

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH PAGKATIPUNAN Y CLEOPE, ACCUSED-APPELLANT.

G.R. No. 232393. August 14, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated November 25, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07357 affirming, with modification, the trial court's twin verdicts of conviction against appellant Joseph Pagkatipunan y Cleope for rape and child abuse.

The Proceedings Before the Trial Court

The Charges

In Crim. Case No. 06-32724, appellant Joseph Pagkatipunan y Cleope was charged with rape under Article 266-A of the Revised Penal Code (RPC),[2] viz:

That on or about the 16[th] day of October 2006, in the Municipality of Cainta, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation and with the attendance of the aggravating circumstance of dwelling, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party AAA, eight (8) years old, a minor, at the time of commission of the crime against her will and without her consent to her damage and prejudice.

CONTRARY TO LAW.[3]

In Crim. Case No. 06-32725, Pagkatipunan was charged, this time, with child abuse under Section 5 (b), Article III of RA 7610,[4] viz:

That on or about the 18[th] day of October 2006, in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and with the attending circumstance of dwelling, sexually abuse the person of the offended party AAA, eight (8) years old, a minor at that time of the commission of the crime by licking her vagina, against her will and without her consent, which act debases, degrades and demeans her intrinsic worth as human being, to her damage and prejudice.

CONTRARY TO LAW.[5]

The cases were raffled to the Regional Trial Court-Br. 72, Antipolo City.

On arraignment, Pagkatipunan pleaded not guilty to both charges.[6] Joint trial ensued.

The Prosecution's Version

On October 16, 2006, eight-year old AAA was sleeping alone in the sala of their house in Cainta, Rizal. She was

awakened when Pagkatipunan barged into the house, undressed her, and then ordered her to keep quiet. She was frightened. Pagkatipunan forced her to lie down on a chair and inserted his penis in her vagina. After consummating his lust, he left. She did not tell anyone in her family about her traumatic experience.[7]

Two (2) days later, on October 18, 2006, AAA was again left alone in the house when Pagkatipunan once more barged in and ordered her this time to sit on the sala. He further commanded her to undress[8] then he spread her legs and licked her vagina.[9]

He was doing the act when AAA's father, BBB, arrived. Enraged by what he saw, BBB rushed straight and punched Pagkatipunan who nonetheless managed to flee. Wasting no time, BBB immediately reported the incident to the barangay officials who caused Pagkatipunan's arrest.[10]

Chief Inspector Jesille C. Baluyot examined AAA and found a shallow healed hymenal laceration at the 6 o'clock position.[11]

The Defense's Version

Pagkatipunan denied the accusations against him. He admitted though that AAA and BBB were his neighbors. He testified that on October 16, 2006, he just stayed home and did the chores.

On October 18, 2006, he went to AAA's house around noontime to watch over her while her parents were at work.[12]

The Trial Court's Ruling

As borne in its two (2) separate Decisions dated October 9, 2014,[13] the trial court found Pagkatipunan guilty of both charges, thus:

Crim. Case No. 06-32724

WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of Rape, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and ordering him to pay the victim P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

SO ORDERED.[14]

Crim. Case No. 06-32725

WHEREFORE, finding the accused JOSEPH PAGKATIPUNAN y CLEOPE guilty beyond reasonable doubt for Violation of Section 5(b), 2nd and 3rd phrases of Article III of R.A. No. 7610 in rel. to Article 14, No. 3 of the Revised Penal Code, as amended and in further rel. to Section 5 (a) of R.A. 8369 he is hereby ordered to suffer the penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years and one (1) day of reclusion temporal as maximum. Accused is ordered to pay the victim the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.[15]

The trial court gave full weight and credence to AAA's positive and categorical testimony pointing to Pagkatipunan as the person who raped and sexually abused her. It noted that AAA, a minor, would not concoct a story of defloration, allow her private parts to be examined, and subject herself to shame if the same were not true.[16] The finding that AAA sustained shallow hymenal lacerations only did not negate the fact that AAA was raped. For the slightest penetration of the male organ into the labia minora is sufficient.[17]

The Proceedings Before the Court of Appeals

On appeal, Pagkatipunan faulted the trial court for giving full weight and credence to AAA's purportedly inconsistent and incredible testimony. Too, he argued that carnal knowledge was not proven in view of AAA's alleged failure to categorically state that he inserted his penis in her vagina.[18]

The Court of Appeals' Ruling

Under Decision dated November 25, 2016,[19] the Court of Appeals affirmed with modification, viz:

WHEREFORE, the appeal filed by Joseph Pagkatipunan y Cleope is DISMISSED.

