

SECOND DIVISION

[G.R. No. 244835, December 11, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABC,^[1]
ACCUSED-APPELLANT.**

D E C I S I O N

REYES, A., JR., J.:

It is said that the safest place in the world for a daughter is in her father's arms. Not in this case.

This is an appeal^[2] filed by accused-appellant ABC from the Decision^[3] dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09378, which affirmed the Judgment^[4] dated March 28, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 106 in Criminal Case Nos. R-QZN-14-07928-CR and R-QZN-14-07929-CR, convicting ABC guilty of the crimes of Acts of Lasciviousness under Article 336 and Rape under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

The Facts

In two separate Informations, ABC was charged with two counts of Rape allegedly committed against his minor daughter, the accusatory portions of which provides:

Criminal Case No. R-QZN-14-07928-CR

That on or between April and May, 2011, in Quezon City, Philippines, the above-named accused, by means of force, threat and intimidation and exercising moral ascendancy over one[AAA],^[5] since he is her father, did then and there, willfully, unlawfully and feloniously commit an act of sexual abuse upon the said [AAA], his very own daughter and a minor 9 years of age, by then and there willfully, unlawfully and feloniously having carnal knowledge with the offended party, against her will and without her consent, to the damage and prejudice of the said offended party.

The crime described above is committed with the qualifying circumstances of relationship and minority for the accused is the father of the offend ed party who was minor, nine (9) years of age at the time.

CONTRARY TO LAW.^[6]

Criminal Case No. R-QZN-14-07929-CR

That on or between January 13 and January 21, 2011, in Quezon City, Philippines, the above-named accused, by means of force, threat and intimidation and exercising moral ascendancy over one[AAA] , since he is her father, did then and there, willfully, unlawfully and feloniously commit an act of sexual abuse upon the said [AAA], his very own daughter and a minor 9 years of age, by then and there willfully, unlawfully and feloniously having carnal knowledge with the offended party, against her will and without her consent, to the damage and prejudice of the said offended party.

The crime described above is committed with the qualifying circumstances of relationship and minority for the accused is the father of the offended party who was minor, nine (9) years of age at the time.

CONTRARY TO LAW.^[7]

When arraigned on October 9, 2014, assisted by a public attorney, ABC entered separate pleas of "not guilty" to the crimes charged.^[8] Pre-trial was held on May 4, 2015^[9] where the prosecution identified AAA, BBB,^[10] CCC,^[11] DDD,^[12] and Police Chief Inspector Charyl Escaro, MD (Dr. Escaro), the medico legal officer as its witnesses while the defense identified the accused appellant as its witness. Joint trial on the merits thereafter ensued.

Evidence for the prosecution shows that on the evening January 13 and 21, 2011 which was a few after her 9th was sleeping in their house situated at [REDACTED] Quezon City. On that evening, she was with her father, ABC, and her three brothers, and they were all sleeping on a cushion on the floor. AAA was suddenly awakened when she felt that something round was pressed on the side of her head. When she opened her eyes, she was not able to see anything because it was dark. AAA wondered as the lights were usually turned on when they sleep. Thinking that it was one of her brother's foot that was on her face, AAA tried to remove it but she heard the voice of ABC saying, "*Baril ito. Huwag kang maingay.*" AAA kept silent because of fear. ABC started stripping AAA by removing her t-shirt, shorts, and panty. AAA tried to put her panty back on but ABC prevailed in undressing her despite her struggle. ABC then inserted his penis into AAA's vagina until she felt that he urinated inside her vagina. After, ABC threatened to kill her brothers if AAA should tell about the incident to the police and to her *lola* EEE who reside nearby. The following morning, AAA woke up feeling a sharp pain in her vagina. When she washed, she felt that there was a wound at the tip of the center of her vagina.^[13]

AAA testified that ABC raped her many times and sometimes twice a week especially on Saturdays and Sundays when ABC was drunk. These unfortunate events became more frequent when ABC lost his job February 2011 which lasted for a year.^[14]

Evidence for the prosecution likewise shows that on the evening between April and May, 2011, AAA's brother, DDD, was at home with his siblings, AAA, FFF and GGG. They were in bed when their father, ABC, arrived. ABC told DDD to turn off the light, which he did and then to go to sleep. They all laid down facing the wall with DDD near the door, next to him was ABC, GGG, AAA, and FFF. Later, ABC moved to AAA's side. DDD was still awake at that time and he saw ABC stand up and went on

top of AAA, ABC took out something which went in and out of AAA's vagina. But because the room was dimly lit, DDD testified that he only saw shadows, with the illumination coming from the moonlight outside. Thereafter, DDD saw ABC lay beside AAA, and then he eventually fell asleep. DDD did not reveal to anyone about what he saw for fear that he might not be allowed to go out of the house and that he will get spanked.^[15]

One year later, or on January 29, 2012, AAA revealed her ordeal to her aunt CCC who did not believe her initially until she showed a "kiss mark" on her breast. Immediately, CCC took AAA to the authorities where they filed a complaint against ABC. Acting on the complaint, police officers arrested ABC for investigation.

