

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CCC, ACCUSED-APPELLANT.

G.R. No. 231925. November 19, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

For consideration of this Court is the appeal of the Decjsion[1] dated February 14, 2017 of the Court of Appeals (CA) dismissing appellant CCC's appeal and affirming with modification, the Judgment[2] dated October 8, 2014 of the Regional Trial Court (RTC), Branch 43, Gingoog City in Criminal Case No. 2013-5130 convicting the same appellant of the crime of qualified rape.

The facts follow.

AAA,[3] the victim, and her twin sister were born on July 6, 1997 to their parents, appellant and BBB. The twins were raised by VVV, a foster mother, until they were 11 years old. AAA and her twin sister were sent home to their biological parents in 2009 because they allegedly stole something from their foster mother.

On November 27, 2011, AAA was asleep when appellant carried her downstairs to his bed. Appellant held AAA's hands and kissed her on the lips, neck and down to her abdomen. Thereafter, appellant undressed-himself and took off AAA's dress. Appellant placed himself on top of AAA, proceeded to kiss her and then inserted his penis inside her vagina.

According to AAA, appellant repeated the deed several times on different dates. The last incident happened on December 30, 2012. On the evening of that date, appellant brought AAA along the seashore of a nearby village using his boat. While on the seashore, appellant made AAA lie down on the sand, and with her back on the sand, he brought himself down and kissed her. Appellant inserted his penis in AAA's vagina, while he was on top of her. AAA tried to fight back, but appellant delivered a fist blow on her abdomen. When appellant finished satisfying his lust, he pulled out his penis, wiped it off and told AAA to get up. Appellant then instructed AAA to go back to the boat.

Unable to bear the burden, AAA confided to her twin sister. Her twin sister sought help from their foster mother. Appellant was eventually arrested and held in custody.

Hence, an Information was filed against appellant which reads as follows:

That on or about and since December 30, 2012, on several occasions, at more or less 8:00 o'clock in the evening, along the seashore of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously force and intimidate AAA, 15 years old, minor, and then forcibly committed sexual intercourse by forcibly inserting his penis to the vagina of the said minor for several occasions, against her will. With the qualifying/aggravating circumstance of (sic) that the victim is under eighteen (18) years of age and the offender/accused is the father of the victim.

Contrary to and in violation of Article 266-A, paragraph 1, of the Revised Penal Code, in relation to R.A.

7610.[4]

During his arraignment on February 5, 2013, appellant, with the aid of a counsel, entered a plea of "not guilty."

Appellant denied the charge against him and claimed that on December 30, 2012 at 7 o'clock in the evening, he was at sea. According to him, when he left their house, his wife and the rest of his children were around.

The RTC found appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua. The dispositive portion of the Judgment dated October 8, 2014 reads follows:

Wherefore, premises considered, the Court finds accused [CCC] is GUILTY beyond reasonable doubt [of] the crime of Rape and sentences him to an imprisonment of RECLUSION PERPETUA. He is directed to pay AAA the following sums: Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php30,000.00 as exemplary damages in each count.

It is further ordered that his preventive detention at BJMP-Gingoog City is fully credited in the service of his sentence. He shall serve sentence at [the] Davao Penal Farm at Dujali, Davao Del Norte.

SO ORDERED.[5]

The CA affirmed the Decision of the RTC with modification that appellant is guilty beyond reasonable doubt of two (2) counts of Qualified Rape under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, in relation to R.A. No. 7610 and ordered appellant to pay AAA the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 as exemplary damages, thus:

WHEREFORE, foregoing premises considered, this ordinary appeal is DENIED for lack of merit. The 08 October 2014 Judgment rendered by the Regional Trial Court, Branch 43, Gingoog City, Misamis Oriental, in Criminal Case No. 2013-5130 is AFFIRMED with MODIFICATION. Appellant [CCC] is found GUILTY beyond reasonable doubt of two (2) Counts of Qualified Rape under Article 266-A(1) of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7160 (sic).

