

SECOND DIVISION

[G.R. No. 229861, July 02, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO EJERCITO, ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated October 28, 2016 of the Court of Appeals (CA) in CA-G.R. CEB CR. HC. No. 01656, which affirmed the Decision^[3] dated April 8, 2013 of the Regional Trial Court of [REDACTED],^[4] Branch 60 (RTC) in Crim. Case No. CEB-BRL-1300 finding accused-appellant Francisco Ejercito (Ejercito) guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,^[5] otherwise known as "The Anti-Rape Law of 1997."

The Facts

This case stemmed from an Information^[6] filed before the RTC charging Ejercito of the aforesaid crime, the accusatory portion of which reads:

That on or about the 10th day of October, 2001 at past 7:00 o'clock in the [REDACTED] evening, [REDACTED] at [REDACTED],

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor, who is only fifteen (15) years old at the time of the commission of the offense against her will and consent and which act demeans the intrinsic worth and dignity of said minor as a human being.

CONTRARY TO LAW.^[7]

The prosecution alleged that at around six (6) o'clock in the evening of October 10, 2001, AAA, then a fifteen (15) year old high school student, was cleaning the chicken cage at the back of their house located in [REDACTED] when suddenly, she saw Ejercito pointing a gun at her saying, "*Ato ato lang ni. Sabta lang ko. Ayaw gyud saba para dili madamay imo pamilya.*" AAA pleaded, "*Tang, don't do this to me*" but the latter replied, "*Do you want me to kill you? I will even include your mother and father.*" Thereafter, Ejercito dragged AAA to a nearby barn, removed her shorts and underwear, while he undressed and placed himself on top of her. He covered her mouth with his right hand and used his left hand to point the gun at her, as he inserted his penis into her vagina and made back and forth

movements. When he finished the sexual act, Ejercito casually walked away and warned AAA not to tell anybody or else, her parents will get killed. Upon returning to her house, AAA hurriedly went to the bathroom where she saw a bloody discharge from her vagina. The following day, AAA absented herself from school and headed to the house of her aunt, CCC, who asked if she was okay. At that point, AAA tearfully narrated the incident and requested CCC to remain silent, to which the latter reluctantly obliged.^[8]

Haunted by her harrowing experience, AAA was unable to focus on her studies. Wanting to start her life anew, AAA moved to the city to continue her schooling there. However, Ejercito was able to track AAA down, and made the latter his sex slave. From 2002 to 2005, Ejercito persistently contacted AAA, threatened and compelled her to meet him, and thereafter, forced her to take *shabu* and then sexually abused her. Eventually, AAA got hooked on drugs, portrayed herself as Ejercito's paramour, and decided to live together. When Ejercito's wife discovered her husband's relationship with AAA, the former filed a complaint against AAA before the barangay. By this time, even AAA's mother, BBB, found out the illicit relationship and exerted efforts to separate them from each other. Finally, after undergoing rehabilitation, AAA finally disclosed to her parents that she was raped by Ejercito back in 2001 and reported the same to the authorities on September 3, 2005.^[9]

In his defense, Ejercito pleaded not guilty to the charge against him, and maintained that he had an illicit relationship with AAA. He averred that during the existence of their affair from 2002 to 2004, he and AAA frequently had consensual sex and the latter even abandoned her family in order to live with him in various places in ██████████. He even insisted that he and AAA were vocal about their choice to live together despite vehement objections from his own wife and AAA's mother. Finally, he pointed out that when AAA was forcibly taken from him by her mother, as well as police authorities, no charges were filed against him. Thus, he was shocked and dismayed when he was charged with the crime of Rape which purportedly happened when they were lovers.^[10]

The RTC Ruling

In a Decision^[11] dated April 8, 2013, the RTC found Ejercito guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to separately pay AAA and her parents P50,000.00 each as moral damages.^[12]

Aggrieved, Ejercito appealed^[13] to the CA.

The CA Ruling

In a Decision^[14] dated October 28, 2016, the CA affirmed the RTC ruling with modification, convicting Ejercito of Rape defined and penalized under Article 335 of the RPC, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to pay the offended party, AAA, the amounts of P75,000.00 as civil indemnity *ex delicto*, P75,000.00 as moral damages, and P75,000.00 as exemplary damages, with legal interest of six percent (6%) per annum to be imposed on all monetary awards from finality of the ruling until fully paid.^[15]

Agreeing with the RTC's findings, the CA held that through AAA's clear and straightforward testimony, the prosecution had established that Ejercito raped her in 2001. On the other hand, it did not give credence to Ejercito's sweetheart defense, pointing out that assuming arguendo that he indeed eventually had a relationship with AAA, their first sexual encounter in 2001 was without the latter's consent and was attended with force and intimidation as he pointed a gun at her while satisfying his lustful desires.^[16]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Ejercito's conviction for the crime of Rape must be upheld.

The Court's Ruling

The appeal is without merit.

Time and again, it has been held that in criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[17]

Based on this doctrine, the Court, upon careful review of this case, deems it proper to correct the attribution of the crime for which Ejercito should be convicted and, consequently, the corresponding penalty to be imposed against him, as will be explained hereunder.

At the onset, the Court observes that the CA, in modifying the RTC ruling, erroneously applied the old Rape Law, or Article 335 of the RPC, since the same was already repealed upon the enactment of RA 8353 in 1997. To recount, the Information alleges "[t]hat on or about the **10th day of October 2001** x x x [Ejercito], with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor who is only fifteen (15) years old at the time of the commission of the offense against her will and consent x x x"; hence, in convicting Ejercito of Rape, the CA should have applied the provisions of RA 8353, which enactment has resulted in the new rape provisions of the RPC under Articles 266-A in relation to 266-B, viz.:

Article 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;

x x x x

Article 266-B. *Penalties.* - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x

For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353, to prosper, the prosecution must prove that: (a) the offender had carnal knowledge of a woman; and (b) he accomplished this act under the circumstances mentioned in the provision, e.g., through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.^[18]

In this case, the prosecution was able to prove beyond reasonable doubt the presence of all the elements of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353. Through AAA's positive testimony, it was indeed established that in the evening of October 10, 2001, AAA, then just a fifteen (15)-year old minor, was cleaning chicken cages at the back of her house when suddenly, Ejercito threatened her, removed her lower garments, covered her mouth, and proceeded to have carnal knowledge of her without her consent. The RTC, as affirmed by the CA, found AAA's testimony to be credible, noting further that Ejercito failed to establish any ill motive on her part which could have compelled her to falsely accuse him of the aforesaid act. In this relation, case law states that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.^[19] As there is no indication that the RTC, as affirmed by the CA, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case, the Court therefore finds no reason to deviate from its factual findings.

The Court remains mindful that Section 5 (b) of RA 7610,^[20] which, to note, was passed prior to RA 8353 on June 17, 1992, equally penalizes those who commit sexual abuse, by means of either (a) **sexual intercourse or** (b) lascivious conduct, **against "a child exploited in prostitution or subjected to other sexual abuse,"** viz.:

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 sexual abuse;

Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

x x x x

In *Quimvel v. People (Quimvel)*,^[21] the Court set important parameters in the application of Section 5 (b) of RA 7610, to wit:

(1) A child is considered as one "**exploited in prostitution or subjected to other sexual abuse**" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult":

To the mind of the Court, the allegations are sufficient to classify the victim as one "exploited in prostitution or subject to other sexual abuse." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, **which encompasses children who indulge in sexual intercourse or lascivious conduct** (a) for money, profit, or any other consideration; or **(b) under the coercion or influence of any adult, syndicate or group.**

Correlatively, Sec. 5 (a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, **paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.** Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. x x x.

^[22] (Emphases and underscoring supplied)

(2) A violation of Section 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim **only once**, even without a prior sexual affront:

[T]he very definition of "*child abuse*" under Sec. 3 (b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. **Thus, a violation of Sec. 5 (b) of RA 7610. occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.**^[23] (Emphasis and underscoring supplied)

(3) For purposes of determining the proper charge, the term "coercion and influence" as appearing in the law is **broad enough to cover "force and intimidation" as used in the Information;** in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by RA 7610 and by the Information are different":