

THIRD DIVISION

[G.R. No. 233463, February 19, 2020]

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

D E C I S I O N

ZALAMEDA, J.:

The Case

This appeal^[1] seeks the reversal of the 14 February 2017 Decision^[2] rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 07296, which affirmed with modifications the 28 November 2014 Joint Judgment^[3] of Branch 33. Regional Trial Court of ██████████, Camarines Sur (RTC), in Criminal Case Nos. P-4356 and P-4357, finding XXX (accused-appellant) guilty beyond reasonable doubt of two (2) counts of Rape, as defined and penalized under Article (Art.) 266-A in relation to Art. 266-B of the Revised Penal Code (RPC).

Antecedents

On 02 March 2010, accused-appellant was indicted for the crime of Rape, in relation to Section 5(b) of Republic Act No. (RA) 7610,^[4] in separate Informations, the accusatory portions of which state:

Criminal Case No. P-4356

That sometime in the year 2009 and the days thereafter at Barangay ██████████, Province of Camarines Sur, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, through force, intimidation and influence, did then and there, willfully, unlawfully and knowingly, undress and succeed in having carnal knowledge with xxx, a thirteen (13) years old minor, without her consent and against her will, an act by deed which debases, degrades or demeans the intrinsic worth and dignity of the said victim as a human being, to her damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.^[5]

Criminal Case No. P-4357

That on January 2, 2010 at Barangay ██████████, Province of Camarines Sur, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, through force, intimidation and influence, did then and there, willfully, unlawfully and knowingly, undress and succeed in having carnal knowledge with xxx, a thirteen (13) years

old minor, without her consent and against her will, an act by deed which debases, degrades or demeans the intrinsic worth and dignity of the said victim as a human being, to her damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.^[6]

Version of the Prosecution

In May 2009, private complainant AAA (AAA), then a thirteen (13)-year-old minor,^[7] and her younger sister, BBB, went to live with accused-appellant, their father's cousin, to fulfill his promise to send the children to school. Accused-appellant treated the siblings kindly at first, but merely a week after, accused-appellant began to sexually abuse AAA.^[8]

The first incident happened on the first Saturday of June 2009. Accused-appellant called AAA to his room to pluck his gray hair strands. Once inside, he locked the door, made AAA lie down, and ordered her to remove her shirt and shorts. She fearfully obeyed him and did not cry for help because accused-appellant angrily threatened to kill her and her family.^[9] Feeling powerless, she covered her face with a pillow as accused-appellant fondled and sucked her breasts, and licked her private part. Still unsatisfied, accused-appellant inserted his finger into AAA's private part but withdrew the same after AAA pleaded that it was painful.^[10] Thereafter, AAA dressed up and left.^[11]

The following Saturday, accused-appellant called AAA again to his room. This time, he wanted her to give him a massage. Upon AAA's entry, he locked the door and kissed her lips. When she said, "[y]ou said, I will just massage,"^[12] he got angry but did not persist, and allowed her to massage him. She left the room once he fell asleep.^[13]

AAA lost count of the instances accused-appellant sexually molested her but remembered that it happened almost every Saturday.^[14]

On 02 January 2010, accused-appellant summoned AAA into his store. She fearfully complied and went inside the store. There, accused-appellant kissed her lips, breasts and vagina, then inserted his penis in/into her vagina. AAA felt both pain and anger.^[15] Moments later, accused-appellant's 18-year-old daughter, CCC, arrived and saw them both naked. When CCC asked his father about what happened, the latter got a knife and warned her against reporting the incident to anyone.^[16] AAA, thereafter, went home and kept the incidents to herself. CCC, on the other hand, mentioned the incident to DDD, another cousin of AAA, which information ultimately led to FFF, AAA's mother.^[17]

FFF immediately fetched her daughters from accused-appellant's house,^[18] and reported the incident to the *barangay* officials, and police authorities.^[19] FFF also had AAA undergo medical examination.^[20]

Dr. Angelina Celzo (Dr. Celzo) found positive healed lacerations at the 1, 3, 5 and 7

o'clock positions on AAA's hymen and noted that her vagina admitted one (1) finger-breadth with ease. Dr. Celzo opined that the four (4) lacerations were possibly caused by the insertion of a hard, blunt object.^[21]