The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32724 is AFFIRMED with MODIFICATION that Joseph Pagkatipunan y Cleope is ORDERED to pay Thirty Thousand Pesos (P30,000.00) as exemplary damages.

The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32735 is AFFIRMED with the following MODIFICATIONS: Joseph Pagkatipunan y Cleope is sentenced to an indeterminate penalty of 13 years, 9 months and 1 day of reclusion temporal as minimum to 17 years and 4 months of reclusion temporal as maximum. He is ORDERED to pay a fine of Fifteen Thousand Pesos (P15,000.00); Twenty Thousand Pesos (P20,000.00) as civil indemnity; Fifteen Thousand Pesos (P15,000.00) as moral damages; and Fifteen Thousand Pesos (P15,000.00) as exemplary damages.

Joseph Pagkatipunan y Cleope is ORDERED to pay interest on all monetary awards for damages in both cases at the rate of six percent (6%) per annum from the date of finality of this Decision until full satisfaction thereof.

SO ORDERED.[20]

The Court of Appeals held that the prosecution was able to establish that on October 16, 2006, Pagkatipunan had carnal knowledge of AAA and on October 18, 2006, he sexually abused AAA by licking her private part. It found that AAA, a child of eight (8) years when the harrowing incidents happened and merely twelve (12) years old when she took the witness stand, would not have fabricated such charges so humiliating to herself and her family had she not been truly subjected to the painful experiences of rape and sexual abuse.[21]

The Present Appeal

Pagkatipunan now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated October 2, 2017,[22] Pagkatipunan and the Office of the Solicitor General manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[23]

Issue

Did the Court of Appeals err in affirming the verdicts of conviction for rape and child abuse against Pagkatipunan?

Ruling

Crim. Case No. 06-32724

Paragraph 1, Article 266-A of the RPC provides for the modes when rape is committed: (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; or (d) when the offended party is under twelve (12) years of age or is demented.

Where the victim is below twelve (12) years old, a case of statutory rape, the only subject of inquiry is whether

carnal knowledge took place. Proof of force, threat, or intimidation is unnecessary.[24]

Here, it is undisputed that AAA was only eight (8) years old when the incident happened.[25] The only remaining question is "did Pagkatipunan have carnal knowledge of AAA?" On this score, AAA testified:

Q

Okay, when you were sleeping on October 16, 2006, what happened?

A

Joseph inserted his penis in my vagina, sir.

Q

Do you know how Joseph was able to enter your house?

A

Yes, sir. He opened our door, sir.

Q

Were you already awake when Joseph opened your door?

A

No, sir.

Q

And at what point did you wake up?

A

When he took off my clothes, sir.

Q

Can you still remember what were you wearing then?

A

I don't recall, sir.

Q

When Joseph took off your clothes, what did you do?

A

I was awakened, sir.

Q

And what did you do after that?

A

I stood up, sir.

Q

What did Joseph do when he saw you standing?

A

He told me to keep quiet and not to report the incident, sir.

Q

How did you feel when Joseph told you that?

A

I got frightened, sir.

Q

Why were you frightened?

A

I was afraid that he might harm me, sir.

Q

When Joseph threatened you, what did you do after that?

A

Nothing, sir.

Q

And what did he do after that?

A

That was the time he inserted his penis in my vagina, sir.

Q

What did you feel?

A

I was in pain, sir.

Q

After that what did he do?

A

Nothing else, sir.

Q

And did he leave your house?

A

Yes, sir.[26] (emphases supplied)

As it was, AAA's testimony did not stand alone. The trial court also considered Chief Inspector Baluyot's corroborative medical finding of a shallow healed laceration of AAA's hymen at the six o'clock position. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisites of carnal knowledge are deemed to have been sufficiently established.[27]

Appellant, nevertheless, attempts to discredit AAA because the latter allegedly admitted not seeing what exactly got inserted in her vagina.[28] To put things in perspective, We quote AAA's relevant testimony, thus:

Q

When Joseph entered his penis in your vagina you were seated properly? What was your position?

A

I was seated, sir.

Q

Where was your thigh located, pressed on the seat itself or in upward position?

A

Seated properly on the chair, sir.

Q

Was your thigh wide apart or pressed together? [sic]

A

Pressed together, sir.

Q

When the accused here, you said his penis entered your vagina, were your thigh[s] pressed together or separated?

A

He spread it, sir. [sic]

Q

Were you able to see his penis?

A

No, sir.

Q

Why?

A

I did not look at it, sir.

Q

Where are you looking at?

A

Looking at him, sir.

Q

Okay, and were you able to see his hands?

A

Yes, sir.

Q

Where was it located? His right hand where is it located?

A

In my thigh, sir. [sic]

Q

How about his left hand?

