

## FIRST DIVISION

[ G.R. No. 221443, July 17, 2017 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DOMINADOR LADRA, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

On appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated June 30, 2015 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01160-MIN, which affirmed the Joint Decision<sup>[3]</sup> dated February 6, 2013 of the Regional Trial Court of Cagayan de Oro City, Branch 22 (RTC) in FC Crim. Case Nos. 2008-426 and 2008-427 finding accused-appellant Dominador Ladra (accused appellant) guilty beyond reasonable doubt of Rape and Unjust Vexation.

#### The Facts

Private complainant AAA<sup>[4]</sup> was born on September 3, 1995<sup>[5]</sup> and the eldest of five (5) siblings. At the time material to these cases, she lived with her family in a remote area in Dumarait, Balingasag, Misamis Oriental.<sup>[6]</sup>

On the other hand, it was alleged that accused-appellant was a relative of BBB, AAA's mother, who allowed him to stay with their family out of pity. He ran errands for them and attended to the children when BBB was busy washing clothes and her husband, CCC, was tending to their farm.<sup>[7]</sup>

Sometime between 2000 to 2001,<sup>[8]</sup> when AAA was around five (5) years old, she and her siblings were left at home with accused-appellant. After their meal, accused-appellant ordered them to sleep. Suddenly, AAA was awakened when she felt accused-appellant, who was already naked, on top of her, forced his penis into her vagina, and made push and pull movements, causing her pain. Accused-appellant threatened to kill her if she told anyone. Thereafter, accused-appellant repeatedly molested her, each time bringing his bolo with him.<sup>[9]</sup> The sexual abuse ceased in 2002, when accused-appellant left their house.<sup>[10]</sup>

Years later, or on the evening of April 16, 2008, AAA - who was already twelve (12) years old at the time - was surprised when she saw accused-appellant in their

kitchen. To her shock, accused-appellant squeezed her vagina and told her that they were going to visit his house. Scared, AAA cried and told her cousin, DDD, about the incident.<sup>[11]</sup> She also told DDD about the first rape incident and the subsequent ones committed by accused appellant. Eventually, AAA told BBB about her traumatic experiences in the hands of accused-appellant when she was five (5) years old. Together, they reported the incident to the barangay and thereafter, had the incident recorded in the police blotter.<sup>[12]</sup> Later, AAA filed criminal cases against accused-appellant, who was subsequently arrested.<sup>[13]</sup>

On April 19, 2008, Dr. Ma. Josefina Villanueva Taleon (Dr. Taleon), Medical Officer III at the Northern Mindanao Medical Center, conducted a physical examination on AAA and found the presence of old healed lacerations in her genitalia at the three (3), eighth (8), and ten (10) o'clock positions.<sup>[14]</sup>

Hence, accused-appellant was charged with *violation of Section 5 (b) of Republic Act No. (RA) 7610* in an Information<sup>[15]</sup> that reads:

Sometime in 2000 up to 2001, when the private complainant is about five to six [5 to 6] years old, at Dumarait, Balingasag, Misamis Oriental, Philippines, within the jurisdiction of the Honorable Court, the above named accused knowing full well the minority, with obvious ungratefulness, did then and there willfully, unlawfully and feloniously commit acts of sexual abuse on one [AAA], five to six years old, by inserting his penis into her vagina, against her will and without her consent, and which act debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a child and as a human being and is prejudicial to the child's development.

CONTRARY TO and in violation of Section 5 Paragraph B of RA 7610.<sup>[16]</sup>

Likewise, accused-appellant was charged with *Acts of Lasciviousness* in an Information<sup>[17]</sup> that reads:

On 16 April 2008 at about 8:00 o'clock in the evening in Dumarait, Balingasag, Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who knew full well the minority of the victim, through force and intimidation, actuated by lust or lewd design, did then and there willfully, unlawfully and feloniously commit a lascivious conduct on twelve-year [12] old [AAA] by squeezing her vagina against her will and to her damage and prejudice.

CONTRARY TO and in violation of Article 336 of the Revised Penal Code as amended.<sup>[18]</sup>

When arraigned, accused-appellant entered a plea of not guilty to the offenses charged.<sup>[19]</sup>

In defense, accused-appellant denied the charges and claimed that AAA's family were angry at him when he left their house, leaving no one to attend to their errands. He asserted that he left them because he could no longer understand what they were asking him to do for them.<sup>[20]</sup>

### **The RTC Ruling**

In a Joint Decision<sup>[21]</sup> dated February 6, 2013, the RTC convicted accused-appellant of: (a) *Rape* in FC Crim. Case No. 2008-426, sentencing him to suffer the penalty of *reclusion perpetua* and to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages; and (b) *Unjust Vexation* in FC Crim. Case No. 2008-427, sentencing him to suffer the penalty of imprisonment for a period of 30 days of *arresto menor* and to pay a fine of P200.00 with accessory penalties.<sup>[22]</sup>

In finding accused-appellant guilty of Rape in FC Criminal Case No. 2008-426, the RTC found that although the allegations in the Information are sufficient to make out a case for child abuse, it also constitutes *Statutory Rape* under Article 266-A of the Revised Penal Code (RPC), as amended. Relative thereto, it found that AAA's narration of her defloration in the hands of accused-appellant more than sufficiently established the offense, as well as the identity of the offender. Despite her tender age, she was straightforward, clear, categorical, and positive in her testimony, indicating that she was telling the truth. Moreover, her account of the incident was supported by the medical findings of Dr. Taleon, who testified that there were healed lacerations in AAA's genitalia at the 3, 8, and 10 o'clock positions.<sup>[23]</sup>

As regards FC Criminal Case No. 2008-427, the RTC found that the prosecution has established that on the evening of April 16, 2008, when AAA went to their kitchen, she encountered accused-appellant who, without warning, "just squeezed her vagina."<sup>[24]</sup> The RTC opined, however, that the prosecution failed to establish the element of *lasciviousness or lewdness* as would justify accused-appellant's conviction for the crime of Acts of Lasciviousness. The overt act of accused-appellant of squeezing AAA's vagina did not show that he intended to gratify his sexual desires nor was it demonstrative of carnal lust. Nonetheless, AAA was clearly annoyed by the act; perforce, the RTC found accused-appellant guilty of Unjust Vexation, defined and penalized under Article 287<sup>[25]</sup> of the RPC.<sup>[26]</sup>

Conversely, the RTC brushed aside the defense proffered by accused appellant, which it found insufficient to debunk the positive evidence of the prosecution.<sup>[27]</sup> Dissatisfied, accused-appellant appealed his conviction.<sup>[28]</sup>

### **The CA Ruling**

In its assailed Decision<sup>[29]</sup> dated June 30, 2015, the CA affirmed *in toto*<sup>[30]</sup> the RTC's Joint Decision convicting accused-appellant of Rape and Unjust Vexation. Apart from concurring with the RTC's findings and conclusions, the CA found no merit in accused-appellant's contention that it was impossible for him to commit the crime as AAA's younger brother was sleeping beside her at the time of the alleged rape incident. Disregarding the argument, the CA ruled that the presence of another person at the scene does not render it impossible for accused-appellant to commit the crime of Rape. As regards its affirmance of accused-appellant's conviction for Unjust Vexation, the CA did not proffer any justification.<sup>[31]</sup>

Aggrieved, accused-appellant is now before the Court seeking the reversal of his conviction.<sup>[32]</sup>

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for Rape and Unjust Vexation.

### **The Court's Ruling**

The appeal has no merit.

Time and again, the Court has held that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts.<sup>[33]</sup>

In FC Criminal Case No. 2008-426, the Court accords credence to the RTC's finding, as affirmed by the CA, that accused-appellant indeed committed the crime of Rape against then five (5)-year-old AAA. As astutely observed by the RTC, which had the opportunity to personally scrutinize AAA's conduct and demeanor during trial, she was a credible witness whose testimony must be given great weight. The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the accused-appellant the burden to bring to the fore facts or circumstances of weight, which were otherwise overlooked, misapprehended or misinterpreted that would materially affect the disposition of the case differently if duly considered.<sup>[34]</sup> Unfortunately for accused-appellant, he miserably failed to discharge this burden, and the Court finds no reason to reverse the CA's conclusions.

Moreover, the CA correctly disregarded accused-appellant's argument that he could

not have committed the crime in the presence of AAA's younger brother, who slept beside her.<sup>[35]</sup> It cannot be denied that the presence of AAA's brother in the room does not negate the commission of the crime. "Rape can 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. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places."<sup>[36]</sup>

In view thereof, the courts *a quo* correctly found accused-appellant guilty of Rape and sentenced him to suffer the penalty of *reclusion perpetua*. However, the Court modifies the amounts of damages awarded conformably with prevailing jurisprudence.<sup>[37]</sup> Accordingly, accused-appellant is ordered to pay AAA the amount of P75,000.00 as moral damages, P75,000.00 as civil indemnity, and P75,000.00 as exemplary damages.

