

FIRST DIVISION

[G.R. No. 219863, March 06, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICHARD RAMIREZ Y TULUNGHARI, ACCUSED-APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

Assailed in this appeal is the October 30, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05176 which affirmed the February 3, 2011 Decision^[2] of the Regional Trial Court (RTC), Branch 254, Las Piñas City, finding appellant Richard Ramirez y Tulunghari guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

The Antecedent Facts

Appellant was charged with the crime of rape in two separate Informations which read:

Criminal Case No. 07-05889

That sometime on or about February 24, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] one ["AAA"],^[3] a six (6) year old minor, through force, or intimidation, and against her will and consent, thereby subjecting her to sexual abuse and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.^[4]

Criminal Case No. 07-0284

That on or about the 18th day of March 2007, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of one ["AAA"], six (6) year[s] old and below 7 years of age, minor, through force and intimidation against her will and consent by licking the vagina and thereafter inserting his penis into the vagina of said ["AAA"], thereby

subjecting her to sexual abuse, and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.^[5]

During his arraignment, appellant entered a plea of not guilty.^[6] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incidents is as follows:

AAA, born on September 7, 2000, was then only six (6) years old when she was raped and molested by the accused.

The victim and the accused [were] neighbors in Las Piñas City. Accused, a stay-in construction worker in Baliwag, Bulacan, [was] also a friend of AAA's uncle who would usually sleep over at the victim's house.

On February 24, 2007, at or about 12:00 a.m, AAA was awakened by the accused when he removed her pajama and panty and placed himself on top of her. The accused licked her vagina before inserting his penis into it She felt pain and cried. Since the accused threatened her with harm if she [told] the incident to anybody, she kept mum about it.

[O]n March 18, 2007, during the wee hours of the morning, or about 2:00 a.m., AAA was awakened by the shout of her uncle, CCC. There, she saw accused standing at the corner of the house with her panty at the latter's feet. Realizing that she was naked, she instantly wore her short pants and ran and embraced her uncle. Thereafter, AAA, together with her grandparents and uncles, went to the police to report what happened. The medico legal examination of the private organ of AAA revealed no laceration in her hymen.^[7]

Version of the Defense

Appellant raised the defenses of denial and alibi, viz.:

x x x On February 24, 2007, he was working as a construction worker at NFA, Baliwag, Bulacan. He worked there from Monday to Saturday. [On said date,] he was working until 5:00 o'clock in the afternoon in Bulacm1.

On March 18, 2007, he was at home resting. At around 8:00 o'clock in the evening of that day, he went out to join his friends, Jonas Rabosa, Aron Rabosa, Jomari Magundayao, Randy Ramirez, Erma Bergancia and Bongbong in a drinking spree in front of the house of AAA's aunt, BBB, where AAA also lived. The drinking spree lasted until 12:00 o'clock midnight when he started vomiting. They slept at BBB's house. He, together with his friends, slept, side by side with each other in the living room, but before he fell asleep he noticed that AAA was sleeping on the sofa.

At around 2:00 o'clock in the morning, [he] was awakened by the punches thrown at him by AAA's uncle, CCC, who claimed to have seen him molesting the girl. He was surprised. Another uncle, ODD, followed suit and both clobbered him. His cousin, Randy Ramirez, intervened to pacify, and brought him home. At home, he narrated to his mother what [had] happened, and she cried. Then, policemen arrived at their house to arrest him, although without showing any warrant of arrest.^[8]

Ruling of the Regional Trial Court

In its Decision dated February 3, 2011, the RTC found appellant guilty beyond reasonable doubt of **rape** under Article 266 of the Revised Penal Code in Criminal Case No. 07-0284 and **acts of lasciviousness** under Article 336 in Criminal Case No. 07-0589.^[9] It held that:

On the first rape, AAA narrated that she was roused from sleep when accused was removing her pajama and panty. After removing he[r] pajama and panty, accused licked her vagina, [and] inserted something hard into [it]. [She later clarified that it was appellant's penis that was inserted into her vagina] She did not disclose this to anybody because accused told her not to tell it to anybody.^[10]

x x x x

On the alleged (second rape incident), AAA narrated that she was roused from sleep when her uncle[,] CCC[,] was shouting angry words at the accused when they saw the latter lying on top of AAA. x x x It is clear from AAA's testimony that when the accused carried out the lecherous intent on March 18, 2007, he did not commit rape, consummated nor attempt[ed]. There [was] no indication that accused successfully penetrated, at least the labia of AAA. Accused should only be held liable for acts of lasciviousness.^[11]

Accordingly, the RTC sentenced appellant to suffer the penalty of *a) reclusion perpetua* and to pay "AAA" P75,000.00 as civil indemnity, P75,000.00 as moral damages and P50,000.00 as exemplary damages in Criminal Case No. 07-0284; and *b) imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and to pay "AAA" P30,000.00 as civil indemnity, P30,000.00 as moral damages and P20,000.00 as exemplary damages in Criminal Case No. 07-0589.^[12]*

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

The CA affirmed the RTC Decision *in toto*. Like the RTC, the CA found "AAA's"

testimony worthy of credence.^[13] It also noted that "AAA" had "positively identified appellant as her abuser and her statements under oath were sufficient to convict appellant for [his misdeeds]."^[14]

In addition, the CA held that appellant's defense of denial cannot prevail over "AAA's" testimony as it was not properly corroborated or substantiated by clear and convincing evidence. It likewise reiterated that the defense of denial could not prevail over "AAA's" positive identification of appellant as the perpetrator of the crimes charged.^[15]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether "AAA's" testimony was credible and straightforward, given that: (a) she simply answered "yes" to almost all of the trial prosecutor's leading questions;^[16] and (b) the defense was able to prove that the alleged acts of rape could not have been perpetrated by appellant, as there were other persons present when said acts were supposedly committed;^[17] and,

Second, whether the absence of hymenal lacerations on "AAA" casts doubt on appellant's guilt.^[18]

The Court's Ruling

After due consideration, we resolve to (a) **affirm** appellant's conviction in Criminal Case No. 07 0589, but **modify** the designation of the crime committed; and (b) **grant** his appeal in Criminal Case No. 07-0284.

Elements of Rape in Criminal Case No. 07-0589 Established

Article 266-A of the Revised Penal Code provides:

ART. 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;
- b. When the offended party is deprived of reason or is otherwise unconscious;

- c. By means of fraudulent machination or grave abuse of authority;
- d. When **the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. (Emphasis supplied)

x x x x

"Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act."^[19] Notably, the absence of free consent in cases of statutory rape is conclusively presumed and as such, proof of force, intimidation or consent is immaterial.^[20]

To convict an accused of statutory rape, the prosecution must prove: 1) the age of the complainant; 2) the identity of the accused; and 3) the sexual intercourse between the accused and the complainant.^[21]

In this case, the prosecution successfully established that the first rape incident on February 24, 2007 indeed took place when "AAA" was only 6 years old,^[22] and that appellant was the perpetrator of the crime. The pertinent portion of "AAA's" testimony detailing said rape incident is quoted below:

[PROS. JACOB M. MONTESA II]

Q: You said you were raped by Kuya Richard, is this true or not?

A: That's true, Sir.

Q: How did he rape you?

A: He placed himself on top of me, Sir.

Q: And what else did he do?

A: He inserted his penis into my vagina, Sir.

Q: What else?

A: He licked my vagina, Sir.^[23]

x x x x

Q: This Kuya Richard who raped you, is he here today?

A: Yes, Sir.

Q: Can you point to him?

A: That one, Sir. (Witness pointing to a person who when asked, answered by the name of Richard Ramirez.)

Q: Can you tell us what you felt when Kuya Richard was doing this? What was your reaction?

A: I was hurt, Sir.

Q: Did you cry?