Accordingly, appellant [CCC] is SENTENCED to suffer the penalty of reclusion perpetua for each case, in lieu of the abolition of death penalty under Article 266-B of the Revised Penal Code as amended by R.A. No. 8353, in relation to R.A. No. 7160 (sic). Moreover, Appellant [CCC] is hereby ORDERED to pay AAA the amount of Seventy Thousand Pesos (sic) (P75,000) as civil indemnity; Seventy Thousand Pesos (sic) (P75,000) as moral damages; and Seventy Thousand Pesos (sic) (P75,000) as exemplary damages for each case.

All damages awarded shall earn interest at the rate of 6% per annum from date of finality of judgment until fully paid.

SO ORDERED.[6]

Hence, the present appeal.

According to appellant, the prosecution was not able to establish the elements of the crime of rape.

The appeal lacks merit.

Under paragraph 1(a), Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[7] Thus, all the elements are present. Furthermore, the Certificate of Live Birth[8] of AAA

proves that she was 15 years old when she was raped by appellant and that the latter is indeed her biological father, making the said crime committed by appellant that of qualified rape.

In testifying before the trial court, AAA was able to narrate in detail the crime committed, thus:

Q: Do you remember when was that when you were raped by yours (sic) father?

A: November 27, 2011.

x x x x

Q: That was the first rape incident with your father?

A: That was the first time that I (sic) molested by my father.

Q: And then you were raped on November 27, 2011 what time was this?

A: Eight o'clock in the evening.

Q: Where did this happen?

A: In our house.

Q: How did it happen?

A: At that time I was asleep and he carried me.

Q: Where did he carry you?

A: Towards his bed downstairs.

Q: What happened there?

A: He held my hand.

Q: What happened after that?

A: He kissed me.

Q: What part of your body was kissed?

A: Lips, neck, down to my stomach.

Q: And then what happened?

A: He undressed himself.

Q: And then what happened?

A: He undressed me.

Q: What did you do when he undressed you?

A: I just followed him because he will kill me if I would not follow his order.

Q: What happened after that?

A: He rode (sic) on top of me.

Q: What did he do to you after he rode (sic) on top of you?

A: He kissed me. He inserted his penis into my vagina.

Q: Was this the first time?

A: Yes, ma'am.

Q: Was that the (sic) first experience with a man?

A: Yes, ma'am.

Q: What did you feel?

A: Pain.

Q: You said that there were several times that he molested you, could you remember what happened on December 30, 2012?

A: That was the last time he raped me.

Q: What time was (sic) this that was (sic) happened?

A: I could not remember.

Q: Was it in the evening?

A: Night time.

Q: Where did it happen?

A: XXX

Q: Why were you at XXX?

A: He brought me to fish.

Q: Is this XXX located in YYY?

A: Yes, ma'am.

Q: How was that he was able to bring you to XXX, how is (sic) this happen?

A: He would go on fishing and the place where the [boat] will be (sic) dock.

Q: Did you not object?

A: No, because he would threat (sic) to kill me because he is bringing a knife.

Q: Did you actually arrive at XXX?

A: Yes, ma'am.

Q: When you said XXX, you mean the seashore?

A: Yes, ma'am.

Q: Who was there aside from you and [CCC]?

A: The two of us.

Q: What happened when you arrived in (sic) the seashore?

A: He molested me.

Q: How did he do this?

A: He would make a push-and-pull movement.

Q: When you arrived there, could you tell us the details how did it happen?

A: He made me lie on the sand.

Q: And then what happened after that?

A: He rode on top of me.

Q: And then?

A: He kissed me. He inserted his penis into my vagina.

Q: Every time that your father does this, what was your reaction?

A: I cried.

Q: Did you not tell him to stop?

A: No, ma'am, because he tell (sic) me to shot (sic) up.

Q: How did he tell you to shot (sic) up?

A: He told me to shot (sic) up because he would kill me if I will not heed his order.

Q: Was there a time that he physically hit you when you protested?

A: Yes, Ma'am.

Q: How did he hurt you?

A: He would box my stomach.

