

FIRST DIVISION

[G.R. No. 249149, December 02, 2020]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE CABALES Y WEBBER @ "BASIL", ACCUSED-APPELLANT.

DECISION

CARANDANG, J.:

This is an appeal^[1] from the Decision^[2] of the Court of Appeals (CA) dated January 31, 2019 in CA-G.R. CR-HC No. 09979. The decision denied the appeal of Jose Cabales y Webber @ "Basil" (accused-appellant) and affirmed with modification the Decision^[3] dated July 19, 2017 of the Regional Trial Court's (RTC) of Manila finding him guilty of sexual assault and rape, respectively, as defined and penalized under Article 266-A, paragraphs 2 and 1 of the Revised Penal Code (RPC), as amended by Republic Act No. (R.A.) 8353, in Criminal Case Nos. 16-328863 and 16-328864.

In separate Informations,^[4] Cabales was charged as follows:

Criminal Case No. 16-328863

The undersigned Assistant City Prosecutor upon sworn complaint by the offended party **[AAA], a minor, 15 years old, assisted by Social Welfare Officer 1 MARIA BENILDA SANTOS** accuses **JOSE CABALES y WEBBER @ "BASIL"** of the crime of RAPE as defined and penalized under Article 266-A, paragraph 2 of the Revised Penal Code as amended by Republic Act 8353, committed as follows:

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly commit sexual assault upon the said **[AAA]**, by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, directing her in removing her clothes and thereafter putting his penis inside the latter's mouth, against her will and without her consent.

Contrary to law.^[5] (Emphasis in the original)

Criminal Case No. 16-328864

That on or about **September 2, 2016**, in the City of Manila, Philippines, the said accused, with lewd designs and by means of force and intimidation, did, then and there willfully and knowingly rape the said **[AAA]**, by then and there compelling her to go inside the comfort room of their house located at x x x, and once inside, succeeded in having carnal knowledge upon the latter by telling her to bend down and

thereafter inserting his penis into her vagina, against her will and without her consent.

Contrary to law."^[6] (Emphasis in the original)

Accused-appellant pleaded not guilty to the crimes charged.^[7] The cases were consolidated and during the pre-trial conference, the defense admitted: (1) the RTC's jurisdiction over the person of accused-appellant; (2) the accused-appellant's identity as the person named in the information and as the person arraigned in the cases; and (3) that accused-appellant underwent inquest proceedings.^[8] Trial on the merits then ensued.

The prosecution presented: (1) AAA;^[9] (2) Dr. Melissa Joyce P. Ramboangga (Dr. Ramboangga); (3) PO3 Jennifer De Leon-Cadatal (PO3 De Leon-Cadatal); and (4) PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) as its witnesses.^[10] For the defense: (1) accused-appellant;^[11] and (2) AAA's mother, BBB,^[12] took the witness stand.^[13]

AAA stated that she was 15 years old. She shared that accused appellant is her stepfather. Accused-appellant and her mother, BBB, have been living together since 2009 and their relationship has produced three children.^[14] She revealed that accused-appellant has been repeatedly raping her since she was 12 years old and her mother knew of this fact. She and her mother tried to run away but accused-appellant chased them, caught them, and beat up BBB. BBB could not do anything about AAA's predicament because she gets beaten up by accused-appellant. The last rape incident, which prompted her to file the present case, happened on September 2, 2016.^[15]

At around 9:00 or 10:00 a.m. of September 2, 2016, accused-appellant instructed AAA to go to the market and her siblings to play outside of their home. Upon arriving from the market, AAA cooked their food. While cooking, accused-appellant told AAA to follow him inside the comfort room. Instead of doing as told, AAA just continued with her cooking in the meantime.^[16]

AAA's siblings noisily went inside their home. They, along with AAA, were sent out by accused-appellant. Accused-appellant, however, whispered to AAA to quickly come back and join him inside the comfort room. Acceding to accused-appellant's command, AAA went back inside their home, entered the comfort room, and saw accused-appellant naked. AAA removed her clothing as directed by accused-appellant. Accused-appellant ordered AAA to put his penis inside her mouth. Thereafter, accused-appellant told AAA to bend over and he inserted his penis inside her vagina. AAA revealed that she does not make a sound during the despicable act because accused-appellant repetitively threatens her that if she did, he will beat her up like he did in the past.^[17]

