with them around even when asleep. It is also not impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night. There is no merit in appellant's contention that there can be no rape in a room where other people are present. There is no rule that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place," and rape can be committed in even the unlikeliest of places. (Citations omitted.)

Demeanor of AAA
as a rape victim

Pareja asseverates that AAA's demeanor and conduct belie her claim that she was raped. He said that "the ordinary Filipina [would have summoned] every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity." Pareja pointed out that they lived in a thickly populated area such that any commotion inside their house would have been easily heard by the neighbors, thus, giving AAA the

perfect opportunity to seek their help.[36] Moreover, Pareja said, AAA's delay in reporting the incidents to her mother or the authorities negates the possibility that he indeed committed the crimes. AAA's belated confession, he claimed, "cannot be dismissed as trivial as it puts into serious doubt her credibility." [37]

A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence.[38] In this case, AAA's lack of resistance was brought about by her fear that Pareja would make good on his threat to kill her if she ever spoke of the incident.

AAA's conduct, i.e., acting like nothing happened, after being sexually abused by Pareja is also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances. [39]

Likewise, AAA's delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that Pareja threatened to kill her if she told anyone of the incidents. In *People v. Ogarte*, [40] we explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation, to wit:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims. (Citation omitted.)

Medical examination
not indispensable

Pareja avers that the Medico-Legal Report indicating that there is evidence of blunt force or penetrating trauma upon examination of AAA's hymen, "cannot be given any significance, as it failed to indicate how and when the said signs of physical trauma were inflicted." Furthermore, Pareja said, the findings that AAA's hymen sustained trauma cannot be utilized as evidence against him as the alleged sexual abuse that occurred in December, was not by penetration of the vagina.[41]

This Court has time and again held that an accused can be convicted of rape on the basis of the sole testimony of the victim. In *People v. Colorado*, [42] we said:

[A] medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape. Expert testimony is merely corroborative in character and not essential to conviction. x x x.

Therefore, the absence of testimony or medical certificate on the state of AAA's anus at the time she was examined is of no consequence. On the contrary, the medical examination actually bolsters AAA's claim of being

raped by Pareja on more than one occasion, and not just by anal penetration. However, as the prosecution failed to capitalize on such evidence and prove the incidence of carnal knowledge, Pareja cannot be convicted of rape under paragraph 1 of Article 266-A of the Revised Penal Code.

In *People v. Perez*,^[43] this Court aptly held:

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. (Citations omitted.)

Criminal Case No. 04-1557-CFM:

The December 2003 Incident

In Criminal Case No. 04-1557-CFM or the December 2003 incident, Pareja was charged and convicted of the crime of rape by sexual assault. The enactment of Republic Act No. 8353 or the Anti-Rape Law of 1997, revolutionized the concept of rape with the recognition of sexual violence on “sex-related” orifices other than a woman’s organ is included in the crime of rape; and the crime’s expansion to cover gender-free rape. “The transformation mainly consisted of the reclassification of rape as a crime against persons and the introduction of rape by ‘sexual assault’ as differentiated from the traditional ‘rape through carnal knowledge’ or ‘rape through sexual intercourse.’”^[44] Republic Act No. 8353 amended Article 335, the provision on rape in the Revised Penal Code and incorporated therein Article 266-A which reads:

Article 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;

2)

By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Thus, under the new provision, rape can be committed in two ways:

1. Article 266-A paragraph 1 refers to Rape through sexual intercourse, also known as "organ rape" or "penile rape." [45] The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.[46]
2. Article 266-A paragraph 2 refers to rape by sexual assault, also called "instrument or object rape," or "gender-free rape." [47] It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[48]

In *People v. Abulon*, [49] this Court differentiated the two modes of committing rape as follows:

(1)

In the first mode, the offender is always a man, while in the second, the offender may be a man or a woman;

(2)

In the first mode, the offended party is always a woman, while in the second, the offended party may be a man or a woman;

(3)

In the first mode, rape is committed through penile penetration of the vagina, while the second is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and

(4)

The penalty for rape under the first mode is higher than that under the second.

Under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, rape by sexual assault is "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

AAA positively and consistently stated that Pareja, in December 2003, inserted his penis into her anus. While she may not have been certain about the details of the February 2004 incident, she was positive that Pareja had anal sex with her in December 2003, thus, clearly establishing the occurrence of rape by sexual assault. In other words, her testimony on this account was, as the Court of Appeals found, clear, positive, and probable.[50]

However, since the charge in the Information for the December 2003 incident is rape through carnal knowledge, Pareja cannot be found guilty of rape by sexual assault even though it was proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict Pareja of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him.[51]

Nevertheless, Pareja may be convicted of the lesser crime of acts of lasciviousness under the variance doctrine

embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure,[52] to wit:

SEC. 4. Judgment in case of variance between allegation and proof. – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. When an offense includes or is included in another. – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

Article 336 of the Revised Penal Code provides:

Art. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prisión correccional.

The elements of the above crime are as follows:

(1)

That the offender commits any act of lasciviousness or lewdness;

(2)

That it is done under any of the following circumstances:

a.

By using force or intimidation; or

b.

When the offended party is deprived of reason or otherwise unconscious; or

c.

When the offended party is under 12 years of age; and

(3)

That the offended party is another person of either sex.[53] (Citation omitted.)

Clearly, the above-mentioned elements are present in the December 2003 incident, and were sufficiently established during trial. Thus, even though the crime charged against Pareja was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.[54]

Nonetheless, the Court takes this case as an opportunity to remind the State, the People of the Philippines, as represented by the public prosecutor, to exert more diligence in crafting the Information, which contains the charge against an accused. The primary duty of a lawyer in public prosecution is to see that justice is done[55] – to the State, that its penal laws are not broken and order maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his crime. A faulty and defective Information, such as that in Criminal Case No. 04-1556-CFM, does not render full justice to the State, the offended party, and even the offender. Thus, the public prosecutor should always see to it that the Information is accurate and appropriate.

Criminal Case No. 04-1556-CFM:

The February 2004 Incident

It is manifest that the RTC carefully weighed all the evidence presented by the prosecution against Pareja, especially AAA's testimony. In its scrutiny, the RTC found AAA's declaration on the rape in the December 2003 incident credible enough to result in a conviction, albeit this Court had to modify it as explained above. However, it did not find that the same level of proof, i.e., beyond reasonable doubt, was fully satisfied by the prosecution in its charge of attempted rape and a second count of rape against Pareja. In Criminal Case No. 04-1556-CFM, or the February 2004 incident, the RTC considered AAA's confusion as to whether or not she was actually penetrated by Pareja, and eventually resolved the matter in Pareja's favor.

This Court agrees with such findings. AAA, in her Sinumpaang Salaysay,[56] stated that aside from sucking her breasts, Pareja also inserted his finger in her vagina. However, she was not able to give a clear and convincing account of such insertion during her testimony. Despite being repeatedly asked by the prosecutor as to what followed after her breasts were sucked, AAA failed to testify, in open court, that Pareja also inserted his finger in her vagina. Moreover, later on, she added that Pareja inserted his penis in her vagina during that incident. Thus, because of the material omissions and inconsistencies, Pareja cannot be convicted of rape in the February 2004 incident. Nonetheless, Pareja's acts of placing himself on top of AAA and sucking her breasts, fall under the crime of acts of lasciviousness, which, as we have discussed above, is included in the crime of rape.

Verily, AAA was again positive and consistent in her account of how Pareja sucked both her breasts in the February 2004 incident. Thus, Pareja was correctly convicted by the courts a quo of the crime of acts of lasciviousness.

Defense of Denial
and Improper Motive

Pareja sought to escape liability by denying the charges against him, coupled with the attribution of ill motive against AAA. He claims that AAA filed these cases against him because she was angry that he caused her parents' separation. Pareja added that these cases were initiated by AAA's father, as revenge against him.[57]

Such contention is untenable. "AAA's credibility cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge." [58] Furthermore, motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[59] In *People v. Manuel*, [60] we held:

Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

Liability for Acts of Lasciviousness

The penalty for acts of lasciviousness under Article 336 of the Revised Penal Code is prisión correccional in its full range. Applying the Indeterminate Sentence Law,[61] the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree,[62] i.e., arresto mayor, which ranges from 1 month and 1 day to 6 months.[63] The maximum of the indeterminate penalty shall come from the proper penalty[64] that could be imposed under the Revised Penal Code for Acts of Lasciviousness,[65] which, in this case, absent any aggravating or mitigating circumstance, is the medium period of prisión correccional, ranging from 2 years, 4 months and 1 day to 4 years and 2 months.[66]

