

## FIRST DIVISION

[ G.R. No. 219863, March 06, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RICHARD RAMIREZ Y TULUNGHARI, ACCUSED-APPELLANT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Assailed in this appeal is the October 30, 2014 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05176 which affirmed the February 3, 2011 Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 254, Las Piñas City, finding appellant Richard Ramirez y Tulunghari guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

#### ***The Antecedent Facts***

Appellant was charged with the crime of rape in two separate Informations which read:

#### *Criminal Case No. 07-05889*

That sometime on or about February 24, 2007, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge [of] one ["AAA"],<sup>[3]</sup> a six (6) year old minor, through force, or intimidation, and against her will and consent, thereby subjecting her to sexual abuse and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.<sup>[4]</sup>

#### *Criminal Case No. 07-0284*

That on or about the 18<sup>th</sup> day of March 2007, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously have carnal knowledge of one ["AAA"], six (6) year[s] old and below 7 years of age, minor, through force and intimidation against her will and consent by licking the vagina and thereafter inserting his penis into the vagina of said ["AAA"], thereby subjecting her to sexual abuse, and that the act complained of is prejudicial to the physical and psychological development of the complainant-minor.<sup>[5]</sup>

During his arraignment, appellant entered a plea of not guilty.<sup>[6]</sup> Trial thereafter ensued.

### ***Version of the Prosecution***

The prosecution's version of the incidents is as follows:

AAA, born on September 7, 2000, was then only six (6) years old when she was raped and molested by the accused.

The victim and the accused [were] neighbors in Las Piñas City. Accused, a stay-in construction worker in Baliwag, Bulacan, [was] also a friend of AAA's uncle who would usually sleep over at the victim's house.

On February 24, 2007, at or about 12:00 a.m, AAA was awakened by the accused when he removed her pajama and panty and placed himself on top of her. The accused licked her vagina before inserting his penis into it. She felt pain and cried. Since the accused threatened her with harm if she [told] the incident to anybody, she kept mum about it.

[O]n March 18, 2007, during the wee hours of the morning, or about 2:00 a.m., AAA was awakened by the shout of her uncle, CCC. There, she saw accused standing at the corner of the house with her panty at the latter's feet. Realizing that she was naked, she instantly wore her short pants and ran and embraced her uncle. Thereafter, AAA, together with her grandparents and uncles, went to the police to report what happened. The medico legal examination of the private organ of AAA revealed no laceration in her hymen.<sup>[7]</sup>

### ***Version of the Defense***

Appellant raised the defenses of denial and alibi, viz.:

x x x On February 24, 2007, he was working as a construction worker at NFA, Baliwag, Bulacan. He worked there from Monday to Saturday. [On said date,] he was working until 5:00 o'clock in the afternoon in Bulacm1.

On March 18, 2007, he was at home resting. At around 8:00 o'clock in the evening of that day, he went out to join his friends, Jonas Rabosa, Aron Rabosa, Jomari Magundayao, Randy Ramirez, Erma Bergancia and Bongbong in a drinking spree in front of the house of AAA's aunt, BBB, where AAA also lived. The drinking spree lasted until 12:00 o'clock midnight when he started vomiting. They slept at BBB's house. He, together with his friends, slept, side by side with each other in the living room, but before he fell asleep he noticed that AAA was sleeping on the sofa.

At around 2:00 o'clock in the morning, [he] was awakened by the punches thrown at him by AAA's uncle, CCC, who claimed to have seen him molesting the girl. He was surprised. Another uncle, ODD, followed suit and both clobbered him. His cousin, Randy Ramirez, intervened to pacify, and brought him home. At home, he narrated to his mother what

[had] happened, and she cried. Then, policemen arrived at their house to arrest him, although without showing any warrant of arrest.<sup>[8]</sup>

### ***Ruling of the Regional Trial Court***

In its Decision dated February 3, 2011, the RTC found appellant guilty beyond reasonable doubt of **rape** under Article 266 of the Revised Penal Code in Criminal Case No. 07-0284 and **acts of lasciviousness** under Article 336 in Criminal Case No. 07-0589.<sup>[9]</sup> It held that:

On the first rape, AAA narrated that she was roused from sleep when accused was removing her pajama and panty. After removing he[r] pajama and panty, accused licked her vagina, [and] inserted something hard into [it]. [She later clarified that it was appellant's penis that was inserted into her vagina] She did not disclose this to anybody because accused told her not to tell it to anybody.<sup>[10]</sup>

x x x x

On the alleged (second rape incident), AAA narrated that she was roused from sleep when her uncle[,] CCC[,] was shouting angry words at the accused when they saw the latter lying on top of AAA. x x x It is clear from AAA's testimony that when the accused carried out the lecherous intent on March 18, 2007, he did not commit rape, consummated nor attempt[ed]. There [was] no indication that accused successfully penetrated, at least the labia of AAA. Accused should only be held liable for acts of lasciviousness.<sup>[11]</sup>

