

## THIRD DIVISION

[ G.R. No. 237349, February 27, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MANUEL BASA, JR., A.K.A. "JUN," ACCUSED-APPELLANT.**

### DECISION

**PERALTA, J.:**

For consideration of the Court is the appeal of the Decision<sup>[1]</sup> dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08164 which affirmed with modification the Decision<sup>[2]</sup> dated July 27, 2015 of the Regional Trial Court (RTC) of Parañaque City, Branch 194, finding Manuel Basa, Jr., a.k.a. "Jun," guilty beyond reasonable doubt of rape under Article 266-A, paragraphs (1) and (2) of the Revised Penal Code (RPC), in relation to Republic Act (R.A.) No. 7610.

The antecedent facts are as follows:

In two (2) separate Informations filed on August 19, 2003, Basa was charged with one violation each of Article 266-A, paragraphs (1) and (2) of the RPC, in relation to R.A. No. 7610, the accusatory portions of which read:

#### Criminal Case No. 04-0200

That on or about a date prior to December 25, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously insert his [finger] into the genitalia of [AAA], a [REDACTED] minor, by means of force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.<sup>[3]</sup>

#### Criminal Case No. 04-0201

That on or about a date prior to December 31, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously have carnal knowledge of [AAA], a [REDACTED] minor, through force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

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

During arraignment, Basa, assisted by counsel, pleaded not guilty to the charges. Subsequently, trial on the merits ensued. The prosecution presented four (4) witnesses, namely: (1) private complainant AAA;<sup>[5]</sup> (2) senior medico officer Dr. Alvin David; (3) AAA's teacher at [REDACTED], Veronica Malapad Francisco; and (4) a representative of the Local Civil Registrar, Josefina Villorant.<sup>[6]</sup> The defense, thereafter, presented the testimonies of: (1) accused Basa; and (2) a certain Alvin Modina.<sup>[7]</sup>

AAA testified that Basa raped her on two (2) occasions: the first incident, prior to December 25, 2002; while the second, about a week after the first. Both occasions took place inside the office of "Ka Eddie," an Iglesia Ni Cristo (INC) pastor, located at the second floor of the INC church [REDACTED], at Parañaque City. AAA had been a member of the INC for almost a year prior to the first incident. Basa, also a member of the INC, had been doing the task of cleaning the church.

On the first incident, AAA narrated that she went to the INC church at around 9:00 a.m. at the request of her cousin, BBB,<sup>[8]</sup> to check if their attendance card or what they refer to as "*tarheta*" had been overturned. Under the INC's practice, this signifies the presence of a person during the worship service. Wearing a skirt and a t-shirt, AAA saw Basa, whom she referred to as "Kuya Jun," cleaning the first floor of the church, near the area where the attendance cards were placed. Basa told AAA that he would show her a small fishpond at the back portion of the church. Trusting her Kuya Jun, AAA went with him. But instead, Basa held her right arm and dragged her to the office of Pastor Eddie at the second floor and locked the door behind them. The office is usually locked, but since Basa was in charge of cleaning the church, he had in his possession the key to the door thereof. There, AAA recounted that Basa began kissing her lips and mashing her breast. He then pulled up her skirt and, through the side of her underwear, inserted his finger into her private part, causing AAA to feel pain. Thereafter, Basa removed her skirt and underwear and started kissing her private part. AAA said that she could not resist because Basa threatened to kill her should she tell anybody of her ordeal.<sup>[9]</sup>

A week thereafter, the second incident occurred. AAA relayed that between 9:00 and 10:00 a.m., she went to the INC church to check the "*tarheta*." When Basa saw her, he immediately dragged her again and brought her to Pastor Eddie's office. As before, she could not do anything out of fear for her life. AAA recalled that apart from the security guards stationed outside the church, no other persons were inside the place of worship. In the office, Basa kissed her, pulled up her shirt, and mashed her breast. Afterwards, he removed her skirt and underwear and put his penis out of his denim pants. He then told her to lie down on the floor and inserted his penis inside her private part, causing her to feel pain. After the incident, AAA went home and swore never to tell anybody about what Basa did to her. It was in January 2003, when classes resumed in her school at [REDACTED], that she found the courage to tell her teacher, Francisco, about the ordeal she went through during the vacation. Upon learning this, Francisco called AAA's grandmother, CCC. Then, when AAA's aunts found out about the incidents, they immediately reported

the same to the National Bureau of Investigation where AAA submitted her *Sinumpaang Salaysay* dated January 20, 2003.<sup>[10]</sup>

AAA's testimony was corroborated by her teacher, Francisco, who stated that AAA was an average student. A week after the 2002 Christmas break, she noticed that AAA was quite withdrawn compared to her usual behavior. Bothered by what she observed, she asked AAA to stay in the classroom after class. Francisco recalled that AAA was first reluctant to confide in her but, after a while, she was able to convince AAA into sharing her harrowing experience. AAA then told her that her Kuya Jun, a caretaker in the INC church, fondled her twice and forced himself on her. Francisco added that as AAA was narrating the incident, she was trembling in fear, terribly shaking, and appeared to have been traumatized. Upon learning of said incident, Francisco immediately relayed the story to AAA's grandmother.<sup>[11]</sup>

