

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OBALDO BANDRIL Y TABLING, ACCUSED-APPELLANT.

G.R. No. 212205. July 06, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the September 24, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05527 affirming appellant's conviction for three counts of rape and one count of acts of lasciviousness.

Appellant was charged of raping his 14-year-old daughter, AAA,[2] three times and attempting to rape her at another time. The four Informations read:

[Criminal Case No. CR-08-9204]

That on the month of March 2007, at 11:00 o'clock in the evening, more or less, at Sitio [XXX], Barangay [XXX], Municipality of Victoria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire and by means of force, violence, threats and intimidation and even taking advantage of his moral authority and influence over the private complainant [AAA], his legitimate daughter and who was then fourteen (14) years old, did then and there willfully, unlawfully and feloniously have carnal knowledge of her against her will and without her consent, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of said [AAA] as a child and as a human being, to her damage and prejudice.

In the commission of the offense, the qualifying circumstances of relationship is attendant, the accused being the father of the complainant and the complainant being then under eighteen (18) years [of] age.

Contrary to Law.[3]

[Criminal Case No. CR-08-9205]

That on the month of June 2007, at 11:30 o'clock in the morning, more or less, at Sitio [XXX], Barangay [XXX], Municipality of Victoria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire and by means of force, violence, threats and intimidation and even taking advantage of his moral authority and influence over the private complainant [AAA], his legitimate daughter and who was then fourteen (14) years old, did then and there willfully, unlawfully and feloniously have carnal knowledge of her against her will and without her consent, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of said [AAA] as a child and as a human being, to her damage and prejudice.

In the commission of the offense, the qualifying circumstances of relationship is attendant, the accused being the father of the complainant and the complainant being then under eighteen (18) years [of] age.

Contrary to Law.[4]

[Criminal Case No. CR-08-9206]

That on the month of October 2007, at 8:00 o'clock in the morning, more or less, at Sitio [XXX], Barangay [XXX], Municipality of Victoria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust, lewd and unchaste desire and by means of force, violence, threats and intimidation and even taking advantage of his moral authority and influence over the private complainant [AAA], his legitimate daughter and who was then fourteen (14) years old, did then and there willfully, unlawfully and feloniously have carnal knowledge of her against her will and without her consent, thereby violating her person and chastity, acts of sexual abuse which debase, degrade and demean the intrinsic worth and dignity of said AAA as a child and as a human being, to her damage and prejudice.

In the commission of the offense, the qualifying circumstances of relationship is attendant, the accused being the father of the complainant and the complainant being then under eighteen (18) years [of] age.

Contrary to Law.[5]

[Criminal Case No. CR-08-9207]

That in the evening of June 21, 2008, at Sitio [XXX], Barangay [XXX], Municipality of Victoria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and with intent to have carnal knowledge of one [AAA], a fourteen (14) year-old-girl, and with the use of force and intimidation, did then and there willfully, unlawfully and feloniously remove her clothes against her will and without her consent, thus commencing the commission of the crime of rape directly by overt acts but did not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance, that is the strong resistance put up by the complainant, [to] the damage and prejudice of said [AAA].

In the commission of the offense, the qualifying circumstances of relationship is attendant, the accused being the father of the complainant and the complainant being then under eighteen (18) years of age.

Contrary to Law.[6]

The prosecution established that AAA was born on December 17, 1993. She is the daughter of appellant and BBB. They resided at Sitio XXX, Barangay XXX, Municipality of Victoria, Province of Oriental Mindoro.

Sometime in March 2007, at around 11:00 p.m., while AAA's mother BBB was not in the house, appellant removed AAA's clothes, took his own clothes off and ordered AAA to lie down. Appellant mounted on top of AAA and inserted his penis into her vagina. AAA felt pain. After satisfying his lust, appellant ordered AAA to wear her clothes and walk away. Out of fear of her father's threats, she did not divulge the incident to anyone.

Sometime in June 2007, appellant and AAA were planting coconut seedlings in a coconut plantation in Barangay XXX. Again, appellant removed AAA's clothes and ordered her to lie down on the banana leaf gathered by appellant. Appellant inserted his penis into AAA's vagina and fondled her breast.

Around October 2007, while at a lanzones plantation in Barangay XXX, appellant approached AAA, ordered her to lie down on the grass and took her clothes off. Then appellant inserted his penis into AAA's vagina, fondled her breast and kissed her lips. Thereafter, appellant clothed AAA and ordered her to collect the lanzones.

Sometime in 2008, appellant attempted to rape AAA in their house. He was able to undress her but failed to rape her.

Several months later, BBB noticed that AAA's stomach was getting bigger. BBB took AAA to a hilot who told BBB that AAA is eight months pregnant. It was at this time that AAA told BBB that she was raped by her father. AAA gave birth to a baby boy whom they gave away for adoption. AAA said that she wants her father to pay for his crime.

Appellant denied the charges and insisted that they were instigated by some persons unknown to him to destroy his good reputation and character.

