

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ABADIES Y CLAVERIA, ACCUSED-APPELLANT.

G.R. Nos. 139346-50. July 11, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of San Pedro, Laguna, in Criminal Case Nos. 0658-SPL to 0661-SPL, dated May 26, 1999, finding accused-appellant Jose Abadies guilty beyond reasonable doubt of four counts of violation of Republic Act No. 7610 or the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," penalized under Section 5 (b), Article III and Section 31, Article XII thereof, and sentencing him for each count to suffer the penalty of reclusion perpetua and to pay a fine of P30,000.00.

Accused-appellant Abadies was charged with a violation of Republic Act No. 7610 in five separate Informations[2] which, except for the dates of commission, are similarly worded as follows:

“That on or about July 1, 1997, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, said accused actuated by lewd design did then and there wilfully, unlawfully and feloniously, with force and intimidation commit acts of lasciviousness upon the person of his 17-year old daughter ROSALIE ABADIES Y MANUNGHAYA by kissing, mashing her breast and touching her private parts against her will and consent.

CONTRARY TO LAW.”

The other incidents were allegedly committed on July 2, 3, 7 and 26, 1997. In an Order[3] dated July 16, 1998, the trial court, upon motion of the public prosecutor, dismissed Criminal Case No. 0657-SPL on the ground that the crime charged appears to have been committed in Las Piñas City, hence, outside the territorial jurisdiction of the court.

During the arraignment, accused-appellant entered a plea of not guilty and hence, trial ensued.

The facts show that accused-appellant has been living for the past twenty years with his common-law wife, Catalina Manunghaya, at Bgy. Pulo, Landayan, San Pedro, Laguna, together with their two children, Jonathan and complainant Rosalie. The family sleeps together in one room and usually Catalina wakes up early in the morning to buy bread. It was during these short periods of time while Catalina was out of the house that the abuses took place. On the dates material to these cases, complainant was 17 years old, having been born on July 29, 1980.[4]

Complainant testified that on July 1, 1997, at about 6:00 a.m., she was sleeping in their house when she was awakened by somebody touching her breast and other private parts of her body. She was startled to see her father, accused-appellant, and she covered her breast with a pillow. Complainant struggled with accused-appellant as he persisted in mashing her breast. She could not shout as fear overcame her when she saw anger from accused-appellant’s face. Accused-appellant was forced to stop only when complainant’s mother arrived from the

store. Complainant did not tell her mother about the incident for fear of accused-appellant.

The following day, July 2, 1997, at about the same time, complainant was again jolted from her sleep by accused-appellant who was touching her breast. She covered herself with a blanket and with her hands. She fought accused-appellant when he tried to remove her hands. Again, accused-appellant desisted only when complainant's mother arrived from the store. Complainant ran to the bathroom where she shed tears.

The next day, July 3, 1997, complainant was once more roused from her sleep by accused-appellant mashing her breast. She started to cry and asked accused-appellant why he was abusing her. Accused-appellant simply continued touching her. Again, he stopped only when his wife arrived from the store.

Complainant was again awakened in the early morning of July 7, 1997 by accused-appellant touching her breast. This time, accused-appellant straddled her, inserted his hand inside her shorts and touched her private part. Complainant resisted and removed accused-appellant's hand. She reached out for the blanket of her brother, Jonathan, who was sleeping beside her in a bid to wake him up. When accused-appellant saw that Jonathan was about to turn, he stopped. However, he warned complainant not to tell her mother about the incident.

On July 26, 1997, complainant was brought by accused-appellant to the house of her stepsister in Las Piñas. Nobody was in the house and strangely, accused-appellant started to sharpen his sickle. He ordered complainant to write a letter to her mother and revealed that he was planning to kill himself and complainant. When complainant refused, accused-appellant forced her inside the bedroom where he threatened complainant to choose whether he would kill her or rape her. Accused-appellant started kissing complainant but the latter was able to run away from him. Complainant reached their house and saw her mother. Crying and looking very pale, she narrated to her mother her ordeal. She likewise disclosed the past abuses of accused-appellant. Complainant and her mother then proceeded to the barangay office where they made a report. On the strength of their complaint, accused-appellant was arrested.

