

SECOND DIVISION

G.R. No. 228887, August 02, 2017

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v. **DOMINADOR UDTOHAN Y JOSE**, *Accused-Appellant*.

DECISION

MENDOZA, J.:

On appeal is the May 30, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06944, which affirmed the June 26, 2014 Decision² of the Regional Trial Court, Branch 69, Taguig City (RTC) in Criminal Case Nos. 146314-15, finding accused-appellant Dominador Udtohan y Jose (*accused-appellant*) guilty beyond reasonable doubt of the crimes of Statutory Rape under Article 266-A (1) (d) of the Revised Penal Code (RPC) and Violation of Section 5 (b) of Republic Act (R.A.) No. 7610.

In two (2) Informations,³ dated September 13, 2011, accused-appellant was charged as follows:

CRIMINAL CASE NO. 146314

That, in the month of April 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with said victim against her will and consent, to her damages and prejudice.

CONTRARY TO LAW.

CRIMINAL CASE NO. 146315

That, on or about the 11th day of September 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and with intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously commit lascivious conduct with said victim, against her will and consent, by then and there inserting his finger inside her vagina, which are acts prejudicial to the normal growth and development as a child.

CONTRARY TO LAW.⁴

On October 18, 2011, accused-appellant was arraigned and he pleaded "not guilty." Thereafter, trial ensued.

Evidence of the Prosecution

The testimonies of the prosecution's witnesses tended to establish that AAA, who was

then eleven (11) years old, together with her mother, BBB, and two (2) siblings, stayed for free in the house of her paternal uncle, accused-appellant herein, located at Block 5, XXX Street, Sitio XXX, Western XXX, XXX. Because AAA's father, DDD, was in jail for murder, accused-appellant helped BBB in taking care of her children.

Sometime in April 2011, AAA went with accused-appellant, whom she called CCC, to the YYY Camp, Sitio XXX, to buy some bananas. Accused-appellant would buy bananas everyday and AAA helped him in selling banana cue as she was still on vacation from school.

While on their way to the YYY Camp, accused-appellant suddenly dragged AAA towards the grassy portion of a vacant lot. Then and there, he had carnal knowledge with AAA by inserting his penis inside her vagina. After satisfying his lust, accused-appellant pushed AAA out of the road and proceeded to buy some bananas. He threatened AAA that should she tell anyone about the incident, he would eject her family from his house and he would not feed them. Subsequently, accused-appellant would sexually abuse AAA almost every day at the same place.

Later, on September 11, 2011, at around 10:00 o'clock in the evening, at the house of accused-appellant, he molested AAA by caressing and touching her vagina. AAA did not tell anyone about accused-appellant's bestial acts against her because she was afraid that the latter would evict them and kill her.

On the following day, when AAA was at school, she revealed her ordeal to her teacher who was then suspicious of her odd behavior. On that same day, accused-appellant's live-in-partner disclosed to BBB that she saw him insert his finger into AAA's vagina. BBB immediately went to AAA's school to verify the information. Thereat, BBB sought the help of AAA's teacher and they went to the *barangay* to lodge a complaint. The *barangay* referred them to the police station.

Thereafter, they proceeded to the PNP Crime Laboratory in Camp Crame wherein PCI Shane Lore Detaballi (*PCI Detaballi*) conducted a genital examination and found the presence of deep-healed lacerations at the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. AAA then gave her sworn statement before the Women and Children Protection Desk to confirm the veracity of her allegations.

Evidence of the Defense

On the other hand, the defense presented accused-appellant as its sole witness. He vehemently denied the accusations against him. Instead, he claimed that the charges were fabricated by BBB, AAA's mother, because she was mad and angry at DDD, her husband and brother of accused-appellant. He also added that BBB was coaching her children to testify against him and that she threatened to physically harm them should they refuse to follow her.