In its Decision[7] dated December 6, 2011, the Regional Trial Court (RTC), Oriental Mindoro, Branch 39, found appellant guilty of three counts of rape and one count of acts of lasciviousness. The fallo of the RTC Decision reads:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

- In Criminal Case No. CR-08-9204, this Court finds the accused OBALDO BANDRIL y TABLING GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay the costs;

- In Criminal Case No. C-08-9205, this Court finds the accused OBALDO BANDRIL y TABLING GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay the costs;

- In Criminal Case No. C-08-9206, this Court finds the accused OBALDO BANDRIL y TABLING GUILTY beyond reasonable doubt as principal of the crime charged against him in the aforementioned Information, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE, and to PAY the private complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P25,000.00 as exemplary damages, and to pay the costs;

- In Criminal Case No. C-08-9207, this Court finds the accused OBALDO BANDRIL y TABLING GUILTY beyond reasonable doubt as principal of the crime of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the RPC, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from SIX (6) MONTHS OF ARRESTO MAYOR, AS MINIMUM, to SIX (6) YEARS OF PRISION CORRECCIONAL, AS MAXIMUM and to PAY the private complainant the amount of P20,000.00 as civil indemnity, P30,000.00 as moral damages, P30,000.00 as exemplary damages, and to pay the costs;

The aforementioned penalties shall be served by the accused SUCCESSIVELY.

SO ORDERED.[8]

The RTC ruled that the prosecution was able to prove that appellant raped his own daughter AAA sometime in March 2007, June 2007 and October 2007. The RTC noted that AAA categorically testified as to the commission of the rapes and that AAA positively identified appellant as the perpetrator. The medico-legal report stating that AAA has healed hymenal lacerations also confirmed AAA's testimony, said the RTC. The RTC also noted that at the time she was raped, AAA was only 14 years old as she was born on December 17, 1993 per her birth certificate. Aside from appellant's admission that AAA is his daughter, the same certificate also proved the qualifying circumstance of relationship between appellant and AAA. The RTC rejected appellant's denial on the ground that it cannot prevail over AAA's positive testimony. On the charge of attempted rape, the RTC found appellant guilty of acts of lasciviousness. The RTC noted that while appellant was able to undress AAA and tried to sexually assault her, there is no showing that appellant's penis touched any part of AAA's body.

Appellant appealed and claimed that the RTC erred in convicting him despite the prosecution's failure to prove his guilt beyond reasonable doubt. Appellant averred that the RTC is expected to properly evaluate and weigh the testimony of the witnesses, particularly of the victim herself.

The CA dismissed the appeal and affirmed the RTC Decision with modification in that the award of exemplary damages in the three rape cases was increased to P30,000 and 6% interest per annum was imposed on all the damages awarded. The fallo of the assailed CA Decision reads:

WHEREFORE, the appeal is DISMISSED. The December 6, 2011 Joint Decision x x x of the Regional Trial Court of Oriental Mindoro, Branch 39 in Criminal Case Nos. x x x CR-08-9204, CR-08-9205, CR-08[-]9206 and 08-9207 are AFFIRMED with modifications in that the amount of exemplary damages awarded to "AAA" in Criminal Case Nos. CR-08-9204, CR-08-9205, CR-08[-]9206 is increased to P30,000.00 for each case, and interest at the rate of six percent (6%) per annum is imposed on all the damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.[9]

The CA found that AAA was telling the truth when she declared that her father raped her on three separate occasions. The CA said that AAA was consistent in her narration on how she was abused by her father in their own house, in the coconut plantation and in the lanzones plantation. The CA also agreed with the RTC's finding that appellant is guilty of acts of lasciviousness when he removed her clothes and tried to sexually assault her a fourth time. Appellant's acts clearly showed lewdness and are indecent and inappropriate, said the CA.

Hence, this appeal. Appellant filed a manifestation in lieu of a supplemental brief.

We dismiss the appeal for lack of merit. The RTC and CA did not err in convicting appellant for three counts of rape and one count of acts of lasciviousness. On appellant's claim that the RTC was expected to properly evaluate and weigh the testimony of the witnesses, particularly of the victim herself, we note that the RTC properly considered AAA's testimony in ruling that AAA categorically testified as to the commission of the rapes and positively identified appellant as her rapist. In fact, the RTC quoted AAA's testimony in its Decision, to wit:

[Q]: So you remember when was the first time?

A: In March 2007, Ma 'am.

xxx

Q: When your father went on top of you was he nude?

A: Yes, Ma'am.

Q: So when he went on top of you, what did he do next?

A: He already raped me, Ma 'am.

Q: When you say he raped [you], what exactly did he do to you, Madam Witness?

A: "Inaano niya ako sa ari ko."

Q: Are you telling us that your father inserted his penis to your vagina?

x x x x x x x x

A: Yes Ma'am.

Q: So how long was your father's penis in your vagina, if you could tell us?

A: Quite a long time, Ma 'am x x x.[10]

[Second rape]

[Q]: xxx So when did the second rape incident happened?