Accordingly, the RTC sentenced appellant to suffer the penalty of *a) reclusion perpetua* and to pay "AAA" P75,000.00 as civil indemnity, P75,000.00 as moral damages and P50,000.00 as exemplary damages in Criminal Case No. 07-0284; and *b) imprisonment of six (6) months of arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and to pay "AAA" P30,000.00 as civil indemnity, P30,000.00 as moral damages and P20,000.00 as exemplary damages in Criminal Case No. 07-0589.<sup>[12]</sup>

Appellant thereafter appealed the RTC Decision before the CA.

### ***Ruling of the Court of Appeals***

The CA affirmed the RTC Decision *in toto*. Like the RTC, the CA found "AAA's" testimony worthy of credence.<sup>[13]</sup> It also noted that "AAA" had "positively identified appellant as her abuser and her statements under oath were sufficient to convict appellant for [his misdeeds]."<sup>[14]</sup>

In addition, the CA held that appellant's defense of denial cannot prevail over "AAA's" testimony as it was not properly corroborated or substantiated by clear and convincing evidence. It likewise reiterated that the defense of denial could not prevail over "AAA's" positive identification of appellant as the perpetrator of the crimes charged.<sup>[15]</sup>

Aggrieved, appellant filed the present appeal.

### **The Issues**

Appellant raises the following issues for the Court's resolution:

*First*, whether "AAA's" testimony was credible and straightforward, given that: (a) she simply answered "yes" to almost all of the trial prosecutor's leading questions; [16] and (b) the defense was able to prove that the alleged acts of rape could not have been perpetrated by appellant, as there were other persons present when said acts were supposedly committed; [17] and,

*Second*, whether the absence of hymenal lacerations on "AAA" casts doubt on appellant's guilt. [18]

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

After due consideration, we resolve to (a) **affirm** appellant's conviction in Criminal Case No. 07 0589, but **modify** the designation of the crime committed; and (b) **grant** his appeal in Criminal Case No. 07-0284.

### ***Elements of Rape in Criminal Case No. 07-0589 Established***

Article 266-A of the Revised Penal Code provides:

**ART. 266-A. Rape, When and How Committed.** - Rape is committed -

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- 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;
- d. When **the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. (Emphasis supplied)

x x x x

"Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act." [19] Notably, the absence of free consent in cases of statutory rape is conclusively presumed and as such, proof of force, intimidation or consent is immaterial. [20]

To convict an accused of statutory rape, the prosecution must prove: 1) the age of the complainant; 2) the identity of the accused; and 3) the sexual intercourse between the accused and the complainant. [21]

In this case, the prosecution successfully established that the first rape incident on February 24, 2007 indeed took place when "AAA" was only 6 years old,<sup>[22]</sup> and that appellant was the perpetrator of the crime. The pertinent portion of "AAA's" testimony detailing said rape incident is quoted below:

[PROS. JACOB M. MONTESA II]

Q: You said you were raped by Kuya Richard, is this true or not?

A: That's true, Sir.

Q: How did he rape you?

A: He placed himself on top of me, Sir.

Q: And what else did he do?

A: He inserted his penis into my vagina, Sir.

Q: What else?

A: He licked my vagina, Sir.<sup>[23]</sup>

x x x x

Q: This Kuya Richard who raped you, is he here today?

A: Yes, Sir.

Q: Can you point to him?

A: That one, Sir. (Witness pointing to a person who when asked, answered by the name of Richard Ramirez.)

Q: Can you tell us what you felt when Kuya Richard was doing this? What was your reaction?

A: I was hurt, Sir.

Q: Did you cry?

A: Yes, Sir.<sup>[24]</sup>

Notably, both the RTC and the CA found "AAA's" testimony credible and convincing. We, too, see no reason to disbelieve "AAA's" testimony as regards the first rape incident, since it was not shown that the lower courts had overlooked, *misunderstood* or *misappreciated* facts or circumstances of weight and substance which, if properly considered would have altered the result of the case.<sup>[25]</sup>

We reject appellant's contention that the presence of other persons during the commission of the first rape incident rendered "AAA's" testimony unbelievable. "It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed."<sup>[26]</sup> After all, "[i]t is settled that lust is not a respecter of time or place and rape is known to happen [even] in the most unlikely places."<sup>[27]</sup>

We are likewise not persuaded by appellant's claim that the absence of lacerations on "AAA's" hymen negated sexual intercourse. "The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process."<sup>[28]</sup> Besides, as the CA correctly