

## SECOND DIVISION

[ G.R. No. 229836, July 17, 2019 ]

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

### DECISION

LAZARO-JAVIER, J.:

#### Prefatory

This appeal assails the Decision<sup>[1]</sup> dated August 11, 2016 of the Court of Appeals in CA-G.R. CR HC No. 01915 entitled "*People of the Philippines v. ██████████*," affirming appellant's conviction for two (2) counts of statutory rape.

#### The Proceedings Before the Trial Court

##### *The Charges*

Appellant ██████████ was indicted for violation of Section 266-A in relation to 266-B of the Revised Penal Code in forty-two (42) separate Informations docketed Criminal Case Nos. DNO-3393 through DNO-3434. Except for the material dates, the Informations alleged, thus:

That on or about (date of commission) in ██████████, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a step-father of AAA, and by means of force and intimidation, as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin under 12 years of age against the latter's will.

CONTRARY TO LAW.<sup>[2]</sup>

Additionally, in eleven (11) separate Informations docketed Criminal Case Nos. DNO-3435 through DNO-3445, appellant was indicted for simple rape. Again, except for the material dates, the Informations uniformly alleged:

That sometime in (date of commission) ██████████, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a step-father of AAA, and by means of force and intimidation, and as well as his moral ascendancy, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a virgin over 12 years old but under 18 years of age against the latter's will.

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

All fifty-three (53) cases got consolidated before the Regional Trial Court, Branch 25, Danao City, Cebu.

On arraignment, appellant pleaded not guilty to all fifty-three (53) counts of rape.<sup>[4]</sup>

During the pre-trial, the parties stipulated on the following: 1) AAA was still a minor in January 2000; 2) AAA is the daughter of BBB; and 3) BBB was the live-in partner of appellant.<sup>[5]</sup> The cases were, thereafter, jointly tried.

### ***Prosecution's Evidence***

AAA testified that since 1995, she had been living with her mother BBB and appellant in a rented house in Danao City. From 1999, when she was only eight (8) years old, to 2004 when she was already thirteen (13) years old, appellant had sexually ravished her several times over.<sup>[6]</sup>

As charged in Criminal Case No. DNO-3393,<sup>[7]</sup> the first rape incident happened in 1999 when her mother had left for work. At noontime, she was taking a nap when she felt appellant had come up to her. He removed her underwear, kissed and touched her, and made her touch his penis. He, thereafter, inserted his penis in her vagina. She got so scared and felt so much pain in her vagina. After it was over, appellant warned her to keep silent about the incident, then, left her alone in the house. When BBB came home, she tried to tell her what happened but BBB did not believe her.<sup>[8]</sup>

Then, the second rape, as charged in Criminal Case No. DNO-3394,<sup>[9]</sup> happened three (3) days later. He did the same things to her and, afterwards, inserted his penis into her vagina. She was scared and again felt pain in her vagina. The same sexual abuse happened once or twice a day from 1999 to 2004. When the sexual abuse thereafter became even more frequent than before, she could bear it no longer.<sup>[10]</sup>

She wanted to report the rape incidents to the police but shame and fear restrained her from doing so. In July 2004, appellant threatened to shave off her hair if she went out with her friends. Then one day, she finally mustered the courage to narrate her ordeal to her friend Portia, who in turn, told her aunt Lucia Lawas. She later on recounted her ordeal to Lucia Lawas.<sup>[11]</sup>

Lucia Lawas took her first to a priest for confession and then to a social worker at the Department of Social Welfare and Development (DSWD). The social worker recommended that she undergo physical examination at the Danao General Hospital, after the doctor in the Danao General Hospital found hymenal lacerations on her vagina, she was advised to go to the "Pink Room" of the Vicente Sotto Memorial Medical Center (VSMMC), Cebu City. There, she was again examined by Dr. Liwayway Reyes who confirmed that she did sustain hymenal lacerations. She stayed with DSWD for ten (10) months.<sup>[12]</sup>

### ***The Defense's Evidence***

Appellant denied the charges. He professed to love AAA very much, she being the

daughter of his live-in partner. He was saddened when the DSWD took AAA from his custody. Lucia Lawas orchestrated the whole thing to get back at him when he stopped working for her.<sup>[13]</sup>

### **The Trial Court's Ruling**

By Decision<sup>[14]</sup> dated May 28, 2012, the trial court ruled that the prosecution was only able to prove two (2) counts of statutory rape, i.e. the first one (Criminal Case No. DNO-3393) which happened sometime in 1999 when AAA was only eight (8) years old; and the second one (Criminal Case No. DNO-3394), which happened three (3) days later. But as for the remaining fifty-one (51) counts, the trial court found that the prosecution utterly failed to prove how each of these supposed rape incidents was committed. Thus, the trial court decreed:

**WHEREFORE**, FOR ALL THE FOREGOING CONSIDERATIONS, this Court finds accused ██████████ **GUILTY** of two (2) counts of statutory rape under Criminal Cases (sic) No. DNO-3393 and DNO-3394 and hereby sentences him to suffer the penalty of RECLUSION PERPETUA under paragraph 3, Article 335 of the Revised Penal Code, as amended by R.A. 7659 for each of the two (2) counts of rape committed.

