

## **SECOND DIVISION**

**[ G.R. No. 228822, June 19, 2019 ]**

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CCC,<sup>[1]</sup>  
APPELLANT.**

### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case**

On appeal is the 22 June 2016 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06686 which affirmed with modification the 20 August 2013 Consolidated Decision<sup>[3]</sup> of Branch 81 of the Regional Trial Court (RTC) of Romblon, Romblon, in Criminal Case Nos. 2566, 2567, 2568 and 2569, finding appellant CCC guilty beyond reasonable doubt of four (4) counts of rape.

#### **The Facts**

CCC was charged with the crime of rape in four Informations, as follows:

##### **Criminal Case No. 2566**

That on or about the 7<sup>th</sup> day of January 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating/qualifying circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

Contrary to law.<sup>[4]</sup>

##### **Criminal Case No. 2567**

That on or about the 9<sup>th</sup> day of January 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and

against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].<sup>[5]</sup>

#### Criminal Case No. 2568

That on or about the 27<sup>th</sup> day of January 2004, at around 11:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].<sup>[6]</sup>

#### Criminal Case No. 2569

That on or about the 3<sup>rd</sup> day of February 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].<sup>[7]</sup>

The prosecution presented as its first witness the Municipal Health Officer of Rural Health Unit of Romblon, Dr. Rowena R. Dianco (Dr. Dianco), who testified that on 19 March 2004 she conducted a physical and genital examination on AAA and observed that AAA's hymen was no longer intact and that it had been ruptured but healed. Dr. Dianco opined that the possible penetration had happened about a month prior. She also identified the Medico-Legal Certification dated 19 March 2004.

On 13 June 2006, the prosecution presented its second witness BBB, the mother of AAA. BBB claimed that CCC was the father of AAA. BBB explained that AAA used the maiden name of BBB because at the time when BBB gave birth to AAA, she and CCC were not yet married. BBB and CCC married only on 17 June 2002. BBB identified

AAA's Certificate of Live Birth in open court which stated that AAA was born on 13 May 1991. AAA was only twelve (12) years old when the alleged incidents happened.

Sometime after the alleged incidents of rape, BBB noticed that AAA had a sudden change in attitude, who became very quiet and aloof, and also in a periodic state of shock. BBB also noticed a sudden change in the behavior of CCC who could no longer stay at home.

BBB testified that AAA ran away from home, leaving behind a handwritten letter. BBB identified the handwritten letter of AAA in open court, which she left when she ran away from home. The undated letter of AAA reads:

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MAHAL KONG MAGULANG SANA MAUNAWAAN NINYO AKO KUNG ANo  
ang aking NARARAMDAMAN NAIS KO SANANG MALAMAN NINYO ANG  
SiNASABi KUnG MANYAK. YUN AY WALA NG iBA KUNDI x x x AY ANG  
WALA KUNG ~~KWENT~~ HIYANG AMA.

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GINAWA NYA YON SA AKIN AY NG UMALIS KAYO Ni ONYOT 7 Bises NiYA  
iYON GINAWA SA Akin SIMULA NG NAMATAY SI LOLA.

Hang[g]ang dito nalang an[g] sulat kamay kung pangit: Good By[e]!  
MAMA I LOVE [YOU].<sup>[8]</sup>

When BBB found AAA, she confronted her daughter as to why she ran away from home. AAA revealed that she had been raped by CCC seven (7) times, the first incident happening during the wake of BBB's mother. AAA also revealed to BBB that CCC tied a piece of cloth around her mouth to prevent her from shouting and that he also threatened and overpowered her. BBB asked AAA if she wanted to file a criminal case against CCC. When AAA expressed her willingness to do so, they went to the police station and went to see Dr. Dianco.

