

THIRD DIVISION

[G.R. No. 234841, June 03, 2019]

MANUEL BARALLAS RAMILO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision^[1] dated May 19, 2017 and the Resolution^[2] dated September 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38601 which affirmed with modification the Decision^[3] dated April 4, 2016 of the Regional Trial Court (RTC) of Marikina City, Branch 192, finding Manuel Barallas Ramilo guilty beyond reasonable doubt of rape through sexual assault.

The antecedent facts are as follows:

In an Information dated August 28, 2013, Manuel Barallas Ramilo was charged of violation of Article 266-A, paragraph 2, of the Revised Penal Code (RPC), the accusatory portions of which read:

That on or about the 27th day of August 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation and/or with grave abuse of parental authority did then and there willfully, unlawfully, knowingly and feloniously commit sexual abuse and lascivious conduct upon her daughter MDR MINOR-VICTIM INQ-13H-00553, a twelve (12) year old minor at the time of the commission of the offense, by then and there lying beside her then embracing her and inserting his fingers inside her vagina thereby causing serious danger to the normal growth and development of the child MDR MINOR-VICTIM INQ-13H-00553, to her damage and prejudice.

The crime is attended with the aggravating circumstance of relationship.

CONTRARY TO LAW.^[4]

During arraignment, Manuel, assisted by counsel, pleaded not guilty to the charge. During pre-trial, the parties agreed to adopt the Report on the Preliminary Conference, for the purpose of the pre-trial conference. Subsequently, trial on the merits ensued. The prosecution presented six witnesses – private complainant AAA; ^[5] private complainant's sister, BBB; the school principal of Malanday Elementary

School, Lino de Guzman; the medico-legal officer, Dr. Ma. Felicidad Mercedes Aulida; and investigating officers PO1 Bernard Pah-E and PO1 Christian Bonifacio.

AAA testified that she was born on February 5, 2001, as evidenced by her Certificate of Live Birth.^[6] Her father, Manuel, was a painter while her mother, CCC, was a manicurist. She recalled that on August 27, 2013, she slept beside Manuel and her one (1) year old sister, and woke up at around 6:00 a.m. the next day. At that time, CCC was already busy downstairs. AAA was about to go downstairs with her sister when Manuel held her wrist. She knew that he was going to molest her again like what he had been doing in the past. According to AAA, she uttered to Manuel, "isusumbong ko kayo kay mama," but the latter replied "isusumbong mo ako, papatayin kita." Thereafter, Manuel pulled AAA and forced her to lie on the floor. He embraced her tightly and put his hand inside her shorts and panty. Then, he inserted his finger inside her vagina, moving it in and out for about five (5) minutes. When AAA's vagina became painful, she struggled and pushed Manuel's hand away. She stood up, went downstairs, and had breakfast. She did not tell anybody of the incident because she was scared of Manuel's threat to kill her. In the afternoon of the same day, AAA went to school at Malanday Elementary School. When her sister BBB arrived thereat, she was called to the principal's office. When her school principal talked to her, AAA disclosed to him the truth, that she was molested by Manuel. Thereafter, a *kagawad*, a representative from the Department of Social Welfare and Development and the police arrived. Subsequently, Manuel was apprehended. AAA was then brought to a doctor for medical examination.^[7]

Next, BBB testified that she is the eldest sister of AAA. She claimed that in 2010, when AAA and their mother, CCC, visited her in her house in Pasig City, she noticed that AAA was acting differently. She was very quiet and astonished. Oftentimes, she became inattentive and would not respond immediately, as if she could not understand them. BBB shared that since she was molested by her father, Manuel, when she was nine (9) years old, she had a hunch that AAA was also abused sexually by their father, who was using prohibited drugs. As she wanted to know the truth, BBB went to AAA's school to investigate. There, the school principal volunteered to talk to AAA who confided in him which eventually led to Manuel's arrest. According to BBB, their mother, CCC, was angry with her at the outset when their father was arrested. At the *barangay* office, the police officer informed CCC that Manuel molested AAA and her other siblings. CCC told BBB to be the one to assist AAA in filing the case against Manuel as she was still undecided.^[8]

Subsequently, Lino de Guzman stipulated in his testimony that he was the principal during the time of the incident and that BBB talked to him about the alleged abuse, which led him to ask AAA if it was true. AAA then admitted the same to him. It was also stipulated, however, that he has no personal knowledge of the incidents of the subject case. As for the testimony of prosecution witness Dr. Ma. Felicidad Mercedes Aulida, the parties dispensed with her presentation in court after stipulating that she conducted a medical examination on AAA and found no hymenal lacerations and no remarkable findings regarding her anus. She also found no injuries on her body. Similarly, the parties dispensed with the presentation of the arresting officers, PO1 Bernard Pah-E and PO1 Christian Bonifacio, after stipulating that they were the ones who arrested Manuel and that they have no personal knowledge of the incidents of the instant case.^[9]

Manuel denied the charges against him and claimed that no unusual incident occurred on August 27, 2013 for he was just at home with AAA, CCC, and his other children in a fifty (50)-square meter house with two (2) floors. AAA slept on the second floor with her younger sister. Manuel explained that he and CCC have seven (7) children, BBB being the eldest and AAA, the fourth child. He was a painter while his wife, CCC, was unemployed. Initially, CCC would handle their finances. But he took over when she mishandled the same. Because of their chaotic relationship, CCC would sometimes take their children to stay at her parents' house in Makati City as what she did with BBB. It was only when BBB turned nine (9) years old that they moved back to living with Manuel. According to Manuel, BBB openly manifested her disapproval of his relationship with CCC which began when he was not able to visit her during a medical operation. As for AAA, she remained in his custody ever since she was just two (2) months old. She grew up to be a kind and obedient daughter. Her behavior changed, however, in 2009 when BBB and CCC started living with them again. AAA began demanding for money, left the house at night without permission, and skipped school. She was heavily influenced by BBB, who stayed out late at night and engaged in drinking sprees with her friends in Makati City.^[10]

CCC testified that she had a tumultuous relationship with Manuel. They intermittently separated and reconciled. When they lived together, CCC would work as a laundrywoman who sold *balut* at night while Manuel would take care of the children. According to CCC, Manuel often physically and psychologically abused her and their children. He often threatened their lives while holding a gun, sometimes a knife, and other times a hammer. Because of this, their children despised Manuel. In fact, their eldest child, BBB, filed complaints against Manuel. AAA, who was disobedient and often left the house without permission, constantly fought with Manuel. CCC added that Manuel often disciplined AAA with a paddle, and there were times that he would kick and punch her. She affirmed that she, Manuel and all their children slept in the second floor of their house. Thus, it is easily noticeable if someone were to move. In addition, AAA slept near the stairs separate from her parents and siblings. Finally, CCC testified that on August 27, 2013, Manuel arrived home, influenced by drugs and alcohol, and inadvertently slept beside AAA.^[11]

On April 4, 2016, the RTC rendered its Decision finding Manuel guilty of the crime charged, disposing of the case as follows:

WHEREFORE, the court finds the accused, MANUEL BARALLAS RAMILO, GUILTY BEYOND REASONABLE DOUBT of Sexual Assault under Article 266-A[,] paragraph 2, of the Revised Penal Code, as amended. Considering that the crime is attended by an aggravating circumstance of relationship, the accused is hereby sentenced to suffer an indeterminate penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. Further, consistent with jurisprudence, the accused is ORDERED TO PAY civil indemnity of FIFTY THOUSAND PESOS (Php50,000.00), moral damages of FIFTY THOUSAND PESOS (Php50,000.00), and exemplary damages of THIRTY THOUSAND PESOS (Php30,000.00).

SO ORDERED.^[12]

The RTC found that AAA positively and categorically stated that Manuel, who is her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in the hands of her father. Moreover, the trial court also found that Manuel's defense of denial could not prevail over AAA's direct, positive, and categorical assertion. It was not persuaded by Manuel's flimsy statement that AAA was merely influenced by her sister, BBB, who allegedly has a grudge on him. Furthermore, the physical finding that AAA did not sustain any injury or hymenal laceration does not impair the prosecution's case.^[13]

In a Decision dated May 19, 2017, the CA affirmed with modification the RTC Decision ordering Manuel to pay six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of the judgment until the damages are fully paid. According to the appellate court, there is no reason to overturn the trial court's finding that AAA's testimony deserves full credence in view of the settled doctrine that when the offended party is of tender age and immature, courts are inclined to give credit to her testimony for youth and immaturity are generally badges of truth and sincerity. Like the RTC, moreover, the CA also held that proof of hymenal laceration is not an element of rape.^[14] Thus, the imposition of the penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, by the RTC was in order, in view of the fact that the sexual assault was committed against a child by her father, which is appreciated as an aggravating circumstance of relationship, pursuant to Article 266-B^[15] of the RPC.

Aggrieved by the CA's denial of his motion for reconsideration, Manuel filed the instant petition on December 7, 2017 invoking the following argument:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION FOR RAPE UNDER ARTICLE 266-A OF THE REVISED PENAL CODE NOTWITHSTANDING THE UNCORROBORATED AND INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT.^[16]

According to Manuel, the charge against him was not proven beyond reasonable doubt. From the testimonies heard during trial, it is clear that AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. It is also clear that AAA was heavily influenced by BBB who openly despised their father. This shows motive on the part of AAA to fabricate the charges against Manuel. In fact, AAA and BBB both previously filed criminal and child abuse charges against him in the past. Manuel further insists on his innocence of the crime charged due to the fact that there were no findings of any hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA. Hence, this physical evidence should prevail over the testimonies presented by the prosecution. Thus, while denial may be generally looked upon with disfavor, it cannot be the basis for his conviction.

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 Manuel 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. Thus, instead of rape through sexual assault under Article 266-A, paragraph 2, of the RPC, Manuel should be held liable for Lascivious Conduct under Section 5(b),^[17] Article III of Republic Act (R.A.) No. 7610.

In *Dimakuta v. People*,^[18] 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 *prision 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 eighteen (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 of 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*,^[19] 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 [a] 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.'"^[20]

It is undisputed that at the time of the commission of the lascivious act, AAA was twelve (12) years old. Thus, based on the above discussion, Section 5(b), Article III of R.A. No. 7610 finds application herein. The provision states:

Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, indulge in sexual intercourse or **lascivious conduct**, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) Those who commit the act of sexual intercourse or **lascivious conduct with a child** exploited in prostitution or [subjected] to other