

## **SECOND DIVISION**

**[ G.R. No. 232393, August 14, 2019 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSEPH PAGKATIPUNAN Y CLEOPE, ACCUSED-APPELLANT.**

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

**LAZARO-JAVIER, J.:**

#### **The Case**

This appeal assails the Decision dated November 25, 2016<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 07357 affirming, with modification, the trial court's twin verdicts of conviction against appellant Joseph Pagkatipunan y Cleope for rape and child abuse.

#### **The Proceedings Before the Trial Court**

##### **The Charges**

In Crim. Case No. 06-32724, appellant Joseph Pagkatipunan y Cleope was charged with rape under Article 266-A of the Revised Penal Code (RPC),<sup>[2]</sup> viz:

That on or about the 16<sup>th</sup> day of October 2006, in the Municipality of Cainta, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation and with the attendance of the aggravating circumstance of dwelling, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party AAA, eight (8) years old, a minor, at the time of commission of the crime against her will and without her consent to her damage and prejudice.

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

In Crim. Case No. 06-32725, Pagkatipunan was charged, this time, with child abuse under Section 5 (b), Article III of RA 7610,<sup>[4]</sup> viz:

That on or about the 18<sup>th</sup> day of October 2006, in the Municipality of Cainta, Province of Rizal, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused did then and there willfully, unlawfully, feloniously and with the attending circumstance of dwelling, sexually abuse the person of the offended party AAA, eight (8) years old, a minor at that time of the commission of the crime by licking her vagina, against her will and without her consent, which act debases, degrades and demeans her intrinsic worth as human being, to her damage and prejudice.

CONTRARY TO LAW.<sup>[5]</sup>

The cases were raffled to the Regional Trial Court-Br. 72, Antipolo City.

On arraignment, Pagkatipunan pleaded not guilty to both charges.<sup>[6]</sup> Joint trial ensued.

### **The Prosecution's Version**

On October 16, 2006, eight-year old AAA was sleeping alone in the *sala* of their house in Cainta, Rizal. She was awakened when Pagkatipunan barged into the house, undressed her, and then ordered her to keep quiet. She was frightened. Pagkatipunan forced her to lie down on a chair and inserted his penis in her vagina. After consummating his lust, he left. She did not tell anyone in her family about her traumatic experience.<sup>[7]</sup>

Two (2) days later, on October 18, 2006, AAA was again left alone in the house when Pagkatipunan once more barged in and ordered her this time to sit on the *sala*. He further commanded her to undress<sup>[8]</sup> then he spread her legs and licked her vagina.<sup>[9]</sup>

He was doing the act when AAA's father, BBB, arrived. Enraged by what he saw, BBB rushed straight and punched Pagkatipunan who nonetheless managed to flee. Wasting no time, BBB immediately reported the incident to the barangay officials who caused Pagkatipunan's arrest.<sup>[10]</sup>

Chief Inspector Jesille C. Baluyot examined AAA and found a shallow healed hymenal laceration at the 6 o'clock position.<sup>[11]</sup>

### **The Defense's Version**

Pagkatipunan denied the accusations against him. He admitted though that AAA and BBB were his neighbors. He testified that on October 16, 2006, he just stayed home and did the chores.

On October 18, 2006, he went to AAA's house around noontime to watch over her while her parents were at work.<sup>[12]</sup>

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

As borne in its two (2) separate Decisions dated October 9, 2014,<sup>[13]</sup> the trial court found Pagkatipunan guilty of both charges, thus:

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WHEREFORE, finding the accused GUILTY beyond reasonable doubt of the crime of Rape, he is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and ordering him to pay the victim P50,000.00 as civil indemnity and another P50,000.00 as moral damages.

SO ORDERED.<sup>[14]</sup>

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WHEREFORE, finding the accused JOSEPH PAGKATIPUNAN y CLEOPE guilty beyond reasonable doubt for Violation of Section 5(b), 2nd and 3rd phrases of Article III of R.A. No. 7610 in rel. to Article 14, No. 3 of the Revised Penal Code, as amended and in further rel. to Section 5 (a) of R.A. 8369 he is hereby ordered to suffer the penalty of eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years and one (1) day of reclusion temporal as maximum. Accused is ordered to pay the victim the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

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

The trial court gave full weight and credence to AAA's positive and categorical testimony pointing to Pagkatipunan as the person who raped and sexually abused her. It noted that AAA, a minor, would not concoct a story of defloration, allow her private parts to be examined, and subject herself to shame if the same were not true.<sup>[16]</sup> The finding that AAA sustained shallow hymenal lacerations only did not negate the fact that AAA was raped. For the slightest penetration of the male organ into the labia minora is sufficient.<sup>[17]</sup>