After five minutes, AAA got dressed, went out of the comfort room, and prepared their food. Emboldened and fed up with what accused-appellant was doing to her, AAA left their home, went to a friend's house, and disclosed to her friend everything that had transpired. AAA likewise revealed her predicament with her friend's mother and the latter had the accused-appellant arrested.^[18]

AAA added that accused-appellant is a drug-user and that he uses drugs before he rapes AAA. She left the custody of BBB and now stays at Bahay Tuluyan. She vividly recalls what transpired on September 2, 2016 because it was BBB's birthday.^[19]

The testimonies of Dr. Melissa Joyce P. Ramboanga (Dr. Ramboangga), PO3 Jennifer De Leon-Cadatal (PO3 De Leon-Cadatal), and PO1 Antonio Mangaoang, Jr. (PO1 Mangaoang) were dispensed with after the prosecution and defense entered into stipulations of facts as regards their intended respective testimonies.^[20]

For Dr. Ramboanga:

1. that she is a physician assigned at the Child Protection Unit, UP-PGH;
2. that she examined AAA on September 5, 2016 at 1:21 p.m.;
3. that the result of AAA's examination is embodied in Final Medico-Legal Report No. 2016-17113;
4. that the Ano-Genital Examination stated therein revealed (a) "*absent hymen from 6 to 8 o'clock; yellow bruise from 9 to 11 o'clock*" and (b) "*Anogenital findings are indicative of blunt force or penetrating trauma*;"
5. that the possible cause of injury is an erect penis;
6. that she conducted an interview with AAA and issued the corresponding summary thereof;
7. that she took photos of AAA and AAA's private part as well; and
8. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.^[21]

For PO3 De Leon-Cadatal:

1. that she is a bonafide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;
2. that she is the assigned on-case investigator;
3. that she prepared the Letter Endorsement to the City Prosecutor as well as the Booking Sheet and Arrest Report;
4. that she interviewed AAA, as well as arresting officers PO1 Antonio Mangaoang, Jr., PO1 Jay-Ar Valdez, PO2 Reyzen del Rosario; PO1 Clifton de Leon, and PO1 Jonathan Manalang, and that she translated their respective narrations into Judicial Affidavits and Affidavit of Apprehension; and
5. that she has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.^[22]

For PO1 Mangaoang:

1. that he is a bonafide member of the PNP assigned at the Police Station No. 2, Moriones, Tondo, Manila;
2. that he is one of the arresting officers together with PO1 JayAr Valdez;

3. that on September 4, 2016, he was at the Police Station when a certain Prescilla lodged a complaint for rape;
4. that he - along with PO1 Valdez, AAA, and Prescilla - proceeded to No. 355 Sta. Isabel, Tondo, Manila;
5. that upon arrival thereat, AAA pointed at her assailant, the accused-appellant, who was standing outside of their home;
6. that accused-appellant was brought to the Gat Andres Bonifacio Medical Center for medical examination and thereafter to Police Station No. 2 for investigation;
7. that he executed a Joint Affidavit of Apprehension; and
8. that he has no personal knowledge as to the facts and circumstances constituting rape allegedly committed by accused-appellant against AAA.^[23]

For his defense, Cabales denied the allegations against him. Cabales claimed that at 12:00 p.m. of September 2, 2016, he took a bath while his eldest son was watching television. After taking a bath, he went to see his live-in partner, BBB, at Paco Market where she was selling *kakanin* and he stayed with her until 6:00 p.m. Cabales averred that AAA eloped twice with Mico, AAA's boyfriend. AAA filed the present cases against him because he punched Mico on September 3, 2016 when AAA returned to their home after their second elopement.^[24]

Cabales insisted that Ma. Benilda Santos (Santos), a Social Welfare Officer of Manila, is the aunt of Mico. Santos assisted AAA to file a complaint against him in retaliation for punching Mico. Cabales, however, admitted that he failed to blotter the incidents that led to the filing of the criminal cases against him and to file the appropriate complaints with the barangay.^[25]