The RTC Ruling

In a Decision, dated June 26, 2014, the RTC found accused-appellant guilty beyond

reasonable doubt of statutory rape under Article 266-A (1) (d) of the RPC and violation of Section 5 (b) of R.A. No. 7610. It found that AAA was born on October 7, 1999, as shown by in her birth certificate, and that she was eleven (11) years old when the two separate sexual abuses occurred. The trial court held that the testimony of AAA was clear, candid, straightforward, and convincing regarding the sexual abuses she suffered at the hands of her uncle. The RTC also ruled that the medico-legal certificate corroborated the testimony of AAA. The RTC disposed the case in this wise: WHEREFORE, finding Dominador Udtohan y Jose guilty beyond reasonable doubt of Statutory Rape and violation of Sec. 5(b) R.A. 7610, this court hereby sentences him as follows:

In Crim. Case No. 146314 to suffer the penalty of Reclusion Perpetua and to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages; and

In Crim. Case No. 146315 to suffer the penalty of 12 years and 1 day of Reclusion Temporal in its minimum period, as minimum, to 15 years and 6 months of Reclusion Temporal in its medium period, as maximum; and to pay AAA Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages.

SO ORDERED.⁵

Aggrieved, accused-appellant elevated an appeal to the CA. He argued that the testimony of AAA was not credible because there were diverging statements regarding the number of incidents of rape he allegedly committed.

The CA Ruling

In its assailed Decision, dated May 30, 2016, the CA denied the appeal. It held that the testimony of AAA regarding the two sexual abuses was clear and convincing. The CA underscored that AAA was able to describe each incident of rape and sexual abuse committed by her uncle, accused-appellant. Also, it did not give weight to the self-serving denial of accused-appellant and his claim that AAA's mother, who was mad at his brother, initiated the charges. The CA added that accused-appellant miserably failed to establish the ill-will or motive of AAA or her mother. The *fallo* reads:

WHEREFORE, the appeal is **DENIED**. The Decision dated June 26, 2014 of the Regional Trial Court of XXX City, Branch 69, is hereby **AFFIRMED** with the **MODIFICATION** in that, interest at the legal rate of six percent (6%) per annum, shall be imposed on the total monetary awards in the appealed decision until the same are fully paid.

SO ORDERED.⁶

Hence, this appeal.

ISSUES

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.⁷

In a Resolution,⁸ dated February 27, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in Lieu of Supplemental Brief,⁹ dated April 5, 2017, accused-appellant manifested that he was adopting his appellant's brief filed before the CA as his supplemental brief. In its Manifestation in Lieu of Supplemental Brief,¹⁰ dated April 12, 2017, the Office of the Solicitor General (OSG) stated that it was no longer filing a supplemental brief, there being no significant transaction, occurrence or event that happened since the filing of the appellee's brief.

The Court's Ruling

The appeal lacks merit.

Section 5 (b) of R.A. No. 7610 provides:

(b) Those who commit the act of sexual intercourse of 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;** [Emphasis supplied]

As stated above, when the victim of rape or acts of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.

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. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.¹¹ Moreover, under Article 266-B of the RPC, there is qualified rape when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.¹²

On the other hand, acts of lasciviousness under the RPC has the following elements: that the offender commits any act of lasciviousness or lewdness; that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and that the offended party is another person of either sex.¹³

After a judicious scrutiny of the records, the Court finds that accused-appellant is guilty of qualified rape and acts of lasciviousness under the RPC in relation to Section 5 (b) of R.A. No. 7610.

The testimony of AAA showed that she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, her relationship with him, and the specific bestial acts committed by him, to wit:

Q: Who are you complaining against?

A: Tito CCC, Sir.

Q: Do you see Tito CCC in the premises?

A: None, Sir.

Q: If you will go out, will you be able to identify him?

A: Yes, Sir.

Q: Please go out?

A: Witness pointed to a male man wearing yellow t-shirt when asked for his name, he answered CCC.

Q: AAA, why are you suing Tito CCC?

A: Kasi po ni-rape po niya ako.

Q: You said you were rape (sic), how many times?