A

In the chair, sir.[29] [sic]

Based on AAA's up and close encounter with appellant, she invariably testified it was appellant's penis, and no other, which appellant himself inserted in her vagina.[30]

Penalty in Crim. Case No. 06-32724

The Information alleged that the aggravating circumstance of dwelling attended the commission of rape.

Dwelling aggravates a felony if it is committed in the victim's home without the latter's provocation.[31] It is an aggravating circumstance because of the sanctity of privacy which the law accords to the human abode. Here, it was amply established that Pagkatipunán just barged into the dwelling of AAA and her family, took advantage of the moment while his neighbors' minor daughter was sleeping alone in the sala, and sexually ravaged her right there and then. His blatant violation of the sanctity of AAA and her family's dwelling aggravated the crime of rape. For the commission of a crime in another's dwelling shows worse perversity and produces graver harm.[32] He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere.[33]

Article 63 of the RPC, nonetheless, provides that "[i]n 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." Thus, although the aggravating circumstance of dwelling was alleged and proven here, the appropriate penalty would still be reclusion perpetua. As for the civil indemnity and damages, in accordance with prevailing jurisprudence,[34] the award of exemplary damages should be increased from P30,000.00 to P75,000.00, moral damages from P50,000.00 to P75,000.00, and civil indemnity from P50,000.00 to P75,000.00. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

Crim. Case No. 06-32725

To sustain a verdict of conviction under Section 5 (b) of RA 7610, the following elements must be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age.[35]

In the recent case of *People v. Tulagan*,[36] the Court decreed that when the victim is under twelve (12) years of age at the time the offense was committed, as here, the offense shall be designated as Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.[37] Thus, before an accused can be convicted of child abuse through lascivious conduct on a minor below twelve (12) years of age, the requisites of acts of lasciviousness under Article 336 of the RPC must be present in addition to the requisites of sexual abuse under Section 5 of RA 7610.[38]

The elements of acts of lasciviousness under Article 336 of the RPC are: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is

committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under twelve (12) years of age. Lewd is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity.[39]

Here, all the elements of lascivious conduct under RA 7610 and acts of lasciviousness under Article 336 of the RPC were clearly established. Records bear AAA's detailed narration of the incident when their neighbor Pagkatipunan entered the house of AAA and her family and ordered her to sit in the sala. There, he further ordered her to undress, and as soon as she did, he licked her vagina. According to AAA, she could not do anything because she was afraid of him.[40]

She recounted what he did to her just two (2) days after he inserted his penis in her vagina, thus:

Q

And when Joseph Pagkatipunan spread your legs, what did he do?

A

That was the moment he licked my vagina, sir.

Q

What was your reaction then?

A

I was afraid, sir.

Q

Did he say anything to you?

A

None, sir.

Q

While he was doing that, what happened?

A

My father saw it, sir.

Q

By the way, other than you said licking your private part, did he do anything else?

A

Yes, sir.

Q

What is that?

A

He inserted his penis in my vagina, sir.

Q

When was that?

A

That was October 16, sir.

Q

You said [awhile ago] that while Joseph was licking your private part your father arrived, what happened when your father arrived?

A

My father punched him, sir.[41]

AAA's testimony was positive, straightforward and categorical. Her father BBB corroborated her testimony. BBB testified that on October 18, 2006, around 1 o'clock in the afternoon, he got home from work and saw with his own eyes Pagkatipunan down on his knees licking AAA's vagina. He rushed straight and punched Pagkatipunan who managed to run out and escape.[42]

As in the first case, the trial court gave credence to AAA's testimony for being positive, straightforward and categorical. Indeed, the trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.[43] This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as in this case.[44]

Against AAA's positive testimony, Pagkatipunan only offered denial and alibi. We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former is generally held to prevail.[45]

Penalty in Crim. Case No. 06-32725

Clearly, Pagkatipunan should be convicted of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610.

The Information in Crim. Case No. 06-32725 likewise alleged that the aggravating circumstance of dwelling attended the commission of the felony. Records show that AAA was alone in the house when Pagkatipunan barged in.[46] He knew that AAA's father BBB was at work.[47] Yet again, he took advantage of this fact and committed acts of lasciviousness on AAA merely two (2) days after raping her.

One's dwelling place is a "sanctuary worthy of respect." [48] Our laws regard our homes with much respect, so much so that dwelling is considered an aggravating circumstance in determining the exact liability in criminal prosecutions. [49] Here, it is clear that Pagkatipunan purposely intended to commit his bestial act while AAA was alone in their house. His downright disrespect of the privacy and sanctity of his neighbors' home aggravates the crime he committed.