AAA was subjected to a physical and medical examination by Dr. Escaro. The Medico-Legal Report No. RI2-127^[16] dated February 3, 2012 revealed:

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: -medium
MENTAL STATUS: -coherent
BREAST: -conial [sic] in shape/light brown
ABDOMENT: -soft/flat
1. Healing ecchymosis, right chest region, measuring 3.0 x 4.0 em, 10 em from the anterior midline.
2. Healing ecchymosis, left chest region, measuring 5.0 x 3.0cm, 8cm

GENITAL

PUBIC HAIR: -absent
LABIA MAJORA: -coaptated
LABIA MINORA: -light brown/non-hypertrophied
-presence of deep healed lacerations at 3 and 9 o'clock positions.
HYMEN:
POSTERIOR FOURCHETTE: -sharp
EXTERNAL VAGINAL ORIFICE: -not assessed
VAGINAL CANAL: -not assessed
CERVIX: -not assessed
PERIURETHRAL AND VAGINAL SMEARS: -not assessed
ANUS: -unremarkable

CONCLUSION: Medical evaluation shows clear evidence of

blunt penetrating trauma to the hymen.^[17]

The prosecution rested its case after a formal offer of its documentary evidence.^[18]

For its part, the defense presented ABC as its only witness. ABC denied the charges and claimed that the crimes were merely fabricated by his mother-in-law who is extremely angry with him for his supposed "*pambababae*." He claimed that his mother-in-law would get jealous every time he and his female co-worker walk the dogs of his boss every morning. His mother-in-law was with the police officers when he was arrested in their house.^[19]

The RTC Ruling

After due proceedings, the RTC rejected ABC's defense of denial in Criminal Case No. R-QZN-14-07929-CR and ruled that the prosecution was able to fully discharge its burden to prove his guilt beyond reasonable doubt for the crime of Rape defined under Article 266-A of the RPC, as amended.

The trial court, however, found insufficient evidence to establish ABC's guilt in the second count of Rape as charged in Criminal Case No. RQZN-14-07928-CR. The trial court ruled that the prosecution was not able to establish what ABC took out that went in and out of AAA's vagina.^[20] It ratiocinated that in Rape cases, it is essential for the prosecution to establish that the penis of the accused reaches the pudendum or at least the labia of the victim.^[21] Absent any showing of the slightest penetration of the female organ, there can be no consummated Rape. The trial court, however, found ABC guilty of the crime of Acts of Lasciviousness, the elements of which are included in Rape.^[22]

The RTC decreed:

IN VIEW WHEREOF, judgment is hereby rendered finding accused [ABC] as follows:

1. In Criminal Case No. R-QZN-14-07928, accused is GUILTY of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of 6 months of *arresto mayor* as minimum to 6 years of *prision correccional* as maximum and to pay private complainant the amount of PhP 20,000.00 as civil indemnity, PhP 30,000.00 as moral damages and PhP 10,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of this Judgment until fully paid.
2. In Criminal Case No. R-QZN-14-07929, accused is GUILTY of the crime of Rape and is hereby sentenced to *reclusion perpetua*, without eligibility for parole and is likewise ordered to pay private complainant the amount of P100,000.00 as civil indemnity, P100,000.00 as moral damages and P100,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of this Judgment until fully paid.

The period of the accused's preventive detention shall be credited in the

service of his sentence.

SO ORDERED.^[23] (Emphasis in the original)

ABC elevated the case to the CA via a Notice of Appeal that was filed on April 4, 2017.^[24]

Ruling of the CA

On September 27, 2018, the CA ruled that the prosecution was able to establish the concurrence of all the elements for the crime of Rape in Criminal Case No. R-QZN-14-07929-CR.^[25] AAA's minority and her relationship with ABC were not in dispute.^[26] The clear and categorical testimony of AAA as corroborated by pieces of evidence that were submitted in court proved the guilt of ABC for the crime of Qualified Rape.^[27]

The CA however modified the nomenclature of the offense committed, the penalty imposed and the damages awarded in Criminal Case No. R-QZN-14-07928-CR.^[28] The appellate court, citing jurisprudence, ruled that when the victim is under 12 years old and all the elements of Acts of Lasciviousness are present, as in the instant case, the nomenclature of the crime should be Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, which was also included in the offense of Rape charged in Criminal Case No. R-QZN-14-07928-CR.^[29]

The CA then disposed:

WHEREFORE, the instant appeal is hereby **DENIED**. The March 28, 2017 Judgment of the Regional Trial Court, Branch 106, Quezon City in Criminal Case No. R-QZN-14-07928-CR and R-QZN-14-07929-CR **AFFIRMED** with **MODIFICATIONS**. As modified in Criminal Case R-QZN-14-07928-CR accused-appellant ABC is found guilty of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610 and sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal minimum, as minimum to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum. He is further ordered to pay private complainant P20,000.00 civil indemnity, moral damages, exemplary damages, and fine, in the amount of P15,000.00 each, which shall earn 6% interest *per annum* from the date of finality of this Decision until fully paid. All other aspects of the assailed Judgment stand.

SO ORDERED.^[30] (Emphasis in the original)

Insisting on his innocence, ABC filed the instant appeal anchored on the following assigned errors: