

## JASPER MONROY Y MORA, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 235799. July 29, 2019*

Ponente: PERLAS-BERNABE, J.

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### PERLAS-BERNABE, J.:

Assailed in this petition[1] for review on certiorari are the Decision[2] dated August 16, 2017 and the Resolution[3] dated November 7, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38406 which affirmed with modifications the Decision[4] dated October 12, 2015 and the Order[5] dated January 7, 2016 of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) finding petitioner Jasper Monroy y Mora (petitioner) guilty beyond reasonable doubt of violation of Section 5 (b), Article III of Republic Act No. (RA) 7610,[6] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

### The Facts

Petitioner was charged with Rape, in relation to RA 7610, in an Information[7] which reads:

That on or about October 17, 2014, in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously insert his penis into the vagina of one AAA,[8] 14 years old (DOB: x x x), against her will and without her consent, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to Law.

Records show that AAA and petitioner used to live in the same house, together with AAA's older sister, BBB, and BBB's husband, CCC. CCC is petitioner's uncle.[9]

The evidence for the prosecution show that on October 17, 2014, at around nine (9) o' clock in the evening, AAA was watching television in the sala when petitioner, who was drunk and wearing only his underwear, approached her and suddenly pulled the blanket that AAA was using, telling her that he was just borrowing it.[10] At that time, BBB and CCC were at the second floor of the house. After a while, AAA asked for her blanket back from petitioner, as she was ready to go to sleep. However, petitioner grabbed her left arm and pulled her onto his bed. While pinning her to the bed, petitioner removed her shorts and underwear and thereafter, inserted his penis into her vagina. She tried to shout but petitioner covered her mouth; she feared for her life after recalling an incident in December 2013 when petitioner got mad and poked a knife against BBB's neck.[11]

Thereafter, petitioner stood up, walked to the kitchen, and told her that he was going to sleep. Meanwhile, as AAA pulled up her clothes, she realized that her life was already worthless and contemplated on committing suicide.[12] Thus, she left a suicide note[13] and then consumed a medicine for dogs from the veterinary clinic being managed by the brother of AAA's brother-in-law. She woke up the following morning in the hospital and was discharged in the afternoon of the same day.[14]

On October 19, 2014, she confided to BBB what happened to her and together, they proceeded to the police station to report the incident.[15] A physical examination thereafter conducted on AAA revealed that "[a]nogenital findings are indicative of blunt force penetrating trauma to the hymen." [16]

The prosecution further alleged that prior to the incident on October 17, 2014, petitioner already attempted to rape her three (3) times. Petitioner threatened that she would stop going to school and be sent back to the province if she told anyone. However, when she learned that petitioner was going back to his wife and children in the province, she wrote a letter[17] stating the following:

"cge uwi ka para malaman talaga ngayon bakit naawa ako sau dahil mahal kita na ikaw talaga ang dahilan kung bakit ako nagpakamatay wala kay ate wala kay kuya ginawa ko lang yung kwento para hindi ka makulong para pag umuwi ka patay na ako kulong ka pa sinira mo lahat pati pangarap ko ngayon magkaalaman tayo mas maganda ako mag plano sayo dahil pag wala na ako kulong kanaman diba patas nayon hindi mo naman ako siniryoso eh kaya gagawin ko para sirain pamilya mo hindi mo ako kilala mas maganda ako magplano kaysa sayo ginamit mo kasi ako nong gabing yon. kaya humanda ka sabihin ko ni rape mo ako. sinira mo pagkatao ko sirain ko din pamilya mo para patas hindi ako nagbibiro"

In defense, petitioner claimed that in September 2014, AAA confessed that she had a crush on him, but he told her that he was too old for her, being twenty-eight (28) years old at the time. Thereafter, AAA twice confessed her feelings for him but he rebuffed her, pushing her to attempt suicide.[18] For fear that he might be blamed should AAA succeed in killing herself, petitioner sought permission from his uncle to go home to the province. When he told AAA about this, she got mad and threw a letter at him.[19]

On October 18, 2014, at around five (5) o'clock in the morning, petitioner saw AAA lying down at the clinic with foam frothing in her mouth. He called BBB and together, they brought AAA to the hospital. He was later told that AAA attempted suicide because he rejected her.[20]

#### The RTC Ruling

In a Decision[21] dated October 12, 2015, the RTC found petitioner guilty beyond reasonable doubt of violation of Section 5 (b), Article III of RA 7610, which provides:

#### ARTICLE III CHILD PROSTITUTION AND OTHER SEXUAL ABUSE

SEC. 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, 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: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

x x x x (Emphasis supplied)

