

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO HIDALGO, DON JUAN HIDALGO AND MICHAEL BOMBASI ALIAS “KABAYAN”(AT LARGE), ACCUSED, ROBERTO HIDALGO, ACCUSED-APPELLANT.

G.R. No. 203313. September 02, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

This is an appeal from the Decision[1] of the Court of Appeals (Cebu City) dated 4 August 2011 in CA-G.R. CR-H.C. No. 00545, which affirmed with modifications the Amended Decision[2] dated 31 January 2003 of the Regional Trial Court (RTC), Branch 7, Tacloban City in Criminal Cases No. 2000-06-363; No. 2000-06-364 and No. 2000-06-365 finding accused Roberto Hidalgo and Don Juan Hidalgo guilty of three (3) counts of simple rape in violation of Republic Act No. 8353 (R.A. No. 8353) or the "Anti-Rape Law of 1997."

On 28 April 2000, three (3) sets of Information were filed against Roberto Hidalgo (Roberto), his sixteen-year-old son Don Juan Hidalgo (Don Juan), and Michael Bombasi alias "Kabayan" (Bombasi) for three counts of rape against AAA.[3]

For Criminal Case No. 2000-06-363

That on or about the 30[th] day of January, 2000 in the Municipality of Santa Fe, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with lewd design and with the use of force upon the thirteen-year-old AAA, a house help of accused Roberto Hidalgo, did, then and there, wilfully, unlawfully and feloniously perform the following acts, to [wit]: accused Roberto Hidalgo succeeded in having carnal knowledge of the said AAA without her consent and against her will, after co-accused Don Juan Hidalgo and Michael Bombasi, alias "Kabayan" participated in the commission of the crime by touching her private parts.

Contrary to law, with the aggravating circumstance that the offended party is only (13) years old and the offender Roberto Hidalgo is her guardian.[4]

For Criminal Case No. 2000-06-364

That on or about the 30[th] day of January, 2000 in the Municipality of Santa Fe, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together[,] and mutually helping one another, with lewd design and with the use of force upon the thirteen-year-old AAA, a househelp of accused Roberto Hidalgo, did, then and there, willfully, unlawfully and feloniously perform the following acts, to wit: accused Don Juan Hidalgo succeeded in having carnal knowledge of the said AAA without her consent and against her will, after co-accused Roberto Hidalgo tied her hands and mouth and Michael Bombasi, alias "Kabayan" touched her private parts.

Contrary to law, with the aggravating circumstance that the offended party is only (13) years old and the offender Roberto Hidalgo is her guardian.[5]

For Criminal Case No. 2000-06-365

That on or about the 30[th] day of January, 2000 in the Municipality of Santa Fe, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with lewd design and with the use of force upon the thirteen-year-old AAA, a househelp of accused Roberto Hidalgo, did, then and there, wilfully, unlawfully and feloniously perform the following acts, to wit: accused [Michael Bombasi] succeeded in having carnal knowledge of the said AAA without her consent and against her will, after co-accused Roberto Hidalgo tied her hands and mouth and [Don Juan Hidalgo], touched her private parts.

Contrary to law, with the aggravating circumstance that the offended party is only (13) years old and the offender Roberto Hidalgo is her guardian.[6]

Thereafter, Don Juan was arrested in Sta. Fe, Leyte on 6 March 2000 while Roberto allegedly surrendered to Philippine National Police Criminal Investigation and Detection Group (PNP CIDG) in Tacloban City on 9 March 2000. On the other hand, Bombasi remains at large.[7]

Upon arraignment, both Roberto and Don Juan entered a non-guilty plea.[8]

After trial, RTC Tacloban City on 31 January 2003 decided that the prosecution proved the guilt of the accused beyond reasonable doubt. It found AAA's narration that she was raped by the three accused in the evening of 30 January 2000 credible. It emphasized that the victim, who was barely thirteen years old and a barrio lass, would not subject herself to the humiliation of public trial if her testimony is of no truth. Further, trial court found present the special aggravating circumstances of the victim's minority, conspiracy, use of force, superior strength, night time, and ignominy.

The trial court found conspiracy among the accused. It ruled that the confederated acts of the three accused as active participants in helping one another subdue AAA and thereafter taking turns in having carnal knowledge of her indicated a common purpose. On the other hand, it considered the special mitigating circumstance of minority in favor of Don Juan. From the foregoing, the court in its amended decision imposed the following penalties via the dispositive portion:

WHEREFORE, premises considered, pursuant to Art. 266-A, 266-B of the Revised Penal Code as amended and the amendatory provision of R.A. No. 8353 (Anti-Rape Law of 1997) in relation to Section 11 of R.A. No. 7659 (Death Penalty Law), the Court found ROBERTO HIDALGO, GUILTY beyond reasonable doubt for the crime of RAPE under Criminal Cases Nos. 2000-06-363; 2000-06-364; and 2000-06-0365 and sentenced to suffer the maximum penalty of DEATH and to indemnify the victim AAA the sum of Seventy Five Thousand ([P]75,000.00) Pesos for each count of Rape and pay moral damages in the amount of Fifty Thousand Pesos ([P]50,000.00) for each count.

DON JUAN HIDALGO is found GUILTY beyond reasonable doubt for the crime of RAPE under Criminal Case Nos. 2000-06-363; 2000-06-364; 2000-06-0365, however, with the special mitigating circumstance of Minority, being sixteen (16) at the time of the commission of the crime, he is sentenced to suffer the maximum penalty of RECLUSION PERPETUA for each count and to indemnify the victim AAA the sum of Fifty Thousand Pesos ([P]50,000.00) for each count of rape and pay moral damages of Fifty Thousand Pesos ([P]50,000.00) for each count; and

Pay the cost. SO ORDERED.[9]

Upon appeal, the Court of Appeals affirmed with modifications the ruling of the trial court in a decision promulgated on 4 August 2011. It ruled that the three accused conspired to rape AAA but disregarded the qualifying circumstance that Roberto acted as a guardian of AAA, in the absence of sufficient proof. Further, the

appellate court did not consider the other aggravating circumstances of abuse of superior strength, night time and ignominy due to the fact that these were not alleged in the three sets of information filed against the three accused. In the dispositive portion, the appellate court ruled as follows:

WHEREFORE, the appeal is DENIED. The Amended Decision dated January 31, 2003 of the Regional Trial Court, Branch 7, Bulwagan ng Katarungan, Magsaysay Blvd., Tacloban City in Criminal Case Nos. 2000-06-363, 2000-06-364 and 2000-06-365 is AFFIRMED with MODIFICATIONS. Appellant Roberto Hidalgo is convicted of three counts of simple rape and sentenced to suffer the penalty of reclusion perpetua for each of the three counts of rape, while appellant Don Juan Hidalgo, being a minor at the time of the commission of the crime and applying the Indeterminate Sentence Law, is sentenced to suffer an indeterminate penalty ranging from twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum in each of the three counts of rape. The sentence as to appellant Don Juan Hidalgo is hereby SUSPENDED, pursuant to Section 38, in relation to Sec. 5 (1), f Republic Act No. 9344, also known as the "Juvenile Justice and Welfare Act of 2006." Upon finality of this Decision, the Assistant Clerk of Court of the Court of Appeals, Visayas Station, Cebu City is DIRECTED to remand the records to the court of origin for further proceedings for purposes of intervention program as to said offender.[10]

Only accused-appellant Roberto filed his appeal and assigned as error on the part of the Court of Appeals when it: (1) gave full faith and credence to the private complainant's testimony; and (2) ruled that conspiracy was established and found the accused-appellant liable for three (3) counts of simple rape.

We dismiss the appeal for lack of merit.

For the prosecution of rape to prosper, the following elements must be proved: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force, threat or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[11]

In the case at bar, We find that the prosecution was able to prove that the three accused Roberto, Don Juan and Bombasi conspired with one another to commit carnal knowledge of AAA through the use of force and threat. Contrary to the allegation of Roberto that the narration of AAA was too uniform, almost general and lacked specific details, we find her testimony sufficient in details to sustain conviction.

In her testimony, AAA testified that she was hired by the spouses Roberto and Vivian Hidalgo as a house helper and nanny of their child Joshua. She recalled that after putting Joshua to sleep at around 8 in the evening of 30 January 2000, she herself slept in sofa beds near where Joshua was sleeping.[12] While sleeping, she was awakened when Roberto and Bombasi tied both of her hands at her back. She also noticed that a handkerchief was already tied in her mouth. Thereafter, both men turned her around, touched her body and started to take her clothes off. Roberto took her shorts and panty off and went on top of her. He then inserted his penis inside her vagina while kissing and touching her. After satisfying his lust, he got off from AAA. Thereafter, Bombasi took his turn and inserted his penis inside AAA's vagina while continuing to touch her body. Finally, Don Juan went on top of AAA and kissed her shoulders and lips. Thereafter, he inserted his penis inside AAA's vagina. During the whole time she was being raped by the three accused, AAA pleaded for Roberto to stop what was happening but her pleas fell to deaf ears. Roberto even shook her head from left to right while Joshua laughed at her side while she was being touched.[13] After satisfying their sexual desires, the three accused untied her and threatened to cut off her tongue and kill her family in case she would tell them what happened. When they left the house, she untied the handkerchief on her mouth and put her clothes on. After a while, Vivian arrived. She caught AAA crying and asked her what was wrong. AAA, afraid to reveal what happened, just asked Vivian for permission to go home.[14]

For fear that the three accused would make true of their threats, it took AAA almost one month to file a case and submit herself to medical examination.

Medico-legal officers Dr. Paolo Estorninos and Dr. Ma. Salud Rosillo of Eastern Visayas Regional Medical Center (EVMRC) in Tacloban City confirmed in their report that there was laceration in the hymen of AAA when they examined her on 28 February 2000.[15]

During the defense's turn in presenting its testimonial evidence in court, Roberto and Don Juan filed a Motion for Leave of Court to File Demurrer to Evidence on the grounds that the prosecution failed to establish the jurisdiction of court and failure of the prosecution to establish the identity of the accused as the perpetrators of the crime.[16] The trial court initially denied the motion but on 23 October 2002, it directed the defense to present its evidence. When asked in open court, both Roberto and Don Juan reiterated their positions that they agreed with the proposition of their counsel to submit their case for decision. Thus, other than their self-serving allegations in their pleadings that AAA failed to identify them as the assailants and lack of conspiracy, no other proof was offered to acquit them.

All told, we are convinced that all the elements constituting the crime of rape were sufficiently established.

Roberto relies upon the failure of AAA to specifically point out the overt acts committed by him which would indicate that there was a conspiracy in raping her. He insisted that the testimony was too broad and general to indicate a common purpose in committing the crime of rape.

We disagree.

Conspiracy exists when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose.[17] In this case, the acts of Roberto, Don Juan and Bombasi clearly demonstrated unity of action to have carnal knowledge of AAA: (1) Both Roberto and Bombasi tied AAA's hands at her back, while a handkerchief was already tied in her mouth; (2) Both men turned AAA around, touched her body and started to take her clothes off; (3) Roberto succeeded in undressing AAA, went on top of her and placed his penis inside her vagina; (4) After satisfying his lust, Roberto got off from AAA and Bombasi took his turn and inserted his penis inside AAA's vagina; (5) After Bombasi, Don Juan went on top of AAA, kissed her shoulders and lips and also inserted his penis inside AAA's vagina; (6) When they were satiated in their sexual desires, the three accused untied the rope binding AAA and threatened to cut off her tongue and kill her family in case she would tell them what happened. Unmistakably, these acts demonstrated a concerted effort to rape AAA.

Since there was a conspiracy between Roberto, Don Juan and Bombasi, the act of one of them was the act of all and the three of them are equally guilty of all the crimes of rape committed against AAA.

With respect to the penalty, the Court affirms with modifications the penalties imposed by the Court of Appeals.

As to Roberto, we affirm the imposition of reclusion perpetua for each of the crimes committed. Under Article 266-B[18] of R.A. No. 8353, the penalty of reclusion perpetua to death shall be imposed whenever the crime of rape is committed through the use of a deadly weapon or by two or more persons. (Emphasis ours) In this case, it was sufficiently alleged in the Information and proven during trial that the crime was committed by Roberto together with Don Juan and Bombasi. Since neither applicable aggravating nor mitigating circumstance attended the commission of the crime, the lesser of the two indivisible penalties which is reclusion perpetua shall be imposed to Roberto pursuant to Article 63[19] of the penal code.[20]

The penalty that the Court of Appeals imposed on Don Juan reads:

x x x while appellant Don Juan Hidalgo, being a minor at the time of the commission of the crime and applying

the Indeterminate Sentence Law, is sentenced to suffer an indeterminate penalty ranging from twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum in each of the three counts of rape. The sentence as to appellant Don Juan Hidalgo is hereby SUSPENDED, pursuant to Section 38, in relation to Sec. 5 (1), f Republic Act No. 9344, also known as the "Juvenile Justice and Welfare Act of 2006." xxx (Underscoring ours)

While Don Juan is not an appellant before us, we find a need to correct the penalty that was imposed, thus, applying ISLAW, the penalty to be imposed on Don Juan will be within the range of prision mayor from six (6) years and one (1) day to twelve (12) years, as minimum penalty, to 14 years, eight (8) months and 1 day to 17 years and four (4) months of prision temporal in its medium period, as maximum penalty in each of the three counts of rape.[21]

With the passage of Republic Act No. 9344 (R.A. No. 9344) known as "Juvenile Justice and Welfare Act of 2006"[22] on 28 April 2006, the provision on retroactivity applies insofar as it favors the persons guilty of a felony.[23] This is despite the fact that the accused is no longer a minor at the time his conviction is promulgated. The intent of R.A. No. 9344 is the promotion of the welfare of a child in conflict with the law even if he/she has already exceeded the age limit of 21 years, so long as he/she committed the crime when he/she was still a child. He/she shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with R.A. No. 9344 in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of conviction is not material.[24] What is important is that the offense was committed when the accused was still of tender age.[25]

WHEREFORE, the appeal is DISMISSED and the Decision of the Court of Appeals dated 4 August 2011 in CA-G.R. CR-H.C. No. 00545 is AFFIRMED with the following modifications:

Roberto is sentenced to suffer the penalty of reclusion perpetua while Don Juan is ordered to serve the period of his sentence in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR, in coordination with the DSWD.

As to civil liability, both Roberto and Don Juan are hereby ordered to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages for each of the three counts of rape committed. In addition, Roberto is further ordered to pay the victim P30,000.00 as exemplary damages for each of the three counts of rape.

The damages to be paid by Roberto Hidalgo and Don Juan Hidalgo shall earn 6% interest to be reckoned from the date of finality of this decision until fully paid.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Edgardo L. Delos Santos, and Victoria Isabel A. Paredes, concurring; CA rollo, pp. 155-174.

[2] Penned by Presiding Judge Crisostomo L. Garrido; id. at 88-110.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or

household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

[4] CA rollo, p. 11.

[5] Id. at 12.

[6] Id. at 13.

[7] Id. at 21.

[8] Id.

[9] Id. at 109-110.

[10] Id. at 172-174.

[11] Republic Act No. 8353, 30 September 1997, AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES otherwise known as "The Anti-Rape Law of 1997."

[12] TSN of AAA, 17 September 2001, p. 10.

[13] Id. at 11-15. TSN of AAA, 12 July 2002, p. 18.

[14] TSN of AAA, 17 September 2001, pp. 12-17.

[15] Records, volume 1, p. 9.

[16] Records, Volume 1, pp. 105-111.

[17] *People v. Dela Torre*, 588 Phil. 937, 942 (2008), citing *People v. Sumalinog, Jr.*, 466 Phil. 637, 658 (2004).

[18] Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

[19] Article 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[20] *People v. Manigo*, G.R. No. 194612, 27 January 2014, 714 SCRA 551, 562.

[21] *People v. Monticalvo*, G.R. No. 193507, 30 January 2013, 689 SCRA 715, 739-740, citing *People v. Duavis*, 678 Phil. 166, 178 (2011).

[22] SEC. 68. Children Who Have Been Convicted and are Serving Sentence.

Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

[23] Art. 22, Revised Penal Code

[24] *Supra* note 21, at 742.

[25] *Id.*, citing *People v. Jacinto*, 661 Phil. 224, 257 (2011).

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