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

On appeal, Pagkatipunan faulted the trial court for giving full weight and credence to AAA's purportedly inconsistent and incredible testimony. Too, he argued that carnal knowledge was not proven in view of AAA's alleged failure to categorically state that he inserted his penis in her vagina.<sup>[18]</sup>

### **The Court of Appeals' Ruling**

Under Decision dated November 25, 2016,<sup>[19]</sup> the Court of Appeals affirmed with modification, viz:

**WHEREFORE**, the appeal filed by Joseph Pagkatipunan y Cleope is **DISMISSED**.

The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32724 is **AFFIRMED with MODIFICATION** that Joseph Pagkatipunan y Cleope is **ORDERED** to pay Thirty Thousand Pesos (P30,000.00) as exemplary damages.

The Decision of the Regional Trial Court of Antipolo City, Branch 72 in Criminal Case No. 06-32735 is **AFFIRMED** with the following **MODIFICATIONS**: Joseph Pagkatipunan y Cleope is sentenced to an indeterminate penalty of 13 years, 9 months and 1 day of reclusion temporal as minimum to 17 years and 4 months of reclusion temporal as maximum. He is **ORDERED** to pay a fine of Fifteen Thousand Pesos (P15,000.00); Twenty Thousand Pesos (P20,000.00) as civil indemnity; Fifteen Thousand Pesos (P15,000.00) as moral damages; and Fifteen Thousand Pesos (P15,000.00) as exemplary damages.

Joseph Pagkatipunan y Cleope is **ORDERED** to pay interest on all monetary awards for damages in both cases at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction thereof.

SO ORDERED.<sup>[20]</sup>

The Court of Appeals held that the prosecution was able to establish that on October 16, 2006, Pagkatipunan had carnal knowledge of AAA and on October 18, 2006, he sexually abused AAA by licking her private part. It found that AAA, a child of eight (8) years when the harrowing incidents happened and merely twelve (12) years old when she took the witness stand, would not have fabricated such charges so humiliating to herself and her family had she not been truly subjected to the painful experiences of rape and sexual abuse.<sup>[21]</sup>

### **The Present Appeal**

Pagkatipunan now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated October 2, 2017,<sup>[22]</sup> Pagkatipunan and the Office of the Solicitor General manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.<sup>[23]</sup>

### **Issue**

Did the Court of Appeals err in affirming the verdicts of conviction for rape and child abuse against Pagkatipunan?

### **Ruling**

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Paragraph 1, Article 266-A of the RPC provides for the modes when rape is committed: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under twelve (12) years of age or is demented.

Where the victim is below twelve (12) years old, a case of statutory rape, the only subject of inquiry is whether carnal knowledge took place. Proof of force, threat, or intimidation is unnecessary.<sup>[24]</sup>

Here, it is undisputed that AAA was only eight (8) years old when the incident happened.<sup>[25]</sup> The only remaining question is "*did Pagkatipunan have carnal knowledge of AAA?*" On this score, AAA testified:

Q Okay, when you were sleeping on October 16, 2006, what happened?

A **Joseph inserted his penis in my vagina, sir.**

Q Do you know how Joseph was able to enter your house?

A Yes, sir. He opened our door, sir.

Q Were you already awake when Joseph opened your door?

A No, sir.

Q And at what point did you wake up?

A When he took off my clothes, sir.

Q Can you still remember what were you wearing then?

A I don't recall, sir.

Q When Joseph took off your clothes, what did you do?

A I was awakened, sir.

Q And what did you do after that?

A I stood up, sir.

Q What did Joseph do when he saw you standing?

A He told me to keep quiet and not to report the incident, sir.

Q How did you feel when Joseph told you that?

A I got frightened, sir.

Q Why were you frightened?

A I was afraid that he might harm me, sir.

Q When Joseph threatened you, what did you do after that?

A Nothing, sir.

Q And what did he do after that?

A **That was the time he inserted his penis in my vagina, sir.**

Q What did you feel?

A I was in pain, sir.

Q After that what did he do?

A Nothing else, sir.

Q And did he leave your house?

A Yes, sir.<sup>[26]</sup> (emphases supplied)

As it was, AAA's testimony did not stand alone. The trial court also considered Chief Inspector Baluyot's corroborative medical finding of a shallow healed laceration of AAA's hymen at the six o'clock position. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the forthright testimony of a rape victim is consistent with medical findings, as in this case, the essential requisites of carnal knowledge are deemed to have been sufficiently established.<sup>[27]</sup>

Appellant, nevertheless, attempts to discredit AAA because the latter allegedly admitted not seeing what exactly got inserted in her vagina.<sup>[28]</sup> To put things in perspective, We quote AAA's relevant testimony, thus:

Q When Joseph entered his penis in your vagina you were seated