The accused is hereby directed to pay the victim the amount of P50,000.00 as civil indemnity *ex delicto* and the amount of P50,000.00 as moral damages, conformably to current jurisprudence for each of the two (2) crimes of rape committed.

For lack of proof beyond reasonable doubt, accused ██████████ is hereby ACQUITTED of the charges against him in Criminal Cases (sic) No. DNO-3395 through DNO-3445.

SO ORDERED.<sup>[15]</sup>

### **The Proceedings before the Court of Appeals**

On appeal, appellant faulted the trial court for giving credence to AAA's testimony despite its alleged inconsistencies and improbabilities: 1) on direct, she testified that in 1999, appellant raped her in the afternoon, but on cross, she claimed it happened in the morning; and 2) her allegation that appellant did not remove his penis from her vagina for about an hour was impossible. Further, the date and time when the two (2) rape incidents supposedly occurred were not proven by the prosecution, thus, creating serious doubt as to their occurrence.<sup>[16]</sup>

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Herman Cimafranca and State Solicitor Sharon Millan-Decano riposted that the trial court's assessment of the credibility of AAA's testimony should be given much weight. Too, the exact dates and time of the rape incidents are not essential elements of rape. Besides, a victim of tender age is not expected to recall the exact date and time when her traumatic experience took place. Lastly, AAA gave positive and categorical testimony on how the two (2) rape incidents occurred and who the perpetrator was.<sup>[17]</sup>

## The Court of Appeals' Ruling

By its assailed Decision<sup>[18]</sup> dated August 11, 2016, the Court of Appeals affirmed with modification, thus:

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed 28 May 2012 *Decision* of the Regional Trial Court, Branch 25, of Danao City is **AFFIRMED WITH THE MODIFICATIONS** that:

(1) Accused-appellant is hereby ordered to pay AAA PhP30,000.00 as exemplary damages for each count of *Statutory Rape*; and

(2) All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>[19]</sup>

### The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. For the purpose of this appeal, the OSG<sup>[20]</sup> and appellant<sup>[21]</sup> both manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

#### Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction against appellant for two (2) counts of statutory rape?

#### Ruling

We affirm appellant's conviction in Criminal Case Nos. DNO-3393 and DNO-3394 but for qualified rape, not for statutory rape.

When she took the witness stand in 2011, AAA recalled the following details on how appellant sexually ravished her way back sometime in 1999 (Criminal Case No. DNO-3393), thus:

Q: Can you describe before this court what are you referring to us he was molesting you while you were still young?

A: I was still in grade one, eight years old.

Q: The question is what did he do when you said he was molesting you?

A: I was sleeping at that time and he removed my panty.

Q: Can you still recall what date wherein you were first molested by your stepfather?

A: What I can remember is that I was still eight years old at that time.

Q: Now you said you were born in the year 1991, will you please add eight years to 1991 and inform this court what is the year?

A: 1999.

x x x

Q: Can you still remember the exact time by which you were molested the first time in the year 1999?

x x x

A: Perhaps it's 2:00 o'clock in the afternoon because at 5:00 o'clock my mother would arrive.

Q: Now, aside from undressing yourself during that time, what else did accused [REDACTED] do?

A: That's then he kissed me and touched me.

Q: Aside from those things, what else did he do?

A: That's then he raped or molested me.

x x x

Q: Can you tell the court and elaborate what do you mean by he raped you?

A: He caused me to touch his sex organ.

Q: Aside from that what other else did he do?

A: He inserted his penis into my vagina.

Q: What have you felt when his penis was inserted in your vagina?

A: Pain.

Q: For how long in terms of minutes did he insert his penis into your vagina?

A: For a long time.

Q: Can you estimate before this court that long time you are mentioning?

A: Around one hour.

Q: During that one hour period, what have you felt when he was then in the act of inserting his penis in your womanhood?

A: I was afraid.

Q: Aside from fear, what other else have you felt?

A: Pain.

Q: What part of your body have you felt pain?

A: My vagina sir.<sup>[22]</sup>

AAA recounted that sometime in 1999 appellant woke her up, undressed her, and proceeded to touch and kiss her. He made her touch his penis then inserted it in her vagina. She was so scared when appellant was about to penetrate her vagina. She endured the pain in her vagina because appellant was inside her for a long time.