A: Yes, Sir.^[24]

Notably, both the RTC and the CA found "AAA's" testimony credible and convincing. We, too, see no reason to disbelieve "AAA's" testimony as regards the first rape incident, since it was not shown that the lower courts had overlooked, *misunderstood* or *misappreciated* facts or circumstances of weight and substance which, if properly considered would have altered the result of the case.^[25]

We reject appellant's contention that the presence of other persons during the commission of the first rape incident rendered "AAA's" testimony unbelievable. "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."^[26] After all, "[i]t is settled that lust is not a respecter of time or place and rape is known to happen [even] in the most unlikely places."^[27]

We are likewise not persuaded by appellant's claim that the absence of lacerations on "AAA's" hymen negated sexual intercourse. "The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process."^[28] Besides, as the CA correctly pointed out, the Initial Medico-Legal Report^[29] itself stated that although there was "no evident injury at the time of examination," the "medical evaluation cannot exclude sexual abuse."

Acts of lasciviousness not proven beyond reasonable doubt

At this juncture, we draw attention to the unique nature of an appeal in a criminal case - the appeal throws the *whole case* open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[30] It is on the basis of such review that we find the present appeal *partially* meritorious.

The Information in Criminal Case No. 07-0284 alleged that appellant had carnal knowledge of "AAA" "on or about the 18th day of March, 2007. For precision and clarity, we quote "AAA's" testimony on the incident that transpired on March 18, 2007 as follows:

[COURT:]

Q: **You mentioned that you did not see the person who took off your pants, you mean you are not sure who he is?**

A: **No, [y]our Honor.**

Q: You said you did not see him?

A: Because I was asleep at that time. I was awakened when my Uncle shouted.

Q: You did not wake up because somebody took off your shorts but because of the shouting of your Uncle?

A: Yes, [y]our Honor.

x x x x

Q: When you heard your Uncle shouting, did you learn why he shouted?

A: Yes, [y]our Honor.

Q: Why?

A: **According to him, BBB [(AAA's aunt)] saw Richard on top of me, [y]our Honor.**

Q: So when he was on top of you, you were not awakened?

A: No, [y]our Honor.^[31] (Emphasis supplied)

Unfortunately, "AAA's" testimony as regards the second rape incident is **not** sufficient to convict appellant of rape or even acts of lasciviousness *sans* the testimonies of "BBB" and "CCC" ("AAA's" uncle) who supposedly witnessed firsthand what happened on that fateful night. "AAA's" narrative thereto clearly consisted of **hearsay evidence** which, "whether objected to or not, *has no probative value* unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule x x x."^[32]

On this point, we deem it appropriate to reiterate our ruling in *People v. Mamalias*^[33] where we emphasized that the admission of hearsay evidence in a criminal case would be tantamount to a violation of the rights of the accused, *viz.*:
x x x We have held that in criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right to confront the witnesses testifying against him and to cross-examine them. **A conviction based alone on proof that violates the constitutional right of an accused is a nullity and the court that rendered it acted without jurisdiction in its rendition.** Such a judgment cannot be given any effect whatsoever especially on the liberty of an individual.^[34] (Emphasis supplied)

Clearly, the RTC committed a grave mistake when it relied on hearsay evidence to convict appellant of the crime of acts of lasciviousness. We also note the error in the *fallo*^[35] of the RTC Decision where the trial court convicted appellant of rape in Criminal Case No. 07-0284 (the second rape incident) and acts of lasciviousness in Criminal Case No. 07-0589^[36] (the first rape incident), when it should have been the other way around, based on the discussion in the body of said Decision.

The CA, too, is equally at fault for failing not only to recognize the glaring flaw in the prosecution's evidence, but also to correct the mistake in the *fallo* of the RTC Decision when the case was elevated on appeal.