Q: How many times did he box your stomach?

A: Many times.

Q: On December 30, 2012, did he box your stomach?

A: Yes; Ma'am.

Q: How many times?

A: Many times.

Q: Why did he box you, did you protest?

A: Yes, Ma'am.

Q: How did you fight back?

A: I also boxed him, but he was strong.

Q: You said that your father would kiss you before having sexual intercourse with you, how did he kiss you?

A: He would suck my neck and stomach.

Q: You have many kiss mark[s] in your body?

A: Yes, Ma'am.

Q: How many?

A: Many.

Q: When you said many in your body that you have kissed (sic) mark?

A: In my neck, around my nipple, my breast and my stomach.

Q: How did this kiss mark[s] appear, could you describe the appearance?

A: Reddish.

Q: They are not injured?

A: No, Ma'am.

Q: On your neck, including your breast?

A: Yes, Ma'am.

Q: Did you tell anybody about your painful experience?

A: To my twin sister.[9]

According to appellant, AAA harbored ill-feelings towards him which motivated her to file charges for rape, hence, her testimony is not credible. Through the testimony of AAA, it was clearly proven that appellant committed the crime, and as such, an attack on her credibility is futile. In *People v. Malana*,^[10] this Court ruled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, thus:

In reviewing rape cases we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of

the evidence for the defense.[11]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction.[12] As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial.[13] The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[14] None of these circumstances are present in the case at bar to warrant its exception from the coverage of this rule.

It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[15] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused,[16] as in this case where the accusations were raised by private complainant against her own father.[17]

Therefore, the CA did not err in finding merit to the findings of the RTC, thus:

We find no reason to deviate from the ruling of the RTC that the victim was able to describe in full and graphic detail what she went through. The private complainant credibly testified on the details of her harrowing experiences from the first to the last time she was sexually molested by appellant. Absent any material or significant inconsistency in her testimony, the same can be accorded with great weight and credibility.

In addition, appellant's contention that appellee harbored ill-feelings towards her father which motivated her to file charges for rape is unavailing. It is highly unthinkable for a victim to falsely accuse her father solely by reason of ill motives or grudge. 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. Ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.[18]

Appellant further argues that AAA's testimony that she was raped on December 30, 2012 at the seashore is unbelievable, because there were many houses along the said area. Such argument is unconvincing. It is recognized that lust is no respecter of time and place; rape can, thus, be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[19]

As to appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[20]

As to the penalty imposed, the RTC was correct in imposing the penalty of reclusion perpetua in lieu of death because of its suspension under R.A. No. 9346.[21] The CA, however, was also correct in finding that appellant is guilty of two (2) counts of qualified rape, because the prosecution was able to prove the occurrence of two rapes on two different dates, committed by appellant on AAA. As ruled by the CA:

In the case of *People and AAA v. Court of Appeals, Carampatana, Opporto and Alquisola*, the Supreme Court established the following doctrine:

Finally, the Court notes that although the prosecution filed only a single Information, it, however, actually

charged the accused of several rapes. As a general rule, a complaint or information must charge only one offense, otherwise, the same is defective. The rationale behind this rule prohibiting duplicitous complaints or informations is to give the accused the necessary knowledge of the charge against him and enable him to sufficiently prepare for his defense. The State should not heap upon the accused two or more charges which might confuse him in his defense. Non-compliance with this rule is a ground for quashing the duplicitous complaint or information under Rule 117 of the Rules on Criminal Procedure and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived. The accused herein, however, cannot avail of this defense simply because they did not file a motion to quash questioning the validity of the Information during their arraignment. Thus, they are deemed to have waived their right to question the same. Also, where the allegations of the acts imputed to the accused are merely different counts specifying the acts of perpetration of the same crime, as in the instant case, there is no duplicity to speak of.

In the case at bar, since the prosecution was able to prove two counts of rape, the appellant must rightfully be charged with the same. Similarly, Section 3, Rule 120 of the Revised Rules of Criminal Procedure further states that when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose upon him the proper penalty for each offense.