A: Two po.

Q: AAA, when was the first time?

A: April 2011, Sir.

Q: About what time?

A: 3:00 P.M.

Q: Where did this happen?

A: At the YYY Camp, Sir.

Q: What were you doing at YYY Camp, Sitio XXX at that time?

A: We were about to buy bananas, Sir.

Q: You said "kami" who was with you?

A: Tito CCC, sir.

Q: So what happened while you were going out to buy bananas?

A: He pulled me in the grassy portion, Sir.

x x x x

Q: AAA you said that you were rape? (sic)

A: Opo

Q: What happened to your private parts if any?

A: Nasira po.

Q: Ipinakita ko sa iyo ito ay...ano ang tingin mo dito manika?

A: Opo.

Q: Ngayon, ito ay manika at ang nirerepresent ng manika na ito ay...ano ba ang tingin mo dito mukha ba siyang lalaki or babae?

A: Lalaki po.

Q: So itong lalaki na ito may mukha, may kamay at paa, meron ding siyang katulad noong nasa lalaki...maari mo bang ituro sa amin kung ano ang ginamit niya?

AAA pointed to the private part of the anatomically correct doll.

PROSECUTOR DE DIOS:

Your Honor, can I unbare?

COURT:

Yes pero dahan-dahan lang baka magulat si AAA.

Q: AAA, this doll is representing a male person. Now a male person has its own private parts. I'd like to show to you a depiction of such private part, is that okay with you?

A: Opo.

Q: I'd like to show to you this portion of the doll, now what do you know about this portion? Ano ito?

COURT:

Q: Ano ba ang alam mo na tawag sa ganyan? Alam mo ba?

A: Opo.

Q: Ano ang tawag diyan, alam mo ba?

A: Witness just pointed the private parts of the anatomical (sic) correct doll

PROSECUTOR DE DIOS:

Q: AAA, am I correct to say that this was the part of the body used by Tito CCC in raping you?

A: Opo.

Q: Now, on September 11, 2011, you also said that you were molested by Tito CCC, what time?

A: 10:00 P.M.

Q: Where did this happen?

A: Sa bahay po.

Q: Now, AAA you said that you were molested, how were you molested by Tito CCC exactly?

COURT:

Q: Gusto mo bang gamitin ulit or ituro...bibigay ko ulit ang doll kay Prosec.dito mo na lang ituro kung ano ang ginamit sa iyo o may ginamit o anong parte ng katawan?

PROSECUTOR DE DIOS:

Q: May ginamit ba si Tito CCC anong parte ng...katawan?

A: Kamay po.

Q: So what did he do with his hands to your persons?

A: Hinipo niya ako.

Q: AAA, with the use of Tito CCC's hands, where did he touch you?

A: Sa ari ko po.

x x x x

Q: Do you have any proof AAA to show us that you were indeed born on October 7, 1999?

A: Opo.

Q: I'd like to show to you certificate of live birth, is this your certificate of live birth?

A: Opo.

x x x x

Q: I noticed the first molestation was on (sic) April 2011 and the second was on (sic) September 2011, from April up to September why did you not tell anyone that you were subject of the molestation?

A: Natakot po ako.

Q: Who are you afraid of?

A: Kay Tito CCC po.

Q: So why are you afraid of Tito CCC?

A: Baka po kasi palayasin kami at patayin ako.

Q: You said "baka" why did you say that you might be evicted or killed? Why do you say that?

A: Kasi iyon po ang sinabi niya sa akin. x x x¹⁴

Qualified Rape

It is apparent from the testimony of AAA that she suffered sexual abuses at the hands of accused-appellant, her own uncle. The first instance occurred in April 2011, on their way to Camp YYY to buy bananas when accused-appellant pushed AAA to the grassy portion and raped her. Despite her tender age and traumatizing experience, AAA was able to describe in open court, through an anatomically correct doll, that accused-appellant used and inserted his penis in her vagina which caused her tremendous pain and injuries.

After satisfying his lust, accused-appellant warned her not to relate the incident to

anybody, otherwise, he would evict her family and he would kill her. Evidently, accused-appellant used threats and intimidation against AAA, which caused her to suffer silently in fear until she finally disclosed her ordeal to her teacher. Further, AAA was only eleven (11) years old at the time of the rape incident, as evidenced by her birth certificate.

The Court does not give credence to accused-appellant's argument that AAA's testimony was incredible because there were inconsistent statements regarding the frequency of the abuses. Inconsistencies in the testimony of the victim do not necessarily render such testimony incredible. In fact, minor inconsistencies strengthen the credibility of the witness and the testimony, because of a showing that such charges are not fabricated. What is decisive in a charge of rape is the complainant's positive identification of the accused as the malefactor.¹⁵

Testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.¹⁶ It is a well-settled rule that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.¹⁷

Moreover, the medico-legal report corroborated the testimony of AAA. It showed the presence of deep-healed lacerations at the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. Time and again, the Court held that the slightest penetration of the labia of the female victim's genitalia consummates the crime of rape.¹⁸

Nevertheless, the crime committed by accused-appellant must be qualified under Article 266-B of the RPC. It was indicated in the Informations that accused-appellant was the paternal uncle of AAA. Also, during trial, AAA positively identified accused-appellant as her uncle and she established that it was her uncle who raped her. There is qualified rape when the victim is below 18 years of age and the offender is an ascendant or relative by consanguinity or affinity within the third civil degree. In this case, accused-appellant, the paternal uncle of AAA, was a relative by consanguinity within the third civil degree. Hence, the crime of qualified rape was committed by accused-appellant.

Acts of Lasciviousness

Aside from the qualified rape committed by accused-appellant, AAA testified positively that he also sexually molested her. She stated that on September 11, 2011, at his house, around 10:00 o'clock in the evening, the accused-appellant touched and caressed her genitals. This was confirmed by his live-in-partner when she reported the incident to BBB.

Section 5 Article III of R.A. No. 7610 provides that when the victim is under 12 years of age, the perpetrators shall be prosecuted under the RPC, but the penalty shall be that provided in R.A. No. 7610.¹⁹ Lascivious conduct is defined as "[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."²⁰

In this case, the conduct of accused-appellant in intentionally touching and caressing the genitals of AAA constituted an act of lasciviousness. He must be punished under the prescribed penalty of R.A. No. 7610 as AAA was below 12 years of age at the time of the incident. The aggravating circumstance of relationship must also be taken into consideration.

Denial is a weak defense

Accused-appellant interposed a defense of denial by vehemently denying the accusations against him. It is an established rule, however, that denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.²¹

Indeed, the positive testimony of AAA outweighs the denial proffered by accused-appellant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.²²

Moreover, accused-appellant's assertion that the charges were merely instituted by BBB because she was mad or angry with DDD, his brother, was utterly unsubstantiated. Motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.²³ Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.²⁴

Penalties

In Criminal Case No. 146314, the crime committed was qualified rape under Paragraph 6(1), Article 266-B of the RPC and the imposable penalty is death. With the enactment of R.A. No. 9346, however, the imposition of the death penalty is prohibited and the proper penalty would be *reclusion perpetua* without the benefit of parole.

In Criminal Case No. 146315, the crime committed was acts of lasciviousness. As the victim was below 12 years of age, the penalty provided under Section 5 (b) of R.A. No. 7610, *reclusion temporal* in its medium period, must be imposed. Further, the aggravating circumstance of relationship between the accused-appellant and AAA is present. Thus, the Court finds that the proper imposable penalty is 12 years and 1 day of *reclusion temporal* in its minimum period, as minimum, to 16 years, 5 months and 10 days of *reclusion temporal* in its medium period, as maximum.²⁵

As to the awards of damages in qualified rape, *People v. Jugueta*²⁶ provides the following awards of damages: P100,000.00 as civil indemnity; P100,000.00 as moral damages; and P100,000.00 as exemplary damages. In acts of lasciviousness, *People v. Aycardo*²⁷ enumerates the following awards of damages: P20,000.00 as civil indemnity;

P15,000 as moral damages; and P15,000.00 as exemplary damages. As properly held by the CA, the amounts of damages awarded shall earn an interest of 6% *per annum* from the date of finality of judgment until fully paid.