The Crime Committed and the Proper Penalty in Criminal Case No. 07-0589

As earlier discussed, sexual intercourse with a woman who is below 12 years of age constitutes statutory rape.^[37] Moreover, Article 266-B of the Revised Penal Code, as amended, provides that the death penalty shall be imposed "when the victim is a

child below seven (7) years old."^[38]

In this case, "AAA" was only six years old at the time of the incident, as evidenced by her Certificate of Live Birth^[39] showing that she was born on September 7, 2000. Consequently, the crime committed by appellant is **qualified statutory rape** under Article 266-B. Since the death penalty cannot be imposed in view of Republic Act No. 9346, or An Act Prohibiting the Imposition of Death Penalty in the Philippines, the proper penalty is reclusion perpetua without eligibility for parole.^[40]

We likewise modify the amounts awarded to "AAA" in view of our ruling in *People v. Gaa*^[41] imposing a minimum amount of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages "in cases where the proper penalty for the crime committed by accused is death but where it cannot be imposed because of the enactment of RA 9346," as in this case.

Thus, we increase the award of civil indemnity from P75,000.00 to P100,000.00; moral damages from P75,000.00 to P100,000.00; and exemplary damages from P50,000.00 to P100,000.00. Moreover, "a legal interest of 6% *per annum* will be imposed on the total amount of damages awarded to "AAA" counted from the date of the finality of this judgment until fully paid."^[42]

WHEREFORE, the appeal is **DISJVIISSED**. The assailed Decision dated October 30, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05176 convicting appellant Richard Ramirez y Tulunghari is **AFFIRMED with the following MODIFICATIONS**:

(a) appellant is found **GUILTY** of **QUALIFIED STATUTORY RAPE** in Criminal Case No. 07-0589, and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;

(b) the amounts of the civil indemnity, moral damages, and exemplary damages in Criminal Case No. 07-0589 are **increased** to P100,000.00, respectively; and,

(c) appellant is **ACQUITIED** in Criminal Case No. 07-0284.

SO ORDERED.

Sereno, C. J., on leave.

Leonardo-De Castro,^{**} Tijam, and Gesmundo,^{***} JJ., concur.

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

(SGD)
TERESITA J.
LEONARDO-DE
CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

(SGD)
ANTONIO T.
CARPIO
Acting Chief
Justice^[43]

** Per Special Order No. 2540 dated February 28, 2018.

*** Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

[1] *Rollo*, pp. 2-10; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[2] *CA rollo*, pp. 82-89; penned by Presiding Judge Gloria Butay Aglugub.

[3] "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. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation. And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC. known as the Rule on

Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] Information dated June 14, 2007, records, p. 1.

[5] Information dated March 20, 2007, id. at 64.

[6] Id. at 21 and 86.

[7] CA *rollo*, 109-110.

[8] Id. at 68.

[9] Id. at 89.

[10] Id. at 86-87.

[11] Id. at 88.

[12] Id. at 89. In the dispositive portion of the RTC's Decision, Crim. Case No. 07-0589 was inadvertently stated as Crim. Case No. 07-0585.

[13] *Rollo*, p. 8.

[14] Id. at 9.

[15] Id.

[16] CA *rollo*, p. 69.

[17] Id. at 74.

[18] Id. at 75-76.

[19] *People v. Gaa*, G.R. No. 212934, June 7, 2017.

[20] Id.

[21] Id.

[22] See "AAA's" Certificate of Live Birth, records, p. 12.

[23] TSN, August 12, 2008, pp. 10-11.

[24] *Id.* at 14.

[25] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008).

[26] *People v. Bangsoy*, 778 Phil. 294, 303 (2016).

[27] *Id.*

[28] *Id.* at 304.

[29] Records, p. 11; prepared by PSI Marianne S. Ebdane, M.D.

[30] *People v. Kamad*, 624 Phil. 289, 310 (2010).

[31] TSN, December 9, 2008, pp. 8-10.

[32] *Republic v. Galeno*, G.R. No. 215009, January 23, 2017. Italics supplied.

[33] 385 Phil. 499 (2000).

[34] *Id.* at 513.

[35] *CA rollo*, p. 89.

[36] Also erroneously stated as Crim. Case No. 07-0585.

[37] *People v. Gaa*, supra note 19.

[38] REVISED PENAL CODE, Article 266-B, par. 5.

[39] Records, p. 12.

[40] *People v. Gaa*, supra note 19.

[41] *Id.* .

[42] *Id.*

[43] Per Special Order No. 2539 dated February 28, 2018.



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