

## THIRD DIVISION

[ G.R. No. 246499, November 04, 2020 ]

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

### DECISION

**LEONEN, J.:**

An uncle's moral ascendancy or influence over his minor niece supplants the element of violence or intimidation in a charge of rape. In this case, such influence, together with his reputation for violence, was why the victim did not shout or struggle while her uncle sexually abused her.

This Court resolves an appeal<sup>[1]</sup> assailing the Court of Appeals' Decision,<sup>[2]</sup> which upheld the Regional Trial Court's Decision<sup>[3]</sup> convicting XXX of two charges of qualified rape defined and penalized under Article 266-A(I)(a) in relation to Article 266-B(I) of the Revised Penal Code, as amended.

In two separate Informations, XXX was charged with the crime of qualified rape of AAA, his minor niece. They read:

#### Criminal Case No. 5878

That on or about 10:00 o'clock in the morning of March 8, 2009, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, and taking advantage of his moral ascendancy being the uncle and relative within the third civil degree of consanguinity of the offended party, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with [AAA], a minor 14 years, born on 17 November 1994, against the latter's will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

#### Criminal Case No. 5879

That on or about 7 o'clock in the evening on March 11, 2009, at [REDACTED], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, and taking advantage of his moral ascendancy being the uncle and relative within the third civil degree of consanguinity of the offended party, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with [AAA], a minor 14 years, born on 17 November 1994, against the latter's will and consent,

to her damage and prejudice.

ACTS CONTRARY TO LAW.<sup>[5]</sup>

On arraignment, XXX entered a plea of not guilty to both charges. The two cases were eventually consolidated and joint trial on the merits ensued.<sup>[6]</sup>

The prosecution presented the following as its witnesses: (1) private complainant AAA; (2) her mother BBB; (3) Senior Police Officer 4 Edgar J. Tuason (SPO4 Tuason); (4) Police Officer 2 Alma C. del Valle; (5) Police Officer 2 Elton del Valle; and (6) Dr. James M. Belgira (Dr. Belgira).<sup>[7]</sup>

AAA testified that at around 10:00 a.m. on March 8, 2009, she went to a creek near her house to gather snails to cook.<sup>[8]</sup>

While she was looking for snails, she saw her uncle, XXX, at the upper portion of the creek. XXX went down the creek toward AAA, removed some leaves off a banana plant, and arranged them on the ground. He then grabbed AAA's hand, embraced her, and guided her to lie down on the banana leaves. AAA said that she did not question or fight off her uncle, who was then unarmed, because she was afraid that he would punch her.<sup>[9]</sup>

Once AAA lay down on the leaves, XXX held both her hands, spread her legs, and removed her shorts. She tried to resist and free her hands from his, but she failed to escape his grip.<sup>[10]</sup>

XXX then removed AAA's undergarments before kissing her from the neck all the way to her vagina. He placed saliva on his hand and rubbed it on her vagina. While pinning down AAA, he removed his shorts and briefs and unsuccessfully tried to insert his penis inside her vagina. He managed to penetrate AAA with his second attempt and then he proceeded to masturbate in front of her. He ejaculated on her vagina and slid his fingers inside AAA, causing her to feel pain.<sup>[11]</sup>

After satisfying himself, XXX told AAA to dress up. She followed his order and ran home.<sup>[12]</sup> Her mother, BBB, who was then picking some pechay near their house, saw AAA running uphill toward the house while XXX stayed downhill. AAA did not tell BBB what transpired with XXX out of fear.<sup>[13]</sup>

AAA then testified that at around 7:00 p.m. on March 11, 2009,<sup>[14]</sup> she was watching television with her parents and siblings when XXX appeared at their house.<sup>[15]</sup> She went out of the house to use the outdoor toilet, and when she got out, there was XXX who had apparently followed her. He grabbed AAA and dragged her uphill toward a cluster of banana plants.<sup>[16]</sup>