As the appellant failed to object and file a motion to quash the information based on the defective and incorrect recital of the facts stated in the same for the two (2) counts of rape, the effect is that he is deemed to have waived such defense. Hence, he can be charged and convicted for two (2) counts of rape.[22]

In addition, the qualification "without eligibility for parole" should be affixed to qualify reclusion perpetua pursuant to A.M. No. 15-08-02-SC.[23]

Moreover, under Article 266-A(1), in relation to Article 266-B of the RPC, the denomination of the crime should be merely qualified rape without reference to R.A. No. 7610, because the law that governs qualified rape is the Revised Penal Code, as amended by R.A. No. 8353, and not R.A. No. 7610, particularly Section 5(b) thereof, which pertains to sexual intercourse with a child exploited in prostitutions or subject to the sexual abuse.

As to the award of damages, a modification must be made per *People v. Jugueta*. [24] Where the penalty imposable is death but because of its suspension under R.A. No. 9346, the penalty imposed is reclusion perpetua, the amounts of damages shall be as follows:

- 1) Civil Indemnity – P100,000.00
- 2) Moral Damages – P100,000.00
- 3) Exemplary Damages – P100,000.00

WHEREFORE, the appeal of CCC is DISMISSED for lack of merit, and the Decision dated February 14, 2017 of the Court of Appeals affirming with modification the Judgment dated October 8, 2014 of the Regional Trial Court, Branch 43, Gingoog City, Misamis Oriental in Criminal Case No. 2013-5130, and convicting appellant of two (2) counts of qualified rape, is AFFIRMED with MODIFICATION –

(1) as to the nomenclature and penalty of the crime, namely qualified rape under Article 266-A(1), in relation to Article 266-B of the RPC, as amended by R.A. 8353, and imposing the penalty of reclusion perpetua without eligibility for parole on each count; and

(2) as to the award of damages, which shall now be as follows: civil indemnity in the amount of P100,000.00; moral damages in the amount of P100,000.00; and exemplary damages in the amount of P100,000.00, on each count, as ruled by this Court in *People v. Jugueta*, [25] with the appellant paying an interest of six percent (6%) per annum on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, and J. Reyes, Jr., JJ., concur.

Gesmundo and Hernando, JJ., on wellness leave.

[1] Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring; rollo, pp. 3-22.

[2] Penned by Presiding Judge Mirabeaus A. Undalok; CA rollo, pp. 20-25.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 2006), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them 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."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

[4] Records, p. 6.

[5] *Id.* at 86.

[6] CA rollo, p. 89.

[7] *People v. Fragante*, 657 Phil. 577, 592 (2011).

[8] Exhibit "B."

[9] TSN, August 13, 2013, pp. 5-10.

[10] 646 Phil. 290 (2010).

[11] *People v. Padilla*, 617 Phil. 170, 182-183 (2009); *People v. Ramos*, 577 Phil. 297, 304 (2008).

[12] *People v. Peralta*, 619 Phil. 268, 273 (2009).

[13] *Remiendo v. People*, 618 Phil. 273, 287 (2009).

[14] *People v. Panganiban*, 412 Phil. 98, 108-109 (2001).

[15] *People v. Paculba*, 628 Phil. 662, 672-673 (2010).

[16] *People v. Ugos*, 586 Phil. 765, 774 (2008); *People v. Miñon*, 477 Phil. 790, 804-805 (2004).

[17] *People v. Malana*, *supra* note 10, at 301-302. (Citations omitted).

[18] Rollo, pp. 17-18.

[19] *People v. Traigo*, 734 Phil. 726, 730 (2014).

[20] *People v. Abulon*, 557 Phil. 428, 448 (2007).

[21] Art. 266-B, Revised Penal Code. 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;

x x x x

[22] *Rollo*, pp. 19-20.

[23]

II. In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1)

x x x; and

(2)

When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify reclusion perpetua in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346. (Underscoring ours)

[24] 783 Phil. 806 (2016)

[25] *Id.*

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