Accordingly, the RTC sentenced petitioner to suffer an indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum, and to pay the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages.[22]

In convicting petitioner, the RTC found that the prosecution was able to prove the elements of violation of Section 5 (b), Article III of RA 7610, to wit: (a) the accused committed the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) the child, whether male or female, is below eighteen (18) years of age.[23]

In this case, it was established that petitioner had carnal knowledge of AAA, as shown by her candid and straightforward testimony and corroborated by the results of the physical examination conducted on her person. Likewise, it was established that AAA was barely fourteen (14) years old at the time of the incident, therefore deemed to be a "child" under the provisions of RA 7610. Finally, it was shown that AAA was intimidated by her previous encounters with petitioner, which included the instance when the latter poked a knife at BBB in AAA's presence. Clearly, as a child, AAA was an easy prey for petitioner to satisfy his sexual desires.[24]

Petitioner's motion for reconsideration[25] was denied in an Order[26] dated January 7, 2016; thus, he appealed his conviction to the CA.

#### The CA Ruling

In a Decision[27] dated August 16, 2017, the CA affirmed the RTC's Decision with modifications as to the penalty imposed and the damages awarded. Thus, the CA imposed upon petitioner the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal, as maximum. Further, the award of civil indemnity was reduced to P15,000.00 and moral damages to P15,000.00. Additionally, petitioner was directed to pay the amounts of P15,000.00 as exemplary damages and P15,000.00 as fine.[28]

In so ruling, the CA found that while it is true that petitioner had carnal knowledge of AAA, the sexual act was not forced; instead, it was consensual for the following reasons: first, AAA admitted to having written a letter[29] for petitioner stating, among others, that she loved him, that she was trying to prevent him from going home to the province, and that she will tell everyone that petitioner raped her in retaliation for him leaving her; second, the contents of the said letter corroborated the defense and version of the events offered by petitioner; third, petitioner did not threaten, intimidate, or force AAA to have sexual intercourse with him; and finally, AAA did not offer any form of resistance to petitioner's sexual advances. Nonetheless, the CA convicted petitioner for violation of Section 5 (b), Article III of RA 7610, under which — unlike rape — the consent of the offended party is immaterial. Further, it held that the disparity between the ages of petitioner and AAA placed the former in a stronger position over the latter as to enable him to enforce his will upon her, thereby constituting "influence" under RA 7610.[30]

Petitioner moved for reconsideration,[31] which was, however, denied in a Resolution[32] dated November 7, 2017; hence, this petition.

#### The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the conviction of petitioner for violation of Section 5 (b), Article III of RA 7610.

#### The Court's Ruling

The petition is meritorious.

In deciding Rape cases, it is well to emphasize that such crime is a serious transgression with grave considerations

and consequences both to the accused and the complainant. On the one hand, the accused is presumed innocent and shall not be convicted unless his guilt is proven beyond reasonable doubt, in which case, he shall be meted with a severe penalty. On the other hand, the Court is ever mindful that a young woman would not publicly announce that she was raped if it were not true. No woman would want to expose herself to the process, the trouble, and the humiliation of a rape trial unless she actually has been a victim of abuse and her motive is but to seek atonement for her abuse. In these lights, a painstaking review of the judgment of conviction is required.[33]

In reviewing rape cases, the Court is guided by three (3) principles: (a) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (b) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (c) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Following these legal precepts, the victim's sole testimony must stand the test of credibility.[34]

Petitioner was charged in this case with Rape in relation to RA 7610. After a careful scrutiny of the records, the Court finds that his guilt has not been established with proof beyond reasonable doubt.

Rape under Article 226-A (1) (a) of the Revised Penal Code, as amended, provides:

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;

x x x x

To be convicted of rape under this provision, the prosecution must prove the following elements beyond reasonable doubt: (a) offender had carnal knowledge of the victim; and (b) such act was accomplished through force, threat, or intimidation.

Meanwhile, in order to be convicted under Section 5 (b), Article III of RA 7610 which penalizes sexual abuse,[35] there must be a confluence of the following elements: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (c) that child, whether male or female, is below 18 years of age.[36]

The evidence on record — consisting of AAA's testimony, as well as the results of the medical examination on her person — are consistent with the prosecution's allegation that petitioner had sexual intercourse with AAA. What is crucial for the Court's consideration at this point is whether the sexual congress transpired with AAA's consent, in light of the key element of "force, threat, or intimidation" that is the gravamen of the offense of rape. On this score, the Court concurs with the CA's findings that from the evidence on record, the sexual intercourse between petitioner and AAA appears to be with the latter's consent.

