

## **SECOND DIVISION**

**[ G.R. No. 226467, October 17, 2018 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. XXX,<sup>[\*]</sup>  
ACCUSED-APPELLANT.**

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

**CAGUIOA, J:**

Before this Court is an ordinary appeal<sup>[1]</sup> filed by the accused-appellant XXX assailing the Decision<sup>[2]</sup> dated March 1, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06918, which affirmed the Decision<sup>[3]</sup> dated April 2, 2014 of the CCC, Regional Trial Court (RTC) in Criminal Case No. C-78912, finding XXX guilty beyond reasonable doubt of rape.

#### **The Facts**

An Information<sup>[4]</sup> was filed against XXX for the rape of AAA, which reads:

That on or about or sometime in July 2003 and immediately thereafter, at [CCC] and within the jurisdiction of this Honorable Court, the above-named accused, being the biological father of [AAA], a 10 year old minor, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said [AAA], against her will and without her consent, which acts of the accused adversely affected the normal growth and development of the minor complainant.

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

During the trial, the prosecution presented, among others, AAA and Police Senior Inspector Marianne Ebdane (P/Sr. Insp. Ebdane), the medico-legal officer of the Eastern Police District, as witnesses. AAA's testimony, as summarized by the CA, was as follows:

Sometime in July 2003, around 8:30 in the morning, while she was inside their house in xxxx [CCC], appellant raped her by inserting his penis into her vagina. She was 10 years old at that time. She was lying on the bed when appellant arrived and laid beside her. Appellant embraced her while his hands touched her body. She was afraid and immobilized. Appellant asked her to give him a massage on his chest, but she refused. As result, appellant pulled her left hand and placed it on his chest as if massaging it, then pulled it down further to his penis. Appellant only stopped when he heard her mother arrive from the market. He stood from the bed and told her to fix her appearance. It took her a long time to report the incident because appellant threatened her mother and older sister.

In 2007, when she was already in 3rd year high school, she could no longer take appellant's abuses so she told her Technology, Livelihood, and Economic (TLE) teacher Deogracias Yuson about it. Her teacher reported it to the school's guidance counselor who, in turn, relayed it to the police station. Thereafter, she went home and learned that a commotion took place when appellant evaded arrest.<sup>[6]</sup>

Meanwhile, P/Sr. Insp. Ebdane testified as to the medico-legal findings. She testified that AAA suffered deep healed lacerations showing clear evidence of blunt force or penetrating trauma to the hymen.<sup>[7]</sup>

On the other hand, the evidence of the defense is based on the lone testimony of XXX, who testified as follows:

Sometime between August and September 2007, several men went to their house at xxxx [CCC] to arrest him. He thought he was being arrested for his illegal electrical connection and, thus, he decided to leave and temporarily stay at Maysan, Valenzuela. In 2008, he was arrested for allegedly raping his daughter AAA based on the complaint filed by his wife. While admitting that something happened between him and his daughter, he insisted that the same was consensual and it was even her daughter who initiated their sexual congress by guiding his hand to her vagina. He assailed the date of commission of the alleged crime claiming that the incident actually complained of happened in 2007. The year 2003 was intentionally placed in the information charging him to aggravate the crime to statutory rape. He likewise questioned the unreasonable delay in reporting the alleged rape incident.<sup>[8]</sup>

### **Ruling of the RTC**

After trial on the merits, in its Decision dated April 2, 2014, the RTC convicted XXX of the crime of Statutory Rape. The dispositive portion of the said Decision reads:

**WHEREFORE**, the foregoing considered, this Court hereby finds accused **[XXX], GUILTY** beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A, paragraph 1 (a) and (d) of Republic Act No. 8353 in relation to Republic Act No. 7610 and sentences him to suffer penalty of **Reclusion Perpetua** and to pay the complainant **AAA** the amount of **Seventy Five Thousand Pesos (Php 75,000.00)** as civil indemnity; **Seventy Five Thousand Pesos (Php 75,000.00)** as moral damages and **Thirty Thousand Pesos (Php 30,000.00)** as exemplary damages.

x x x x

SO ORDERED.<sup>[9]</sup>

Relying on AAA's direct testimony, the RTC held that it was convinced that XXX was guilty of having carnal knowledge of AAA by means of force and intimidation "sometime in July 2003."<sup>[10]</sup> The RTC likewise ruled that since XXX admitted that he did have sexual intercourse with his daughter – although he claimed that it happened in 2007, instead of 2003 – sufficed to convict him of the crime charged. As to the discrepancy in the dates, the RTC held:

Moreover, the precise time of the commission of the rape is not an essential element of the crime of rape. Neither is the exact date of commission of rape an element of the crime for the gravamen of the offense of rape is sexual intercourse without consent. In this case, accused candidly admitted having sexual intercourse with her daughter. Hence[, ] whether it was perpetuated in 2003 or in 2007, the fact remains that he had carnal knowledge with this minor daughter and that it was done sans the latter's consent and, through violence and intimidation.<sup>[11]</sup>

Aggrieved, XXX appealed to the CA. In the appeal, XXX reiterated his claim for innocence for the crime charged. According to him, the evidence on record indicates that he did not have carnal knowledge of the victim "sometime in July 2003" – as stated in the information – and that instead it happened in 2007 and the same was consensual.<sup>[12]</sup>

### **Ruling of the CA**

In the questioned Decision dated March 1, 2016, the CA affirmed the RTC's conviction of XXX.

The CA held that the exact date or place of the commission of the rape is not an element of the crime, and that what is decisive is that the act was committed. It ratiocinated that the exact place and time are minor matters which do not delve into the elements of the crime.<sup>[13]</sup>

Hence, the instant appeal.

### **Issue**

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting XXX.

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

The appeal is partially meritorious. The Court modifies the conviction of XXX from Statutory Rape to Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 (R.A. 7610), as the prosecution was unable to prove that he committed the crime charged beyond reasonable doubt.

In rape cases in general, the prosecution has the burden to conclusively prove the two elements of the crime – viz.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation.<sup>[14]</sup> On the other hand, to convict an accused for Statutory Rape, the prosecution has the burden of proving only the following: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.<sup>[15]</sup>

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.<sup>[16]</sup> What differentiates it with other instances of rape is that, proof of force, intimidation or consent is unnecessary, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.<sup>[17]</sup> At that age, the law presumes

that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.<sup>[18]</sup>

The Information in this case accuses XXX of committing Statutory Rape for having sexual intercourse with his then 10-year old daughter "sometime in 2003." The RTC and the CA convicted him of the crime charged essentially for the same reasons, to wit: (1) carnal knowledge was sufficiently proved as XXX himself admitted having had sexual intercourse with AAA, albeit in 2007; and (2) the discrepancy as to the date was immaterial as the exact time and place of the commission of the crime is not an element of the offense.

While the Court denounces XXX's acts – he himself having admitted to engaging in sexual intercourse with his minor daughter – the Court has no choice but to modify the conviction of XXX on the ground that the prosecution failed to sufficiently establish the elements of the crime of Rape, whether statutory or otherwise.

In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.<sup>[19]</sup>

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;

(2) in view of the intrinsic nature of the crime where only two persons are usually involved, **the testimony of the complainant must be scrutinized with extreme caution**;

(3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[20]</sup>

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.

<sup>[21]</sup> Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.<sup>[22]</sup> Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.<sup>[23]</sup>

With the foregoing principles in mind, the Court holds that there exists reasonable doubt that XXX committed the crime charged against him. To reiterate, XXX was charged with Statutory Rape for allegedly having sexual intercourse with his then

10-year old daughter "sometime in 2003." **The records would reveal, however, that the evidence presented by the prosecution failed to establish that he indeed had sexual intercourse with AAA in 2003, or at the time she was still 10 years old.** On cross-examination, AAA testified as follows:

Q: And according to the Information that alleged act of rape began sometime in July 2003, am I correct?

A: Yes, sir.

Q: And how old were you then?

A: 10 years old.

x x x x

Q: Miss [AAA], were you studying back then?

A: Yes, sir.

Q: And you are studying in what school if you could recall?

A: Bagong Silang, Caloocan High School.

Q: You are in what year level then?

A: Third year High School during that time of the incident, sir.

Q: But is it not that the incident occurred when you were still 10 years old?

A: Sorry sir, First Year High School

Q: When you said the time of the incident I am referring to the date of sometime July 2003, is that clear to you?

A: Yes, sir.

Q: And according to you, you were only 10 years old then, correct?

A: Yes, sir.

x x x x

Q: So are you trying to tell me that your father was already there at the time that you are lying on the bed during the day time?

A: Yes, sir.

Q: Where is your mother then?

A: She was at the market.

Q: How about your older sister?

A: She was with my mother, sir.

Q: Could you recall for how long were they away just to buy at the market?

A: Around one hour, sir.