Version of the Defense

Accused-appellant denied the charges against him. Although he admitted that AAA and BBB stayed with him and his family, he claimed that he could not have raped AAA in June 2009 as she was no longer staying with them at that time. Also, the alleged rape on 02 January 2010 could not be true because the day before that, he had a drinking session with his friends until 3:00 A.M. the following day. Later that morning, AAA woke him up and prepared him a cup of coffee. She then cuddled with him and sat on his lap when CCC arrived and saw them in that position.^[22]

Ruling of the RTC

On 28 November 2014, the RTC rendered its Joint Judgment,^[23] the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

1. In Crim. Case No. P-4356, finding the accused **XXX, GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A and Art. 266-B of the Revised Penal Code and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*; and

2. In Crim. Case No. P-4357, finding the accused **XXX, GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A and Art. 266-B of the Revised Penal Code and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.

He is also directed to pay the victim in each case the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-five thousand pesos (P25,000.00) as exemplary damages.

The accused is credited in full for the period of his preventive imprisonment if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, with four-fifths only.

SO ORDERED.^[24]

Ruling of the CA

On 14 February 2017, the CA promulgated its Decision, affirming accused-appellant's conviction but modified the awards of damages, thus:

WHEREFORE, in view of the foregoing, the instant appeal is **DENIED**. The *Joint Judgment* of the Regional Trial Court, Branch 33, of [REDACTED], Camarines Sur in Criminal Case Nos. P-4356 and P-4357

dated November 28, 2014 is hereby **AFFIRMED with MODIFICATIONS** in that the amount of exemplary damages shall be increased to PhP 75,000.00 for each count of rape; that the amount of moral damages shall be increased to PhP 75,000.00 for each count of rape; that the victim shall be awarded the amount of Php 75,000.00 as civil indemnity for each count of rape; and that all the monetary awards shall have an interest rate of 6% *per annum* from the finality of this Decision until fully paid.

SO ORDERED.^[25]

Hence, this appeal.^[26]

Issues

Accused-appellant claims that:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE HIGHLY INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II.

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.^[27]

Simply stated, the issue is whether or not the CA rightly affirmed accused-appellant's conviction for two (2) counts of rape.

Ruling of the Court

We sustain accused-appellant's conviction with modification.

Accused-appellant is liable for lascivious conduct under Section 5(b) of Republic Act No. 7610

In Criminal Case No. P-4356, the RTC, as affirmed by the CA, convicted accused-appellant of the crime of rape through sexual intercourse under Art. 266-A in relation to Art. 266-B of the RPC.

We find the disposition of the RTC and the CA to be erroneous.

Rape via sexual intercourse is committed only by a man through the penile penetration of the woman victim's vagina. On the other hand, sexual assault^[28] may be committed by either a man or a woman against a man or a woman through

the insertion of the penis into another person's mouth or anal orifice, or the insertion of any instrument or object into the genital or anal orifice of another person.^[29]

In this case, the Information charged accused-appellant with rape through carnal knowledge. However, the pieces of evidence disclose that accused-appellant inserted his finger, not his penis, into the vagina of AAA, without her consent. He achieved this by threatening to kill AAA and her family if she did not submit to his bestial desires. It would thus appear that the incident constituted sexual assault as it involved the insertion of an object into AAA's genital orifice. However, accused-appellant cannot be convicted of sexual assault considering that the latter crime has been held not to be included in rape via sexual intercourse given the essential difference in the means of commission (penile penetration v. object penetration).^[30]

The foregoing notwithstanding, the Court finds that based on the facts established, accused-appellant may still be convicted of lascivious conduct under Section 5(b) of RA 7610.

As a rule, an accused can only be convicted of the crime with which he or she is charged. This rule proceeds from the constitutional guarantee that an accused shall always be informed of the nature and cause of the accusation against him or her. An exception to this is the rule on variance^[31] under Sections 4 and 5, Rule 120 of the Rules of Court, which states:

RULE 120

Judgment

Section 4. *Judgment in Case of Variance between Allegation and Proof.* - When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, **the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.**

Sec. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. **And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.** (Emphases supplied)

The due recognition of the constitutional right of an accused to be informed of the nature and cause of the accusation through the criminal complaint or information is decisive of whether his or her prosecution for a crime stands or not. The right is not transgressed if the information sufficiently alleges facts and omissions constituting an offense that includes the offense established to have been committed by the accused,^[32] as in this case.