AAA struggled against XXX while he dragged her but then she stopped<sup>[17]</sup> because she was afraid of her uncle who had once stabbed their relative in the stomach.<sup>[18]</sup>

XXX removed his shirt, embraced AAA, and made her lie on the ground. He then began kissing her on the face and on her body. She tried to resist him but was

pinned down by his arms. He removed her shorts and panties and inserted his penis inside her vagina. AAA tried to shove him away, but XXX instead inserted his finger inside her vagina. Once he removed it, he masturbated for about a minute and ejaculated on AAA's vagina. He then stood and ordered AAA to dress up. She quickly dressed up and ran away from him.<sup>[19]</sup>

On her way home, AAA saw her father, who was angrily looking for her. She told her father about what XXX did to her.<sup>[20]</sup>

That same evening, BBB and AAA reported the incident to their barangay captain, who then accompanied them to the police station to lodge a complaint against xxx.<sup>[21]</sup>

The following morning, several police officers came to arrest XXX, read him his constitutional rights, and brought him to the police station.<sup>[22]</sup>

Later that same day, AAA underwent a physical and genital examination. Dr. Belgira, the forensic physician who examined AAA, testified that he observed "a deep healed laceration" in the six o'clock position of [AAA]'s genitals, which may have been caused by any blunt, hard object that was forcefully inserted into her vagina.<sup>[23]</sup>

The defense presented XXX as its sole witness and he denied raping AAA on both occasions.<sup>[24]</sup>

He claimed that from 8:30 a.m. to 11:00 a.m. on March 8, 2009, he was near his house harvesting peanuts with AAA's parents, so he could not have molested AAA at 10:00 a.m. that day.<sup>[25]</sup>

He also denied raping AAA on the evening of March 11, 2009. He claimed that he was home that time eating dinner with his family. He added that he did not see AAA that night.<sup>[26]</sup>

XXX asserted that the unfounded allegations of rape were due to the land dispute between him and AAA's parents.<sup>[27]</sup>

In its November 11, 2016 Decision,<sup>[28]</sup> the Regional Trial Court found XXX guilty beyond reasonable doubt of both charges against him. It gave full credit to the testimony of AAA, holding that XXX's alibi cannot prevail over AAA's clear and positive assertions.<sup>[29]</sup> It noted that "[t]hroughout the lengthy examination conducted by the prosecution [and] the equally lengthy examination conducted by the defense during which occasion [AAA] never wavered except for some minor lapses [that are] natural and normal of someone who is naive of promiscuity."<sup>[30]</sup> The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered finding accused JESUS MALBAROSA guilty beyond reasonable doubt of the crime of Rape punishable under Article 266- A(I)(a) in relation to Article 266-B(I) of the Revised Penal Code, as amended.

He is hereby sentenced to suffer imprisonment of *Reclusion Perpetua*.

In consonance with existing jurisprudence, accused shall indemnify the private offended party the following:

- (a) P40,000.00 as civil indemnity;
- (b) P40,000.00 as moral damages; and
- (c) P40,000.00 as exemplary damages.

SO ORDERED.<sup>[31]</sup>

The prosecution moved to clarify whether the conviction and imposition of civil liability should be applied to both Criminal Case No. 5878 and Criminal Case No. 5879.<sup>[32]</sup>

In its January 9, 2017 Order, the Regional Trial Court modified its Decision as follows:

Acting upon the Motion for Clarification and Modification filed by Associate Prosecution Attorney II Ma. Czarina S. Lanuzo seeking to clarify anent the Court's Judgment dated November 11, 2016 which found accused [XXX] guilty beyond reasonable doubt [of] the crime of Rape punishable under Art 266-A(l)(a) in relation to Article 266-B(l) of the Revised Penal Code as amended wherein the Court pronounced sentencing him to suffer imprisonment of *reclusion perpetua*, which pronouncement should be for the accused to suffer imprisonment of *reclusion perpetua* in each of the Criminal Case Nos. 5878 and 5879.