In line with prevailing jurisprudence, the Court modifies the award of damages as follows: P20,000.00 as civil indemnity;[67] P30,000.00 as moral damages; and P10,000.00 as exemplary damages,[68] for each count of acts of lasciviousness. All amounts shall bear legal interest at the rate of 6% per annum from the date of finality of this judgment.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03794 is hereby AFFIRMED with MODIFICATION. We find accused-appellant Bernabe Pareja y Cruz GUILTY of two counts of Acts of Lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, as amended. He is sentenced to two (2) indeterminate prison terms of 6 months of arresto mayor, as minimum, to 4 years and 2 months of prisión correccional, as maximum; and is ORDERED to pay the victim, AAA, P20,000.00 as civil indemnity, P30,000.00 as moral damages, and P10,000.00 as exemplary damages, for each count of acts of lasciviousness, all with interest at the rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.

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

[1] Rollo, pp. 2-15; penned by Associate Justice Isaias P. Dicdican with Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda, concurring.

[2] CA rollo, pp. 17-27.

[3] Under Republic Act No. 9262 also known as “Anti-Violence Against Women and Their Children Act of 2004” and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim’s privacy.

[4] CA rollo, p. 10.

[5] Id. at 11.

[6] Id. at 53.

[7] Records, p. 20.

[8] Id. at 37-38.

[9] TSN, November 4, 2004, p. 3.

[10] Rollo, pp. 4-7.

[11] CA rollo, pp. 52-62.

[12] Id. at 62.

- [13] Id. at 28.
- [14] Rollo, pp. 14-15.
- [15] Id. at 16-18.
- [16] CA rollo, pp. 45-46.
- [17] Rollo, pp. 31-35.
- [18] Id. at 31.
- [19] CA rollo, pp. 48-49.
- [20] G.R. No. 197815, February 8, 2012, 665 SCRA 639, 643.
- [21] People v. Manalili, G.R. No. 191253, August 28, 2013.
- [22] People v. Rubio, G.R. No. 195239, March 7, 2012, 667 SCRA 753, 762.
- [23] G.R. No. 178406, April 6, 2011, 647 SCRA 374, 388.
- [24] People v. Zafra, G.R. No. 197363, June 26, 2013.
- [25] Id.
- [26] People v. Cantomayor, 441 Phil. 840, 847 (2002).
- [27] People v. Escultor, 473 Phil. 717, 727 (2004).
- [28] 377 Phil. 904 (1999).
- [29] Id. at 911-915.
- [30] Id. at 915.
- [31] Id. at 912.
- [32] People v. Manalili, supra note 21.
- [33] CA rollo, p. 46.
- [34] People v. Mangitngit, 533 Phil. 837, 854 (2006).
- [35] 342 Phil. 499, 506-507 (1997).
- [36] CA rollo, p. 47.
- [37] Rollo, pp. 31-32.
- [38] People v. Pacheco, G.R. No. 187742, April 20, 2010, 618 SCRA 606, 615.
- [39] People v. Saludo, supra note 23 at 394.
- [40] G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412.
- [41] CA rollo, p. 48.
- [42] G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673.
- [43] G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671.

- [44] *People v. Abulon*, 557 Phil. 428, 452-453 (2007).
- [45] *Id.* at 453-454.
- [46] *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 497.
- [47] *People v. Abulon*, *supra* note 44 at 454.
- [48] *People v. Soria*, *supra* note 46 at 497.
- [49] *Supra* note 44 at 454.
- [50] Rollo, p. 13.
- [51] *People v. Abulon*, *supra* note 44 at 455.
- [52] *Id.*
- [53] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 158.
- [54] *Perez v. Court of Appeals*, 431 Phil. 786, 797 (2002).
- [55] Code of Professional Responsibility, Rule 6.01.
- [56] Records, pp. 142-143.
- [57] TSN, May 27, 2008, p. 6.
- [58] *People v. Zafra*, *supra* note 24.
- [59] *People v. Mangitngit*, *supra* note 34 at 852.
- [60] 358 Phil. 664, 674 (1998).
- [61] Republic Act No. 4103, as amended.
- [62] *Id.*, Section 1.
- [63] Revised Penal Code, Articles 25 and 27.
- [64] *Id.*, Article 64(1).
- [65] Republic Act No. 4103, as amended, Section 1.
- [66] Revised Penal Code, Article 77.
- [67] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 480-481.
- [68] *Sombilon, Jr. v. People*, G.R. No. 175528, September 30, 2009, 601 SCRA 405, 421.

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