Complainant further testified that on December 6, 1997, accused-appellant wrote her a letter from his detention cell asking for forgiveness.

Accused-appellant proffered the defense of denial and alibi. He denies having committed acts of lasciviousness against complainant. He testified that on the dates of the alleged incidents, he woke up between 7:00 to 7:30 a.m.; that complainant and her mother were already preparing breakfast; and after eating breakfast, he would leave for work. He also testified on the reason why the charges at bar were filed against him. Allegedly, on July 26, 1997, he asked complainant what was happening to their lives as his children were aloof with him. Complainant threatened to end her life because she felt she was to be blamed for their problems. Accused-appellant also declared he was too strict with his children, and even inflicts physical harm on them when they disobey him.

In the present appeal, accused-appellant asserts that the court a quo erred in finding the prosecution's version more credible and in convicting him despite the implied pardon given by complainant. Accused-appellant likewise contends that there exists no factual basis for the trial court to consider his plea of forgiveness in his letter to complainant as an implied admission of guilt.

The appeal is not impressed with merit.

Accused-appellant stands charged with violation of Republic Act No. 7610 or The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, specifically Article III, Section 5 (b) thereof which reads:

“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 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; x x x.”

The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[5]

The testimony of complainant that accused-appellant touched and mashed her breasts and other private parts of her body against her will, and that she could not shout or fight back because she was afraid of accused-appellant, sufficiently constitute acts of lasciviousness under the foregoing provision. Although accused-appellant was not armed nor did he threaten complainant, his moral ascendancy over her is a sufficient substitute for the use of force or intimidation.[6]

Accused-appellant faults the trial court in giving credence to the testimony of complainant. He contends that it is difficult to comprehend why complainant did not shout or do anything to ask help from her brother who was sleeping beside her. He also claims that if the charges were true, it is inconceivable why complainant did not immediately tell her mother. The argument is specious.

The Court has probed into the records to assess complainant's credibility and we find that her testimony deserves full faith and credit. Complainant's testimony was straightforward and free from contradiction as to any material point. We also accord great weight to the findings of the trial court having heard the witnesses and observed their deportment and manner of testifying during trial.[7]

Complainant's failure to disclose about her misfortune to her mother does not destroy her credibility. Complainant explained that she did not tell her mother about her ordeal because she was afraid of accused-appellant. Accused-appellant admitted that his children were afraid of him because he was very strict with them, and that there were occasions when he would hit them with anything that he could get hold of or inflict physical punishment whenever they disobeyed him.[8] This is enough reason for complainant to be cowed into silence.

It is of no moment that complainant failed to shout for help while she was being molested with her brother sleeping beside her in the same room. Accused-appellant was complainant's own father, who exercised moral ascendancy over her.[9] Indeed, it is now hoary jurisprudence that lust is no respecter of time and place for rape has been committed in places where people congregate, even in the same room where other members of the family are sleeping.[10] Moreover, we have also ruled that no standard form of behavior has been observed when a person is confronted by a shocking or a harrowing and unexpected incident, for the workings of the human mind, when placed under emotional stress, are unpredictable. Some people may cry out, some may faint, some may be shocked into insensibility, while others may yet appear to yield to the intrusion.[11]

On the other hand, accused-appellant's simple denial of the crime charged is inherently weak. It is negative evidence which cannot overcome the positive testimonies of credible witnesses. For accused-appellant's denial to prevail, it must be buttressed by strong evidence of non-culpability and there is none.[12]

Accused-appellant further contends that there is no factual basis for the trial court to conclude that the plea for forgiveness contained in his letter is to be deemed as an implied admission of guilt. We do not agree.