WHEREFORE, the June 26, 2014 Decision of the Regional Trial Court, Branch 69, Taguig City, in Criminal Case Nos. 146314-15, is **AFFIRMED** with the following **MODIFICATIONS**:

WHEREFORE, in Criminal Case No. 146314, finding accused Dominador Udtohan y Jose **GUILTY** beyond reasonable doubt of **QUALIFIED RAPE** under Article 266-A (1) (d) and penalized under Article 266-B of the Revised Penal Code, the Court sentences him to suffer the penalty of *reclusion perpetua*, without eligibility for parole; and to pay AAA the amounts of P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages.

In Criminal Case No. 146315, finding accused Dominador Udtohan y Jose **GUILTY** beyond reasonable doubt of ACTS OF LASCIVIOUSNESS under Article 336 of the Revised Penal Code and penalized under Section 5 (b), Article III of R.A. No. 7610, the Court sentences him to suffer the penalty of 12 years and 1 day of *reclusion temporal* in its minimum period, as minimum, to 16 years, 5 months and 10 days of *reclusion temporal* in its medium period, as maximum; and to pay AAA the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, and P15,000.00 as exemplary damages.

In both cases, the amounts of damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

Carpio, (Chairperson), Peralta, Leonen, and Martires, JJ., concur.

Endnotes:

¹ Penned by Associate Justice Sesinando E. Villon with Associate Justice Rodil V. Zalameda and Associate Justice Pedro B. Corales, concurring; *rollo*, pp. 2-23.

² Penned by Judge Loriel Lacap Pahimna; *CA rollo*, pp. 15-24.

³ *Id.* at 11-14.

⁴ *Id.* at 54-55.

⁵ *Id.* at 24.

⁶*Rollo*, p. 23.

⁷ *CA rollo*, p. 44.

⁸*Rollo*, p. 29.

⁹ *Id.* at 33-35.

¹⁰ Id. at 30-32.

¹¹ *People v. Cadano, Jr.*, 729 Phil. 576, 584 (2014).

¹² *People v. Traigo*, 734 Phil. 726, 731 (2014).

¹³ *People v. Aycardo*, G.R. No. 218114, June 5, 2017.

¹⁴ *Rollo*, pp. 11-15; TSN dated April 16, 2012, pp. 4-37.

¹⁵ *People v. Cabigting*, 397 Phil. 944, 982 (2000).

¹⁶ *People v. Baraga y Arcilla*, G.R. No. 208761, June 4, 2014, 725 SCRA 293, 298-299.

¹⁷ *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 377.

¹⁸ *People v. Reyes*, 714 Phil. 300, 309 (2013).

¹⁹ *Imbo y Gamores v. People*, G.R. No. 197712, April 20, 2015, 756 SCRA 196, 204.

²⁰ Section 32, Article XIII of the Implementing Rules and Regulations of R.A. No. 7610.

²¹ *Garingarao v. People*, 669 Phil. 512, 522 (2011).

²² *People v. Amaro*, G.R. No. 199100, July 18, 2014, 730 SCRA 190, 199.

²³ *People v. Parejay Cruz*, 724 Phil. 759, 786 (2014).

²⁴ *People v. Manuel*, 358 Phil. 664, 674 (1998).

²⁵ See *People v. Aycardo*, supra note 13, where the Court also imposed the same penalty to the crime of acts of lasciviousness and the victim was below 12 years of age with the aggravating circumstance of relationship.

²⁶ G.R. No. 202124, April 5, 2016.

²⁷ Supra note 13.