In his defense, Basa denied the accusations against him. He narrated that on December 25, 2002, AAA was not yet a member of the INC and was still under probation or "*sinusubok*." Basa contended that on the alleged first rape incident, he was preparing the stage of the church for its afternoon program, while on the second rape incident, he was with several other persons preparing for the New Year's celebration and afternoon prayer. According to Basa, the only possible reason that could have impelled AAA to file cases against him was because of BBB. He recounted an instance wherein their "*Pangulong Diakono*" or Deputy Head Deacon told him to order those persons not included in the worship service, among them was BBB, to go outside of the church. This incident angered BBB. In addition, Basa revealed that BBB once admired him, but he turned her down.<sup>[12]</sup>

The defense also presented, as its witness, Alvin Modina, a member of the INC. Modina knew Basa as a "*masiglang kaanib*" of their religious segregation, while AAA as one of those being indoctrinated in their barangay. According to Modina, he was at the INC church from 8:00 a.m. to 9:30 a.m. on the alleged first incident when AAA was molested, but he did not notice the presence of AAA or Basa. He stated that AAA arrived only in the evening when the church was opened for the worship service. On the alleged second rape incident, Modina testified that he was at the INC church from 9:00 a.m. until 4:00 p.m. and saw Basa there preparing for the New Year celebration.<sup>[13]</sup>

On July 27, 2015, the RTC rendered its Decision finding Basa guilty of the crime charged, disposing of the cases as follows:

**WHEREFORE,** the Court finds accused **MANUEL BASA, a.k.a. "Jun"** **GUILTY** beyond reasonable doubt of the crime of Rape under the following cases:

1. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0200** for the crime of Rape under Article 266-A (2) in relation to Republic Act No. 7610 and is hereby sentenced to suffer the indeterminate penalty ranging from four (4) years of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum and to pay private complainant [AAA] the amount of P30,000.00 as moral damages and P30,000.00 as exemplary

damages.

2. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0201** for the crime of Rape under Article 266-A (1) in relation to RA 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant [AAA] the amount of P30,000.00 as moral damages and P30,000.00 as exemplary damages.

As the accused is a detention prisoner, the period of his detention shall be credited in the period of his sentence.

SO ORDERED.<sup>[14]</sup> (Emphases and italics in the original.)

The RTC found that judging on the basis of the testimonies of both the prosecution and the defense in connection with which documentary pieces of evidence were formally offered, the prosecution sufficiently established the existence of the elements of the crime charged against Basa.<sup>[15]</sup>

In a Decision dated September 28, 2017, the CA affirmed with modification the RTC Decision in the following manner:

Anent the damages awarded by the RTC, We find that modification of the amount of damages awarded is in order. For Criminal Case No. 04-[0200], in addition to the Php30,000.00 award as moral damages and Php30,000.00 as exemplary damages, the amount of Php30,000.00 shall also be awarded as civil indemnity. On the other hand, for Criminal Case No. 04-[0201], in line with recent jurisprudence, the amount of exemplary damages shall be modified and increased to P75,000.00. AAA shall likewise be entitled to civil indemnity of P75,000.00 and moral damages of P75,000.00.

In addition, all the monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this decision until fully paid.

**WHEREFORE**, premises considered, the Decision dated July 27, 2015 of the Regional Trial Court of Parañaque, Branch 194 in Criminal cases No. 04-0200 and [No.] 04-0201, is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[16]</sup> (Citations omitted; emphases in the original.)

According to the appellate court, there is no reason to disturb the findings of the RTC, holding that AAA's credibility, by well-established precedents, is given great weight and accorded high respect.<sup>[17]</sup>

Now before us, Basa manifested that he is dispensing with the filing of a

supplemental brief considering that he had exhaustively discussed the assigned errors in his Appellant's Brief.<sup>[18]</sup> The Office of the Solicitor General similarly manifested that it had already discussed its arguments in its Appellee's Brief.<sup>[19]</sup>

According to Basa, AAA's testimony is too incredible and full of inconsistencies to merit faith and credence. If she did go through such ordeal, she should have struggled or, at least, shouted for help considering that there was no mention of any fatal weapon and especially during the time when Basa was allegedly opening the door to Pastor Eddie's office. Moreover, her behavior after the first rape incident contradicts her claim of fear because she simply wore back her dress, fixed herself, and went home. Basa also points out that the report of the medico-legal officer shows "no evident sign of extragenital injuries and the hymen, intact and its orifice small as to preclude complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury."<sup>[20]</sup> Thus, physical evidence belies AAA's claims that he inserted his finger and penis inside her vagina.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding him guilty of the acts charged against him. In view of the circumstances of the instant case, however, a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed is in order.

In Criminal Case No. 04-0200, instead of rape under Article 266-A, paragraph (2) of the RPC, in relation to R.A. No. 7610, Basa should be held liable for Lascivious Conduct under Section 5 (b),<sup>[21]</sup> Article III of R.A. No. 7610.

In *Dimakuta v. People*,<sup>[22]</sup> the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph (2) of the RPC, which is punishable by *prisión mayor*, the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, paragraph (2) of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People v. Chingh*,<sup>[23]</sup> the Court noted that "it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

It is undisputed that at the time of the commission of the lascivious act in Criminal Case No. 04-0200, AAA was [REDACTED] years old. Thus, based on the above