A cursory reading of the relevant parts of the letter will readily show that accused-appellant was indeed seeking pardon for his misdeeds. Some of the pertinent portions read as follows: "I made this letter to ask your 'forgiveness.' x x x Alam mo bang sobra-sobra na ang pagsisisi ko sa ginawa kong iyon. x x x Parang awa mo na Ne hirap na hirap na ako at ang lahat ay buong puso ko ng pinagsisisihan. Patawarin mo na ako anak. x x x." There is no iota of doubt that accused-appellant was asking forgiveness for having committed the acts with which he now stands charged. Settled is the rule that in criminal cases, except those involving quasi-offenses or those allowed by law to be settled through mutual concessions, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.[13] Evidently, no one would ask for forgiveness unless he had committed some wrong and a plea for forgiveness may be considered as analogous to an attempt to compromise.[14] Under the circumstances, accused-appellant's plea of forgiveness should be received as an implied admission of guilt.

Accused-appellant likewise contends that he was impliedly pardoned by the complainant. He deduced the purported implied pardon from complainant's testimony that she did not disclose to her mother the dastardly acts committed by accused-appellant on July 1, 2, 3 and 7, 1997 and that she had not intended to file charges against him. He alleged that the present charges were filed against him only after the Las Piñas incident which happened on July 26, 1997. Accused-appellant posits the thesis that the failure of complainant to report the first four acts of lasciviousness is tantamount to an implied pardon. He relies on Article 344 of the Revised Penal Code which provides:

"ART. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.

x x x x x x x x

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be. x x x."

The argument will not hold. First, the supposed pardon cannot be implied from the fact that the complainant did not immediately reveal to her mother her defloration. As earlier stated, it was her fear of accused-appellant which restrained complainant from reporting the incidents to her mother. Second, Article 344 of the RPC and Section 5, Rule 110 of the Revised Rules of Criminal Procedure provide that the pardon must be express and cannot be based on hazy deduction.[15]

The imposable penalty prescribed under Section 5, Article II of Republic Act No. 7610 is reclusion temporal in its medium period to reclusion perpetua. Section 31 (c), Article XII thereof provides that the penalty in its maximum period shall be imposed when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity. In the cases at bar, the relationship of complainant and accused-appellant is established by the birth certificate of complainant which shows that accused-appellant is her father. This relationship is further supported by the testimonies of complainant and her mother, as well as that of accused-appellant. Hence, the trial court did not err in appreciating the generic aggravating circumstance of relationship and in imposing the penalty of reclusion perpetua for each count of lascivious conduct committed by accused-appellant against his daughter.

It will be noted that Section 5, Article II of Republic Act No. 7610 provides for the penalty of imprisonment. Nevertheless, Section 31 (f), Article XII (Common Penal Provisions) thereof allows the imposition of a fine

subject to the discretion of the court, provided that the same is to be 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. This provision is in accord with Article 39 of the Convention on the Rights of the Child, to which the Philippines became a party on August 21, 1990, which stresses the duty of states parties to ensure the physical and psychological recovery and social reintegration of abused and exploited children in an environment which fosters their self-respect and human dignity.

In the case of *People vs. Jaime Cadag Jimenez*[16] where a minor victim was sexually molested by her own father, the accused was ordered to pay a fine of P20,000.00 as cash fund for the rehabilitation of the victim and moral damages in the amount of P50,000.00 for each count of lascivious act committed by the accused. Hence, in the cases at bar, the trial court correctly imposed a fine of P30,000.00 for each count of lascivious conduct committed by accused-appellant. In addition, moral damages should be awarded in the amount of P50,000.00 for each count.

