

SECOND DIVISION

[G.R. No. 241591, July 08, 2020]

**ABC, * PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

INTING, J.:

This is a Petition for Review on *Certiorari*^[1] filed pursuant to Rule 45 of the Rules of Court assailing the Decision^[2] dated January 23, 2018 and the Resolution^[3] dated August 20, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39617 which affirmed with modification the Consolidated Judgment^[4] dated January 19, 2017 of the Family Court of Baguio City (Family Court) in Criminal Case Nos. 37118-R, 37119-R, and 37120-R finding ABC (petitioner) guilty beyond reasonable doubt for Sexual Assault defined under paragraph 2, Article 266-A of the Revised Penal Code (RPC) and penalized under Section 5(b) of Republic Act No. (RA) 7610, otherwise known as the *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

Antecedents

Three separate Informations were filed against petitioner as follows:

Criminal Case No. 37118-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, actuated by lust, did then and there willfully, unlawfully, feloniously commit an act of lasciviousness on the person of private complainant "AAA" a ten-year old child, by making a "push and pull" motion on the part of vagina of said "AAA", a ten-year old child, and thereafter, mashed her breast, to her great damage and prejudice.

The offense is attended by the aggravating circumstances of minority and relationship as the accused is the grandfather of AAA.

CONTRARY TO LAW.^[5]

Criminal Case No. 37119-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and

feloniously commit sexual assault against "AAA", a ten-year old minor, by inserting his finger in the anal orifice of said "AAA", a ten-year old minor.

The offense is attended by the aggravating circumstances of minority and relationship as Accused is the grandfather of AAA.

CONTRARY TO LAW.^[6]

Criminal Case No. 37120-R

That sometime between March 28, 2015 to March 31, 2015, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual assault against "AAA", a ten-year old minor, by inserting his finger in the vagina of said "AAA", a ten-year old minor.

The offense is attended by the aggravating circumstances of minority and relationship as accused is the grandfather of AAA.

CONTRARY TO LAW.^[7]

Upon arraignment, petitioner pleaded not guilty to the crimes charged.^[8]

During the trial, AAA testified that she was 10 years old and an incoming Grade 5 learner in a school in La Union at the time of the incidents. She was staying in her grandmother's house in Baguio for a vacation when herein petitioner, who likewise resides with her grandmother, started molesting her.^[9] She testified that petitioner, whom she later identified in court, fondled her breasts and vagina. With the aid of the anatomically correct dolls, AAA demonstrated how petitioner placed his hand inside the underwear that she was wearing, groped her genitals, and inserted his forefinger inside her vagina.^[10]

The testimonies of the medico-legal officer and the social welfare officer, who corroborated AAA's narration were dispensed with upon stipulation of the parties.

Petitioner waived his right to testify in his defense.^[11]

Ruling of the Family Court

In the Consolidated Judgment^[12] dated January 19, 2017, the Family Court found petitioner guilty beyond reasonable doubt for Sexual Assault in Criminal Case No. 37119-R, but acquitted him for the other crimes of Acts of Lasciviousness and the other charge for Sexual Assault. The dispositive portion of the decision reads:

WHEREFORE, in view of all the foregoing, accused [ABC] is found

- a) In Criminal Case No. 37118-R, NOT GUILTY by reason of reasonable doubt;
- b) In Criminal Case No. 37119-R GUILTY beyond reasonable doubt of the offense defined under paragraph 2, Article 266-A

of the Revised Penal Code and penalized under Section 5 (b) of RA 7610.

He is sentenced to suffer the indeterminate sentence of twelve (12) years and one day of *reclusion temporal* minimum as minimum to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* as maximum.

In line with prevailing jurisprudence, he is ordered to pay AAA Php30,000.00 as civil indemnity *ex-delicto* and PhP30,000.00 as moral damages or a total of PhP 60,000.00, with an interest of 6% per annum from the finality of the decision until its full satisfaction.

c) In Criminal Case No. 37120-R, NOT GUILTY by reason of reasonable doubt;

Considering that the accused has undergone preventive imprisonment, he shall be credited in the service of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law.