For her part, BBB corroborated her common-law husband's story that at 12:00 p.m. of September 2, 2016, AAA, accused-appellant, and Nestar were at Paco Market waiting for her while she sells *kakanin* using *kariton*. BBB claimed that after accused-appellant punched Mico, the latter threatened to file a complaint against Cabales. BBB maintained that AAA filed the cases against her husband because of Mico's prodding. BBB stated that AAA is now pregnant and lives in Cebu with Mico.^[26]

On cross-examination, BBB revealed that AAA left their home on September 3, 2016, a day after her birthday. Prior to September 2, 2016, AAA was missing for a week. She saw AAA again on September 2, 2016 when AAA and accused-appellant went to the market together and brought her a cake. She got angry at AAA when she saw her and she hit AAA. BBB explained that AAA was raised by her grandmother and that she only started living with them in 2011. BBB described AAA as hard-headed. BBB declared that AAA should have informed her earlier that her live-in partner was raping her. BBB stated that she was not present when AAA testified that, "*Ang pinakikinggan mo lang naman ay yung asawa mo at hindi silang mga anak.*"^[27]

BBB alleged that she leaves their home at 4:00 a.m. to go to the market and she comes back at 1:00 or 2:00 p.m. For that particular day on September 2, 2016, however, she went home with AAA and accused-appellant between 10:00 to 11:00 p.m.^[28] When confronted why she was wearing a yellow shirt for detainees, BBB

confirmed that she was under detention for a drug-related case.^[29]

Ruling of the Regional Trial Court

On July 19, 2017, the RTC found accused-appellant guilty beyond reasonable doubt for the crimes charged.^[30] AAA's narration - on how accused-appellant summoned her inside the comfort room and once there required her to put his penis inside her mouth - was clear, straight forward, and credible. The fear created by accused-appellant's repeated mauling of AAA prevented the latter from resisting the sexual assault. Accused-appellant's moral ascendancy over AAA as the latter's stepfather substituted for the elements of violence or intimidation. AAA's consistent and forthright account of how accused-appellant required her to bend over in order for him to enter her vagina from behind gives credence to her rape story. The anogenital findings indicative of "blunt force or penetrating trauma" which could have caused by an erect penis is consistent with AAA's claim that she was raped by accused-appellant. For the RTC, accused-appellant's contention that AAA filed the cases against him to retaliate for punching Mico is inconsistent with human experience. The RTC opined that it is too high a price to be demanded in exchange for a minor assault. The RTC observed that AAA, at her age, ordinarily would not know and would not be able to narrate details of her rape story if it did not happen to her.^[31]

In Criminal Case No. 16-328863 (for rape by sexual assault), the RTC applied the penalty of *reclusion temporal* in its medium period^[32] as provided in Section 5(b), Article III of R.A. 7610^[33] taking into account AAA's age (15 years old). The RTC sentenced accused-appellant to suffer the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. The RTC further adjudged accused-appellant to pay: (a) civil indemnity; (b) moral damages; and (c) exemplary damages in the amount of P30,000.00 for each.^[34]

In Criminal Case No. 16-328864 (for rape by carnal knowledge), accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay: (a) P50,000.00 as civil indemnity; (b) P50,000.00 as moral damages; (c) P30,000.00 as exemplary damages; and (d) the costs of suit.

Aggrieved, Cabales appealed^[35] his conviction to the CA. In his Brief,^[36] he argued that he was unarmed during the commission of the alleged offenses depriving him of the opportunity to employ force or intimidation. Moral influence or ascendancy cannot be presumed as substitutes for the elements of force or intimidation absent any evidence that moral influence or ascendancy vitiated the victim's consent when her womanhood was violated. He noted that one who is being sexually abused for several years would have sought help and run away when she had the means and opportunity to do so. He claimed that AAA was ill-motivated when she filed false charges against him, and BBB corroborated his testimony on this matter. If he indeed raped AAA, BBB would not have testified against AAA, her own daughter.^[37]

The Office of the Solicitor General (OSG), appearing for the prosecution, countered that the common law spouse of a biological parent may be considered as having