As a final note, we deem it relevant to stress the escalating awareness and concern for the protection of the rights of children. The need of children for special protection was given recognition by the nations of the world as early as 1924 when the assembly of the League of Nations endorsed the Declaration of the Rights of the Child (commonly known as The Declaration of Geneva) which focused on children's welfare, specifically their economic, psychological and social needs. Reaffirming the fact that children need special care and protection because of their vulnerability, and the vital role of international cooperation in securing children's rights, the General Assembly of the United Nations adopted on November 20, 1989 the Convention on the Rights of the Child (CRC), which incorporates the full range of human rights - civil, political, economic, social and cultural - of children. The Convention stresses the duty of the state to take all the necessary steps to protect children from being sexually abused (as in rape, molestation and incest) or exploited (forced or induced into prostitution, pornographic performances and others).[17] It is reassuring to note that we are not lagging far behind on the domestic front. Over the past years, Congress has enacted a number of laws relating to the protection of children's welfare and rights,[18] while the executive department has issued various executive orders and proclamations in order to give teeth to the implementation and enforcement of these laws.[19] These international instruments and national legislation emphasize that the primordial consideration in deciding issues and cases involving children is the welfare and best interests of the child.[20] For its part, the Supreme Court has issued Administrative Circular No. 23-95 enjoining trial courts to act with dispatch on all cases involving children, including but not limited to pedophilia, child labor and child abuse cases. To date, procedural rules applicable specifically to cases involving children have already been approved by the Court such as the Rules on Examination of a Child Witness, on Commitment of Children, and on Juveniles in Conflict with the Law. Our duty does not end here though. As the highest court of the land, it is incumbent upon us to give life to all these covenants, agreements, and statutes by enriching and enhancing our jurisprudence on child abuse cases, bearing in mind always the welfare and protection of children.

WHEREFORE, the decision of the Regional Trial Court of San Pedro, Laguna, Branch 93, in Criminal Case Nos. 0658-SPL to 0660-SPL, finding accused-appellant JOSE ABADIES guilty beyond reasonable doubt of four counts of violation of Republic Act No. 7610, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P30,000.00, for each count, is hereby AFFIRMED with the MODIFICATION that accused-appellant is hereby ordered to pay moral damages in the amount of P50,000.00 for each count. No costs.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

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- [1] Penned by Presiding Judge Francisco Dizon Paño; Original Record, pp. 135-140.
- [2] Ibid., pp. 1-5.
- [3] Ibid., p. 83.
- [4] Certificate of Birth, Exhibit A; Ibid., p. 107.
- [5] People vs. Gianan, 340 SCRA 477 (2000); People vs. Contreras, 338 SCRA 622 (2000).
- [6] People vs. Jaime Cadag Jimenez, G.R. Nos. 137790-91, April 16, 2001.
- [7] People vs. Oquiño, 122 SCRA 797 (1983).
- [8] TSN, January 19, 1999, p. 7; TSN, January 26, 1999, pp. 3-4.
- [9] People vs. Pecayo, Sr., 348 SCRA 95 (2000).
- [10] People vs. Jaime Cadag Jimenez, supra note 6.
- [11] People v. Sagaysay, 308 SCRA 455 (1999); People v. Soberano, 244 SCRA 467 (1995); People v. Casao, 220 SCRA 362 (1993).
- [12] People vs. Nelson Parcia, G.R. No. 141136, January 28, 2002.
- [13] Section 27, Rule 130, Revised Rules of Court.
- [14] People vs. Alvero, 329 SCRA 737 (2000); People v. Bartolome, 296 SCRA 615 (1998); People v. Prades, 293 SCRA 411 (1998).
- [15] Perez vs. CA, et al., 168 SCRA 236 (1988).
- [16] Supra note 6.
- [17] Looking After Filipino Children: A Compendium of Philippine Laws and International Declarations, Conventions and Covenants, Children and Youth Foundation of the Philippines, 1998, pp. 27-28.
- [18] See for example: Presidential Decree No. 603 (The Child and Youth Welfare Code); Republic Act No. 8353 (Anti-Rape Law of 1997); Republic Act No. 8369 (Family Courts Act of 1997); Republic Act No. 8044 (Youth in Nation-Building Act); Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination).
- [19] Executive Order No. 275 created a Special Committee for Children which reports to the President actions taken to address specific issues on child abuses and exploitation; Executive Order No. 56 (Authorizing the Ministry of Social Services and Development to take Protective Custody of Child Prostitutes and Sexually Exploited Children); Proclamation No. 731 (Declaring the Second Week of February of Every Year as "National Awareness Week for the Prevention of Child Sexual Abuse and Exploitation").
- [20] Supra note 17, p. 46.

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