SO ORDERED.^[13]

The Family Court found the evidence against petitioner insufficient to establish beyond reasonable doubt that he made "push and pull" motions on AAA's vagina while massaging her breasts; thus, it acquitted him for Acts of Lasciviousness.^[14]

With respect to the other two charges for Sexual Assault, the Family Court ruled that only one instance was proven: the act of petitioner in inserting his finger inside AAA's vagina. The Family Court appreciated the spontaneous, natural, and consistent declaration of AAA that it was petitioner who molested her.^[15]

Aggrieved, petitioner appealed his conviction and argued that the Family Court erroneously convicted him of Sexual Assault in Criminal Case No. 37119-R since the allegations therein pertained to the act of insertion of a finger into AAA's anal orifice which the Family Court itself found unsupported by evidence. He nevertheless contended that his acquittal in Criminal Case No. 37120-R should be sustained pursuant to his right against double jeopardy.

Ruling of the CA

In the Decision^[16] dated January 23, 2018, the CA ruled that there was a typographical error in the dispositive portion of the Family Court's Decision; clarified that the verdict clearly referred to petitioner's conviction for Rape by Sexual Assault in Criminal Case No. 37120-R and not in Criminal Case No. 37119-R; and accordingly acquitted petitioner in the latter case.^[17] The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is hereby DENIED. The January 19, 2017 Consolidated Judgment of the Regional Trial Court, Branch 4, Baguio City in Criminal Case Nos. 37118-R, 37119-R, and 37120-R is AFFIRMED with

MODIFICATIONS. As modified and corrected, accused-appellant ABC is found GUILTY beyond reasonable doubt in Criminal Case No. 37120-R of rape by sexual assault under paragraph 2 of Article 266-A of the Revised Penal Code and sentenced to suffer the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months, and twenty (20) days of *reclusion temporal*, as maximum, and is ordered to pay private complainant AAA civil indemnity, moral damages, and exemplary damages, each amounting to P30,000.00 which shall earn 6% interest *per annum* from the date of finality of this Decision until fully paid. ABC is found NOT GUILTY by reason of reasonable doubt in Criminal Case No. 37119-R. All other aspects of the Consolidated Judgment stand.

SO ORDERED.^[18]

The CA ruled that petitioner should be convicted for Rape by Sexual Assault for his act of inserting his finger into AAA's genitals as charged in Criminal Case No. 37120-R and that the correction of the typographical error in the dispositive portion of the Family Court Consolidated Judgment would not put him in double jeopardy citing the case of *Cobarrubias v. People*^[19] (*Cobarrubias*).

Undeterred, petitioner filed the instant petition.

The Issues before the Court

The issues for the Court's resolution are as follows: (1) whether or not double jeopardy had set in for Criminal Case No. 37120-R; and (2) whether the conviction should be upheld with petitioner's assertion that the victim's testimony was incredible and conflicting. He contended that he was already acquitted in Criminal Case No. 37120-R; hence, his conviction therein violates his right against double jeopardy. Furthermore, petitioner reiterated that the testimony of AAA is full of inconsistencies and lapses that affect her credibility.

Our Ruling

The petition is bereft of merit.

The CA did not commit any reversible error which would warrant the exercise of the Court's discretionary appellate jurisdiction. As correctly ruled by the CA, the clear findings of the Family Court is that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in his indictment for Criminal Case No. 37119-R which charged him for his act of insertion of a finger into the victim's anal orifice; and that only one instance of Sexual Assault was established which pertained to Criminal Case No. 37120-R committed by petitioner by his insertion of a finger into AAA's genitalia. Thus, it is only just and proper to correct the dispositive portion to reflect the exact findings and conclusions of the Family Court as the Court already settled in *Cobarrubias*, viz.:

The general rule is that where there is a conflict between the *fallo*, or the dispositive part, and the body of the decision or order, the *fallo* prevails on the theory that the *fallo* is the final order and becomes the subject of execution, while the body of the decision merely contains the reasons or