A: In the month of June 2007 Ma 'am.

Q: So tell us what happened on that second time?

A: Same thing happened Ma 'am.

x x x x x x x x

Q: So tell us exactly what was that same incident that happened?

A: He also took off my clothes Ma 'am.

Q: After taking off your clothes, what did he do next?

A: He inserted his penis.

Q: On what part of your body did he insert his penis?

A: Into my vagina.

Q: And for this second time, how long was he in that position?

A: Quite long, Ma'am xxx.[11]

[Third rape]

[Q]: x x x What date was that third incident?

A: October 2007 Ma'am.

x x x x x x x x

Q: After you were made to lie down, what did your father exactly do?

A: He took off my clothes.

Q: And after taking off your clothes, what happened next?

A: He also took off his clothes.

Q: So after he took off his clothes, what did he do next?

A: He went on top of me again.

Q: So after he went on top of you, what did he actually do?

A: He already inserted his penis into my vagina, Ma'am xxx.[12]

The CA also found that AAA was telling the truth when she declared that her father raped her on three separate occasions. The rule is that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, as in this case, is accorded full weight and credit as well as great respect, if not conclusive effect.[13] And after our own examination of AAA's testimony, we find no reason to disagree with the RTC and CA in finding AAA as a credible witness.

We also agree with the RTC in rejecting appellant's denial of the rape charges against him. Said denial cannot prevail over AAA's credible and positive testimony that appellant raped her.[14]

Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under 12 years of age or is demented, even though none of the circumstances mentioned above be present. In incestuous rape of a minor, actual force or intimidation need not be employed where the overpowering moral influence of the father would suffice.[15] In this case, appellant had carnal knowledge three times of his daughter, AAA, who was then only 14 years old.

As regards appellant's conviction for acts of lasciviousness, not for attempted rape, we find no reason to disturb it. Appellant's acts of undressing AAA and trying to sexually assault her a fourth time are lascivious acts. These acts are clearly lewd, indecent and inappropriate. Lewdness is defined as an "obscene, lustful, indecent, and lecherous" act which signifies that form of immorality carried on a wanton manner.[16] Indeed, appellant cannot be convicted of attempted rape since appellant's penis never touched any part of AAA's body.[17] For there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however, slight, is not completed.[18]

For the crimes of rape, the penalty of reclusion perpetua without eligibility for parole, and the award of P75,000 as civil indemnity, P75,000 as moral damages and P30,000 as exemplary damages for each count were correct.[19] For the crime of acts of lasciviousness, the penalty of imprisonment for six months of arresto mayor, as minimum, to six years of prision correctional, as maximum, and the award of P20,000 as civil indemnity, P30,000 as moral damages, P30,000 as exemplary damages were also correct.[20] We likewise agree with the CA in awarding 6% interest per annum on all the damages awarded from the date of finality of this Decision.[21]

WHEREFORE, we DISMISS the appeal and AFFIRM the September 24, 2013 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05527.

With costs against accused-appellant.

SO ORDERED.

Peralta,[*] J., Acting Chairperson, Perez,**] Perlas-Bernabe,[***] and Leonen,[****]JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2071 dated June 23, 2015.

[**] Designated additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 22, 2014.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2072 dated June 23, 2015.

[****] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084-B dated June 29, 2015.

[1] Rollo, pp. 2-11. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[2] The victim's real name and personal circumstances or any other information tending to establish or compromise her identity as well as those of her immediate family are withheld per *People v. Cabalquinta*, 533 Phil. 703, 709 (2006).

[3] Records (Crim. Case No. CR-08-9204), p. 1.

[4] Records (Crim. Case No. CR-08-9205), p. 1.

[5] Records (Crim. Case No. CR-08-9206), p. 1.

[6] Records (Crim. Case No. CR-08-9207), p. 1.

[7] Records (Crim. Case No. CR-08-9204), pp. 130-141. Penned by Judge Manuel C. Luna, Jr.

[8] *Id.* at 140-141.

[9] Rollo, p. 10.

[10] Records (Crim. Case No. CR-08-9204), pp. 135-136.

[11] *Id.* at 136.

[12] *Id.* at 137.

[13] *People v. Sabadlab*, G.R. No. 186392, January 18, 2012, 663 SCRA 426, 440-441.

[14] *People of the Philippines v. Oscar Santos y Encinas*, G.R. No. 205308, February 11, 2015, p. 8.

[15] *People v. Dominguez, Jr.*, 650 Phil. 492, 510 (2010).

[16] *Id.* at 518.

[17] Records (Crim. Case No. CR-08-9204), p. 139.

[18] *People v. Dominguez, Jr.*, *supra* note 15, at 515.

[19] *People of the Philippines v. Oscar Santos y Encinas*, *supra* note 14, at 9.

[20] *People v. Dominguez, Jr.*, *supra* note 15, at 523-524.

[21] *People of the Philippines v. Oscar Santos y Encinas*, *supra* note 14, at 10-11.

July 27, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on July 6, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 27, 2015 at 11:30 a.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

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