The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 of RA 7610, if the victim is below twelve (12) years old when the offense was committed, is reclusion temporal in its medium period. [50] Considering the presence of the aggravating circumstance of dwelling, the penalty shall be imposed in its maximum period. [51] Applying the Indeterminate Sentence Law, [52] the Court of Appeals correctly sentenced appellant to thirteen (13) years, nine (9) months and one (1) day of reclusion temporal as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. The imposition of P15,000.00 as fine in accordance with Section 31 (f) of RA 7610 [53] is also proper. In accordance with our pronouncement in *People v. Tulagan*, [54] however, the awards of civil indemnity should be increased from P20,000.00 to P50,000.00, moral damages from P15,000.00 to P50,000.00, and exemplary damages from P15,000.00 to P50,000.00. These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

ACCORDINGLY, the appeal is DENIED. The Decision of the Court of Appeals dated November 25, 2016 in CA-G.R. CR-HC No. 07357 is AFFIRMED with MODIFICATION.

In Crim. Case No. 06-32724, JOSEPH PAGKATIPUNAN y CLEOPE is found GUILTY of Rape. He is sentenced to Reclusion Perpetua and ordered to PAY P75,000.00 as civil indemnity; P75,000.00 as moral damages; and P75,000.00 as exemplary damages.

In Crim. Case No. 06-32725, JOSEPH PAGKATIPUNAN y CLEOPE is found GUILTY of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610. He is sentenced to the indeterminate penalty of thirteen (13) years, nine (9) months and one (1) day of reclusion temporal as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is further ordered to PAY P15,000.00 as fine; P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P50,000.00 as exemplary damages.

These amounts, except for the fine, shall earn six percent (6%) interest per annum from finality of this Decision until fully paid.

SO ORDERED.

Caguioa, [*] J. Reyes, Jr., and Zalameda, JJ., concur.
Carpio (Chairperson), J., on official leave.

[*] Acting Second Division Chairperson

[1] Rollo, pp. 2-17.

[2] As amended by RA 8353 otherwise known as the Anti-Rape Law of 1997.

[3] Rollo, p. 3.

[4] Otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

- [5] Rollo, p. 3.
- [6] Id.
- [7] Id. at 4.
- [8] CA rollo, p. 68.
- [9] Rollo, p. 11.
- [10] Id. at 4.
- [11] Id.
- [12] Id. at 4-5.
- [13] Penned by Judge Ruth D. Cruz-Santos; CA rollo, pp. 61-72.
- [14] CA rollo, p. 66.
- [15] Id. at 72.
- [16] Id. at 70-71.
- [17] Id. at 65.
- [18] Id. at 50-52.
- [19] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob concurring; rollo, pp. 2-17.
- [20] Rollo, pp. 16-17.
- [21] Id. at 9-10.
- [22] Id. at 20-21.
- [23] Id. at 27-29 and 35-36.
- [24] *People v. Araojo*, 616 Phil. 275, 287 (2009).
- [25] Rollo, p. 6.
- [26] Id. at 6-7.
- [27] See *People v. Sabal*, 734 Phil. 742, 746 (2014), citing *People v. Perez* 595 Phil. 1232, 1258 (2008).
- [28] CA rollo, p. 51-52.
- [29] Rollo, pp. 8-9.
- [30] Id. at 9.
- [31] *People v. Jugueta*, 783 Phil. 806, 849 (2016).
- [32] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.
- [33] See *People v. Bringcula*, G.R. No. 226400, January 24, 2018.
- [34] See *People v. Belen*, 803 Phil. 751, 774 (2017) and *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[35] *People v. Monroyo*, 811 Phil. 802, 812 (2017).

[36] G.R. No. 227363, March 12, 2019.

[37] This finds support in the first proviso in Section 5 (b) of RA 7610 which requires that "when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be."

[38] *People v. Caoili*, G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107, 152-153.

[39] *Lutap v. People*, G.R. No. 204061, February 5, 2018.

[40] CA rollo, p. 68.

[41] Rollo, p. 11.

[42] *Id.* at 4.

[43] See *People v. Nelmda*, 694 Phil. 529, 556 (2012).

[44] See *People v. Regaspi*, 768 Phil. 593, 598-599 (2015).

[45] *People of the Philippines v. Jordan Batalla*, G.R. No. 234323, January 07, 2019.

[46] Rollo, p. 11.

[47] *Id.* at 4-5.

[48] *People v. Villaros y Caranto*, G.R. No. 228779, October 8, 2018.

[49] *Id.*

[50] *Ramilo v. People*, G.R. No. 234841, June 3, 2019.

[51] See *People v. Delantar*, 543 Phil. 107, 125-126 (2007).

[52] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

[53] SECTION 31. Common Penal Provisions.

xxx

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

[54] G.R. No. 227363, March 12, 2019.

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