In FC Criminal Case No. 2008-427, however, the Court disagrees with the CA's affirmance of the RTC's finding that accused-appellant can only be held guilty of Unjust Vexation. After a punctilious review of the evidence, the Court finds that he should instead be convicted of Acts of Lasciviousness, as charged in the information, in relation to Section 5 (b) of RA 7610.

Acts of Lasciviousness is defined and penalized under Article 336 of the RPC, which reads:

Article 336. *Acts of lasciviousness*. - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned on the preceding article, shall be punished by *prision correccional*.

Conviction for such crime requires the concurrence of the following elements: (a) that the offender commits any act of lasciviousness or lewdness; (b) that it is done under any of the following circumstances: (i) through force, threat, or intimidation, (ii) when the offended party is deprived of reason or otherwise unconscious, (iii) by means of fraudulent machination or grave abuse of authority, and (iv) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (c) that the offended party is another person of either sex.<sup>[38]</sup>

Meanwhile, Section 5 (b) of RA 7610 provides:

Section 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 subject 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.

Before an accused can be held criminally liable for lascivious conduct under Section 5 (b) of RA 7610, the requisites of the crime of Acts of Lasciviousness as penalized under Article 336 of the RPC above-enumerated must be met in addition to the requisites for sexual abuse under Section 5 (b) of RA 7610, as follows: (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) that the child, whether male or female, is below 18 years of age.<sup>[39]</sup>

A judicious examination of the records reveals that all the elements of the crime of Acts of Lasciviousness under the RPC and lascivious conduct under Section 5 (b) of RA 7610 have been sufficiently established. The prosecution was able to prove AAA's minority at the time of the incident through the presentation of her Certificate of Live Birth<sup>[40]</sup> showing that she was born on September 3, 1995. At the time of the commission of the lascivious act, AAA was then 12 years old. It was likewise established that accused-appellant, an adult who exercised influence on AAA, committed a lascivious act by "squeezing" her vagina.

The courts *a quo* convicted accused-appellant of the crime of Unjust Vexation instead of Acts of Lasciviousness on the finding that there was no element of lasciviousness or lewdness in accused-appellant's act. In its Decision, the RTC even pointed out that accused-appellant could not have intended to lie with AAA at that moment considering that she still had her underwear on, and the act of "squeezing" her private part was not demonstrative of camallust.<sup>[41]</sup>

The Court disagrees.

"Lascivious conduct" is defined in Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, as follows:

**[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.**

In *Amployo v. People*,<sup>[42]</sup> the Court expounded on the definition of the word "lewd," to wit:

The term "lewd" is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition. As early as *U.S. v. Gomez* we had already lamented that -

It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.<sup>[43]</sup>

After a careful evaluation, the Court finds that the mere fact of "squeezing" the private part of a child - *a young girl 12 years of age* - could not have signified any other intention but one having lewd or indecent design. It must not be forgotten that several years prior, accused-appellant had raped AAA in the same house, for which act he was appropriately convicted. Indeed, the law indicates that the mere *touching* - more so, "squeezing," in this case, which strongly suggests that the act was intentional - of AAA's genitalia clearly constitutes lascivious conduct. It could not have been done merely to annoy or vex her, as opined by the courts *a quo*. That AAA was fully clothed at that time, which led the courts *a quo* to believe that accused-appellant could not have intended to lie with her, is inconsequential.

"Lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form

of immorality which has relation to moral impurity; or that which is carried on a wanton manner."<sup>[44]</sup> As such, accused-appellant's act of squeezing AAA's vagina was a lewd and lascivious act within the definitions set by law and jurisprudence.

Under Section 5 (b) of RA 7610, the prescribed penalty for lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua*. In the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period<sup>[45]</sup> thereof. Applying the Indeterminate Sentence Law, the minimum term shall be taken within the range of the penalty next lower in degree, which is *prision mayor* in its medium and maximum periods to *reclusion temporal* in its minimum period.<sup>[46]</sup> Accordingly, accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4) months, and one (1) day of *reclusion temporal*, as maximum. In addition, and conformably with recent jurisprudence, accused-appellant is ordered to pay AAA the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment.<sup>[47]</sup>

**WHEREFORE**, the Decision dated June 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01160-MIN is hereby **AFFIRMED** with the following **MODIFICATIONS**:

(1) In FC Criminal Case No. 2008-426, accused-appellant Dominador Ladra is found guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, as amended, and, accordingly, sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant the amounts of P75,000.00 as moral damages, P75,000.00 as civil indemnity, and P75,000.00 as exemplary damages;

(2) In FC Criminal Case No. 2008-427, accused-appellant Dominador Ladra is found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code, as amended, in relation to Section 5 (b) of Republic Act No. 7610 and, accordingly, sentenced to suffer the indeterminate prison term of 10 years and one (1) day of *prision mayor*, as minimum, to 17 years, four (4), months and one (1) day of *reclusion temporal*, as maximum, and to pay private complainant the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine;

(3) Accused-appellant Dominador Ladra is ordered to pay the private complainant interest on all monetary awards at the legal rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

**SO ORDERED.**



Sereno, C. J., on leave.

*Leonardo-De Castro*,\*\* (*Acting Chairperson*), and *Caguioa, JJ.*, concur.  
*Del Castillo, J.*, on official leave.

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\*\* Per Special Order No. 2464 dated July 17, 2017.

[1] See Notice of Appeal dated July 30, 20 15; *rollo*, pp. 11-12.

[2] *Id.* at 3-10. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Pablito A. Perez concurring.

[3] *CA rollo*, pp. 28-36. Penned by Judge Richard D. Mordeno.

[4] 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 Republic Act No. (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].)

[5] See Certificate of Live Birth, Index of Exhibits, p. 2.

[6] See *CA rollo*, p. 29.

[7] See *id.* at 29-30.

[8] See *id.* at 28-29.

[9] AAA testified that accused-appellant raped her "more than ten times." See TSN, July 21, 2011, pp. 7-8. See also *CA rollo*, p. 30.

[10] AAA testified that accused-appellant left their house when she was already seven (7) years old. See TSN, July 21, 2011, p. 14.

[11] See TSN, July 21, 2011, pp. 5-6.

[12] See Extract Copies form Police Blotter, Index of Exhibits, pp. 1 and 5.

[13] See *rollo*, pp. 5-6.

[14] See Living Case Report dated April 21, 2008. Index of Exhibits, p. 6.

[15] Records, pp. 3-4.

[16] *Id.* at 3.

[17] *Id.* at 42-43.

[18] *Id.* at 42.

[19] See Orders dated December 8, 2008 and December 17, 2008 penned by Presiding Judge Francisco L. Calingin and Judge Jose L. Escobido, respectively; *id.* at 27 and 64.

[20] See *CA rollo*, p. 30.

[21] *Id.* at 28-36.

[22] *Id.* at 36.

[23] See *id.* at 31-33.

[24] *Id.* at 33.

[25] Article 287. *Light coercions.* - x x x

Any other coercion or unjust vexation shall be punished by *arresto menor* or a fine ranging from 5 to 200 pesos, or both.

[26] See *CA rollo*, pp. 33-35.

[27] See *id.* at 35-36.

[28] See Notice of Appeal dated March 27, 2013; records, pp. 210-211.

[29] *Rollo*, pp. 3-10.

[30] See *id.* at 9.

- [31] See *id.* at 7-9.
- [32] See Notice of Appeal dated July 30, 2015; *rollo*, pp. 11-12.
- [33] *People v. Esperanza*, 453 Phil. 54, 67 (2003).
- [34] *People v. Lupac*, 695 Phil. 505, 511-512 (2012).
- [35] See *rollo*, pp. 7-8.
- [36] *People v. Bangsoy*, G.R. No. 204047, January 13, 2016, 780 SCRA 564, 573.
- [37] See *People v. Juguetta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383.
- [38] See *Quimvel v. People*, G.R. No. 214497, April 18, 2017.
- [39] See *id.*, citing *Cabila v. People*, 563 Phil. 1020, 1027 (2007), and *Amployo v. People*, 496 Phil. 747, 755 (2005).
- [40] Index of Exhibits, p. 2.
- [41] See CA *rollo*, pp. 34-35.
- [42] *Supra* note 38.
- [43] *Id.* at 756, citing *U.S. v. Gomez*, 30 Phil. 22, 25 (1915); other citations omitted.
- [44] *PO3 Sombilon, Jr. v. People*, 617 Phil. 187, 197 (2009); citation omitted.
- [45] 17 years, four (4) months, and one (1) day to 20 years.
- [46] 14 years, eight (8) months, and one (1) day to *reclusion perpetua*.
- [47] See *Quimvel v. People*, *supra* note 37.



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