In consonance therewith and in line with existing jurisprudence, accused shall indemnify the private offended party the following: a) Forty Thousand Pesos (P40,000.00) as civil indemnity in each of the two (2) counts; b) Forty Thousand Pesos (P40,000.00) as moral damages in each of the two (2) counts and c) Forty Thousand Pesos (P40,000.00) as exemplary damages in each of the criminal case[s].

WHEREFORE, considering the foregoing amendment, the court's Decision dated November 11, 2016 is hereby modified as such.

SO ORDERED.<sup>[33]</sup>

On the other hand, XXX filed a Notice of Appeal,<sup>[34]</sup> which the Regional Trial Court gave due course to in its January 19, 2017 Order.<sup>[35]</sup>

In its January 11, 2019 Decision,<sup>[36]</sup> the Court of Appeals affirmed XXX's conviction. It deferred to the Regional Trial Court's assessment of credibility of witnesses, pointing out that the trial court is best situated to determine the probative value of testimonies.<sup>[37]</sup> On XXX's claim that the rape charges were motivated by the existing land dispute between their families, it held that in the absence of proof to the contrary, witnesses cannot be presumed to be motivated by any ill will or bias.<sup>[38]</sup>

The Court of Appeals likewise pointed out that XXX's defense of alibi was

unconvincing as he admitted that his house was merely 40 meters away from the creek and 30 meters away from AAA's house. He thus failed to prove that it was physically impossible for him to have been at the crime scene when the alleged rape incidents happened.<sup>[39]</sup>

The Court of Appeals, however, modified<sup>[40]</sup> the award of damages in view of this Court's ruling in *People v. Jugueta*.<sup>[41]</sup> The dispositive portion of the Court of Appeals Decision reads:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court of Ligao City, Branch 12, in Criminal Case Nos. 5878 and 5879 finding accusedappellant [XXX] guilty beyond reasonable doubt of two (2) counts of rape is hereby **AFFIRMED** with the following **MODIFICATIONS**:

- (1)The accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole for each count of qualified rape;
- (2)The accused-appellant is ordered to pay the private complainant One Hundred Thousand Pesos (Php100,000.00) as civil indemnity; One Hundred Thousand Pesos (Php100,000.00) as moral damages; and One Hundred Thousand Pesos (Php100,000.00) as exemplary damages for each count of qualified rape; and
- (3)The civil indemnity, moral damages, and exemplary damages awarded herein shall be subject to six percent interest (6%) per annum from the finality of this Decision until full payment thereof.

**SO ORDERED.**<sup>[42]</sup> (Emphasis in the original, citation omitted)

XXX filed a Notice of Appeal,<sup>[43]</sup> to which the Court of Appeals gave due course.<sup>[44]</sup>

On June 3, 2019, this Court issued a Resolution<sup>[45]</sup> notifying the parties that they may file their respective supplemental briefs. Both plaintiffappellee People of the Philippines<sup>[46]</sup> and accused-appellant<sup>[47]</sup> manifested that they would no longer file supplemental briefs and would instead be adopting their briefs filed before the Court of Appeals.

In his Brief,<sup>[48]</sup> accused-appellant claims that AAA's testimonies on the two rape incidents were almost identical, engendering suspicion that she was coached or that her testimony was rehearsed or contrived.<sup>[49]</sup> He also points out that AAA seemed to be unbothered with his presence days after the alleged first rape incident, thus belying her accusations of assault and abuse.<sup>[50]</sup> He contends that "the sight [of a man masturbating] would necessarily frighten a woman" and, because AAA did not appear so, he says the chances that he "never sexually abused AAA cannot be discounted."<sup>[51]</sup>

To support his claim that the rape did not happen, he underscores that the medical findings revealed a deep healed laceration even though AAA was subjected to physical and genital examination only one day after the alleged second rape