Most revelatory among all the evidence on record is the undated letter[37] which AAA admitted to have written for petitioner. In it, she unequivocally declared, among others, that she loved petitioner, that the charge of rape was concocted to retaliate against petitioner who wanted to go home to the province and to break his family apart, and that she attempted to commit suicide because of him. This letter bolsters the suicide note[38] that AAA left for BBB on the same night of the sexual congress between AAA and petitioner. On cross-examination, AAA admitted having written the undated letter for petitioner, to wit:

[ATTY. BAUTISTA]: I am showing to you a letter, Ms. Witness, will you go over this and tell to the Honorable Court, whose hand writing is this?

[AAA]: Mine, sir. Because he was about to go away to the province, he already packed his things and he was about to leave that's where I have the courage to tell to my sister what happened.[39]

x x x x

Q: But you wrote this letter?

A : Yes, . sir.[40]

x x x x

Q: He was packing and he was going to his live-in partner and to his child in Isabela?

A: I don't know where he is going.

Q: But you know that he was leaving?

A: Yes, sir.

Q: And he is leaving you?

A: Yes, sir.

Q: And you're angry because you love the accused, am I correct?

A: No, sir.

Q: And why is it that you wrote in your letter "Dahil mahal kita?"

A: I only wrote that because I don't want him to leave because he has to pay what he did to me, sir.

Q: Do you confirm that you wrote the following words: "Mas maganda akong magplano sayo dahil pag wala na ako kulong ka naman diba, patas lang tayo hindi mo naman ako sineryoso eh kaya gagawin ko para masira ang pamilya mo, hindi mo ako kilala mas maganda ako magplano sayo, ginamit mo kasi ako nung gabing yun kaya humanda ka sasabihin ko nirape mo ko"

A: Yes, sir, he raped me.

Q: But you stated here that you will tell that you were raped?

A: Nirape nya po ako talaga, totoo naman talaga na nirape nya ko kung ginusto ko po yun, bakit pa ko magpapakamatay kaylangan ko pa bang sayangin yung buhay ko dahil sa kanya, dahil minahal ko po sya?

Q: What do you mean by that, Ms. Witness?

A: Hindi po, ibig sabihin ko po kaylangan ko pa bang sayangin ung buhay ko dahil inaano ko lang na nirape nya ako, sinasabi ko lang ... hindi naman po ako nagsisinungaling eh.

Q: So you value your life and your dignity, am I correct Ms. Witness?

A: Yes, sir.[41] (Emphases supplied)

From the foregoing pieces of evidence, it would appear that the sexual intercourse that transpired between petitioner and AAA was consensual at the time — with AAA admitting that she loved petitioner — but when she learned that the object of her affection was about to leave for the province, she felt jaded and could not accept it. Hence, she attempted to commit suicide, as evidenced by the suicide note and the afore-quoted letter for petitioner, and threatened not just to break his family apart but also, to charge him with rape. As it is, the present

case against petitioner is based merely on trumped-up allegations meant as retaliation.

That the sexual intercourse between the parties appears to be consensual is bolstered by the fact that AAA failed to cry or shout for help, or at the very least, offer some kind of resistance against petitioner's advances. She claimed to have tried to shout but petitioner allegedly covered her mouth;<sup>[42]</sup> still, under the circumstances, and fully aware that petitioner was about to defile her, she could have made any kind of noise in order to alert her sister BBB and CCC, who were upstairs at the time. While it is true that the failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent, in this case it created a serious doubt when taken together with the other pieces of evidence tending to show that AAA consented to the sexual congress and merely fabricated the rape charge against petitioner. Neither can the Court accept AAA's explanation that she was afraid of petitioner because she recalled an incident in 2013 when petitioner allegedly poked a knife against BBB's neck; at the particular moment when AAA alleged that petitioner forced himself upon her, there was no immediate threat of bodily harm or injury as to rouse fear or panic in AAA.

As regards the CA's conviction of petitioner for violation of Section 5 (b), Article III of RA 7610 on the premise that consent is immaterial under such charges, it bears to point out that "consent of the child is material and may even be a defense in criminal cases" involving the aforesaid violation when the offended party is 12 years old or below 18 years old,<sup>[43]</sup> as in AAA's case. The concept of consent under Section 5 (b), Article III of RA 7610 peculiarly relates to the second element of the crime – that is, the act of sexual intercourse is performed with a child exploited in prostitution or subjected to other sexual abuse. A child is considered "exploited in prostitution or subjected to other sexual abuse" when the child is pre-disposed to indulge in sexual intercourse or lascivious conduct because of money, profit or any other consideration or due to the coercion of any adult, syndicate, or group,<sup>[44]</sup> which was not shown in this case; hence, petitioner's conviction for the said crime cannot be sustained.

As repeatedly held by this Court, the findings of the trial court regarding the credibility of witnesses are generally accorded great respect and even finality on appeal. However, this principle does not preclude a reevaluation of the evidence to determine whether material facts or circumstances have been overlooked or misinterpreted by the trial court. It is the prosecution's duty to present the necessary evidence to prove conviction beyond reasonable doubt to convince and satisfy the conscience of those who are to act in judgment. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court.

It bears stressing that the Court's finding does not mean absolute certainty that petitioner did not coerce AAA to engage in the sexual act. It is simply that the evidence presented by the prosecution fall short of the quantum of proof required to support a conviction. Jurisprudence has consistently held that "[a] conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution."<sup>[45]</sup> If the prosecution fails to do so, "the presumption of innocence of the accused must be sustained and his exoneration be granted as a matter of right. For the prosecution's evidence must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense,"<sup>[46]</sup> as in this case.

WHEREFORE, the petition is GRANTED. The Decision dated August 16, 2017 and the Resolution dated November 7, 2017 of the Court of Appeals in CA-G.R. CR No. 38406 are hereby REVERSED and SET ASIDE. Petitioner Jasper Monroy y Mora is ACQUITTED on the ground of reasonable doubt.

### **SO ORDERED.**

Carpio (Chairperson), Caguioa, and J. Reyes, Jr., JJ., concur.

A. Reyes, Jr., J.,[\*] on official leave.

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[\*] Designated Additional Member per Raffle dated July 1, 2019; on official leave.

[1] Rollo, pp. 12-28.

[2] Id. at 33-63-A. Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) with Associate Justices Japar B. Dimaampao and Pedro B. Corales, concurring.

[3] Id. at 65.

[4] Id. at 87-112. Penned by Presiding Judge Evangeline M. Francisco.

[5] Id. at 113.

[6] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[7] See rollo, p. 34.

[8] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES" approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence Against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013].)

[9] See rollo, p. 35.

[10] Id.

[11] Id.

[12] Id. at 36.

[13] Id. at 352. The letter states:

"Ate pasinsya na pero kailangan kong gawin sumuko na ako sa buhay ko at sira na rin lahat nang pangarap ko sa buhay dahil araw2x na sana makatapos ako nang pagaaral hindi nayon matupad dahil sinira nang tao ang boung pagkatao ko mahal na mahal ko kau te sana sabihin nyo kay nanay na pasensya na"

[14] Id. at 36.

[15] Id.

[16] Initial Medico-Legal Report dated November 5, 2014 and Medico-Legal Report No. R14-378N, both prepared by Police Chief Inspector and Medico-Legal Officer Jocelyn Padilla Cruz, MD; id. at 157 and 165, respectively.

[17] Id. at 167.

[18] Id. at 39.

[19] See *id.* at 39 and 106.

[20] *Id.* at 40.

[21] *Id.* at 87-112.

[22] *Id.* at 112.

[23] *Id.* at 110.

[24] *Id.* at 110-111.

[25] Dated November 20, 2015; *id.* at 114-123.

[26] *Id.* at 113.

[27] *Id.* at 33-63-A.

[28] *Id.* at 62-63.

[29] *Id.* at 167.

[30] *Id.* at 42-58.

[31] *Id.* at 495-500.

[32] *Id.* at 65.

[33] See *People v. Rubillar, Jr.*, G.R. No. 224631, August 23, 2017, 837 SCRA 646, 657-658.

[34] *Id.* at 658; citation omitted.

[35] See *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[36] See *Quimvel v. People*, 808 Phil. 889, 915 (2017).

[37] *Rollo*, p. 167.

[38] *Id.* at 160.

[39] *Id.* at 106.

[40] *Id.*

[41] *Id.* at 107-108.

[42] See *id.* at 35.

[43] See *People v. Tulagan*, *supra* note 35.

[44] Section 5, Article III of RA 7610.

[45] *People v. Patentes*, 726 Phil. 590, 606 (2014).

[46] *People v. Rubillar, Jr.*, *supra* note 33, at 667-668, citing *Astorga v. People*, 480 Phil. 585, 596 (2004); citation omitted.

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