On the same day that BBB's testimony was terminated, the prosecution presented its last witness, the complainant AAA. For lack of material time, she was not able to testify. The following hearing was cancelled due to inclement weather, but was noted in the return by SPO2 Pacifico A. Caleja. Jr. that AAA and BBB refused to sign the subpoena because they were uncertain whether they could attend the scheduled hearing due to financial problem. On 22 November 2006, AAA was able to testify under the same oath. However, for lack of material time, her testimony was again suspended. AAA and BBB were not duly notified of the 18 April 2007 hearing because the notice of hearing remained unclaimed. On 17 July 2008 and 19 February 2009 the hearings were cancelled at the instance of CCC while on 17 June 2009, the hearing was cancelled because AAA was not duly notified. On 20 August 2009, the subpoena reached BBB but not AAA because BBB refused to sign as AAA was out of the locality. Nonetheless, the hearing was cancelled at the instance of CCC. On 23 October 2009, BBB again refused to sign the subpoena as AAA was out of the locality. On 19 January 2010, the similar thing happened except that CCC's counsel, who only filed motions for postponement, was terminated and CCC's defense was turned over to the Public Attorney's Office. The hearing was cancelled

at the instance of the government prosecutor for the unavailability of the witness. On 16 March 2010, BBB again refused to sign the subpoena because AAA was out of the locality. The hearing on that day was nonetheless cancelled due to a provincial holiday. On 21 September 2010 and 15 February 2011, BBB continued to refuse to sign the subpoena; and thus, the RTC gave the prosecution one last chance to present its evidence.

On 24 June 2011, the RTC issued an Order directing BBB to explain in writing why she should not be cited for contempt of court for her failure to accept and acknowledge the receipt of the subpoena. On 15 August 2011, the RTC Judge was unavailable, but BBB still refused to sign the subpoena. The same happened on 14 November 2011 and 19 January 2012. On 22 June 2012, the Court issued an order for the issuance of a subpoena to AAA and BBB through the Department of Social Welfare and Development Office of Magdiwang, requesting the latter to provide financial assistance for their expenses in coming to court and back to their place of origin. However, AAA and BBB refused to sign the subpoena for the hearing on 24 August 2012, and also, the Municipal Social Welfare Officer was out of the locality. For the hearing on 18 October 2012, the Municipal Social Welfare Officer refused to sign the subpoena while AAA and BBB were outside of the locality.

The case was reset to 22 January 2013 where the prosecution made its formal offer of evidence. Ultimately, AAA's testimony was expunged from the records due to the lack of cross-examination.

On 22 January 2013, the prosecution offered the following exhibits through a verbal formal offer of evidence: (1) certified "xerox" copy of the Medico-Legal Certification dated 19 March 2004, issued by Dr. Dianco; (2) Certificate of Live Birth of AAA; and (3) the handwritten letter of AAA.

On the other hand, CCC manifested through his counsel that he was waiving his right to present evidence.

### **The Ruling of the RTC**

In a Consolidated Decision dated 20 August 2013, the RTC found CCC guilty beyond reasonable doubt in all four counts of rape. The RTC found the testimony of BBB to be reliable and credible - in fact, BBB's testimony was never challenged or questioned by the defense. The RTC found the testimony of BBB which was within her knowledge, such as what AAA confided to her that she was raped by her own father, and her observations as to the demeanor of AAA and CCC after the alleged incidents, to be convincing. Together with the testimony of Dr. Dianco finding that the hymen of AAA to be no longer intact which indicated possible penetration, and the undated letter of AAA which was positively identified by BBB in open court, the RTC found the evidence to be adequate and convincing to find CCC guilty. This was despite the fact that the RTC did not rely on AAA's testimony, which was expunged from the records due to the lack of cross-examination.

The RTC found that the failure of AAA to appear in court to continue her testimony - despite the issuance of several subpoenas - was because of lack of finances or poverty. The RTC stated that regrettably, in Romblon, a litigant must have at least One Thousand Three Hundred Pesos (P1,300.00), which includes the fare for the boat, meals and lodging, and such amount is burdensome for AAA and her mother

considering their capacity to earn a living and the fact that AAA has eight other siblings that BBB has to support. Thus, the RTC found CCC guilty, and the dispositive portion of the Consolidated Decision reads:

IN CRIMINAL CASE NO. 2566

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to Reclusion Perpetua, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2567

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to Reclusion Perpetua, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2568

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to Reclusion Perpetua, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2569

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY