

## SECOND DIVISION

[ G.R. No. 218114, June 05, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SALVADOR AYCARDO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated April 24, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05752, which affirmed with modification the Consolidated Judgment<sup>[2]</sup> dated July 16, 2012 of the Regional Trial Court (RTC) of Legazpi City, Albay, Branch 8, finding accused-appellant Salvador Aycardo guilty beyond reasonable doubt of Acts of Lasciviousness under Article 336 of the Revised Penal Code, (RPC) as amended, in Criminal Case No. FC-08-0272, and Qualified Rape under Art. 266-A, paragraph 1(d) of the RPC, in Criminal Case No. FC-08-0273.

Accused-appellant Salvador Aycardo was initially charged in two (2) separate Informations dated July 7, 2008 with the crimes of Rape as defined under Article 266-A, par. 2 in relation to par. 1(d) of the RPC, and Rape as defined under Article 266-A, par. 1(d) thereof. Later on, the said charges against Aycardo were amended. The accusatory portions of the Amended Informations dated December 2, 2008 read:

#### Criminal Case No. FC-08-0272

That sometime in the evening of September 2007, at Barangay Tinapian, of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by affinity within the 3<sup>rd</sup> civil degree of [AAA]<sup>[3]</sup> as well as the tender age of the said [AAA], with lewd and unchaste design, did then and there willfully, unlawfully and feloniously committed an act of sexual assault by inserting his finger into the genital orifice upon the person of the said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.<sup>[4]</sup>

#### Criminal Case No. FC-08-0273

That sometime in the evening of September, 2007, at Barangay Tinapian, of the Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, an adult, taking advantage of his influence being the uncle and relative by

affinity within the 3<sup>rd</sup> civil degree of [AAA] as well as the tender age of the said [AAA], with lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge upon the person of said minor [AAA], an eleven (11) year old girl, against her will and consent, to her damage and prejudice.

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

Upon arraignment, Aycardo, duly assisted by counsel, pleaded "not guilty" to both charges. After the pre-trial conference was terminated, a joint trial on the merits ensued.

The prosecution presented three (3) witnesses, namely: AAA, the victim; BBB, her mother; and Dr. James M. Belgira, a forensic physician and Medical Officer of the Philippine National Police Forensic Service, who conducted the medical examination on AAA. The facts established by the conducted the medical examination on AAA. The facts established by the evidence of the prosecution, as summed up by the CA, are as follows:

In 2007, private complainant AAA, then 11 years old, was residing in Manito, Albay, at the house of her Tiya Tess and the latter's husband "Tiyu Buddy," herein accused-appellant, as AAA's mother, BBB, who was based in Batangas, entrusted her to Tiya Tess, BBB's sister.

Sometime in September 2007, at around one o'clock in the afternoon, AAA was in a room inside the house of accused-appellant, when the latter entered, attempted to remove her shorts and panties and tried to insert his finger into her vagina. Accused-appellant failed to undress AAA because she resisted his advances, but accused-appellant was able to touch her vagina with his finger. AAA then ran to the house of her cousin Joy. Later in the evening that same day, accused-appellant came by to fetch her, telling her she needed to prepare his and Tiya Tess' meal. AAA yielded and returned to accused-appellant's house.

Back at accused-appellant's house, AAA prepared supper as instructed and had dinner with accused-appellant and his son Bongbong, his (sic) cousin. After supper, AAA sought accused-appellant's permission to spend the night at the house of Tiya Ening (another sister of her mother) but accused-appellant denied her request. As told, AAA just went to the sala to watch TV, and thereafter, slept on a mat where Bongbong lay between her and accused-appellant. In the middle of the night, AAA was roused from her sleep when she felt somebody removing her panties and shorts, who turned out to be accused-appellant. AAA resisted but accused-appellant told her he would do it slowly. Accused-appellant then undressed and inserted his penis into her vagina. Gripped with fear, she just wept, with accused-appellant warning to kill her if she tells anyone of the incident.

On 26 March 2008, while sleeping with her mother BBB, AAA yelled in her sleep "Enough Tiyo Buddy! I do not want anymore!" Alarmed, BBB immediately asked the latter why she mentioned accused-appellant's name in her dream, but AAA did not respond. The following day, or on 27

March 2008, BBB again asked AAA why the latter uttered accused-appellant's name in her dream and this time, AAA told BBB that accused-appellant had raped her.

BBB and AAA reported the incident to the barangay then to the police station, after which she was medically examined by forensic physician Dr. James M. Belgira. Dr. Belgira's examination (Medico-Legal Report No. MLB-34-08) revealed the following:

GENITAL:

There is absence of growth of pubic hair. The labia majora are full, convex and coaptated with the dark brown labia minor presenting in between. On separating the same disclosed a **markedly dilated** and redundant fleshy type **hymen**. The posterior fourchette is sharp. The external vaginal orifice offers strong resistance to the introduction of the examining index finger. The vaginal canal is narrow with prominent rugosities. The cervix is firm and closed.

CONCLUSION:

**Findings show clear sign of blunt vaginal penetrating trauma.**

There are no extra genital signs of application of any form of physical trauma.<sup>[6]</sup>

To substantiate its claims of denial and *alibi*, on the other hand, the defense presented as witnesses Aycardo himself and Odilon Trilles, the barangay captain of Tinapian, Manito, Albay. The facts established by the evidence of the defense, as stated by the CA, are as follows:

Accused-appellant is engaged in handicrafts and farming. He works at the farm owned by his wife in Tinapian, Manito, Albay. He knows AAA to be the daughter of his wife's sister who is also from Tinapian, Manito, Albay. AAA lives with her mother at a place which is 100 meters away from his house. In September 2007, he accompanied his wife on three occasions to his sister's house to treat AAA. He denied AAA to have worked in his house as a helper in September 2007 and further denied to have raped her during at the (sic) time. Accused-appellant testified that he only learned of the case when he was arrested at the police station to inquire about the charges.<sup>[7]</sup>

After trial, the RTC convicted appellant of the crimes of Acts of Lasciviousness and Qualified Rape. The dispositive portion of the RTC Consolidated Judgment dated July 16, 2012 states:

WHEREFORE, in Criminal Case No. FC-08-0272, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court

imposes upon him a penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum.

Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo **GUILTY** beyond reasonable doubt of the crime of Rape as defined under Article 266-A 1(d) and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3<sup>rd</sup> degree being properly alleged in the information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused is likewise ordered to pay the victim [AAA] the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and to pay the further sum of Php25,000.00 as exemplary damages plus costs.

SO ORDERED. [8]

With respect to the first charge, the RTC held that since Aycardo was not actually able to insert his finger inside AAA's vagina, he cannot be convicted of the crime of rape by sexual assault. Still, he can be convicted of acts of lasciviousness, because it is necessarily included in the offense charged in the first Information, and it was proved in court. The RTC noted that, while appellant failed to insert his finger inside AAA's vagina, he was nonetheless able to touch the same, thereby consummating the crime of acts of lasciviousness.

As to the second charge, the RTC found that the prosecution successfully proved the elements of statutory rape, qualified by the circumstances of relationship and minority under Article 266-B of the RPC, namely: that Aycardo, a relative by affinity within the 3<sup>rd</sup> civil degree, had carnal knowledge of his niece, AAA, a child below 12 years of age. The RTC also ruled that Aycardo's self-serving denial cannot prevail over AAA's positive, straightforward, and credible testimony, which was supported by the medico-legal findings of markedly dilated hymen and blunt vaginal penetrating trauma.

Aggrieved by the RTC decision, Aycardo filed an appeal before the CA, arguing that the RTC gravely erred in convicting him of the crimes of Acts of Lasciviousness and Rape, despite the prosecution's failure to prove his guilt beyond reasonable doubt.

[9]

In a Decision dated April 24, 2014, the CA affirmed with modification the Consolidated Judgment of the RTC, thus:

**WHEREFORE**, the assailed Consolidated Judgment dated 16 July 2012 of Branch 8, Regional Trial Court of Legazpi City, Albay, is **AFFIRMED** but with **MODIFICATION** to read as follows:

**WHEREFORE**, in Criminal Case No. FC-08-0272, this Court finds the accused Salvador Aycardo GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, and

there being no aggravating or mitigating circumstance alleged and proved, applying the Indeterminate Sentence Law, this Court imposes upon him a penalty of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. **Accused is also ordered to pay the victim (AAA) the amount of Php20,000.00, as civil indemnity and Php15,000.00 as moral damages.**

Likewise, in Criminal Case No. FC-08-0273, this Court finds accused Salvador Aycardo GUILTY beyond reasonable doubt of the crime of Rape as defined under Article 266-A par. 1(d) of the Revised Penal Code and penalized under Article 266-B thereof. The qualifying circumstances of the victim's minority and her relationship with the accused as the latter's relative by affinity within the 3<sup>rd</sup> degree being properly alleged in the Information and proven during the trial, this Court, in view of Republic Act No. 9346 which prohibits the imposition of the death penalty, hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused is likewise ordered to pay the victim (AAA) the amount of seventy-five thousand (Php75,000.00) pesos as civil indemnity, **seventy-five thousand (Php75,000.00) pesos** as moral damages and to pay the further sum of **thirty thousand (Php30,000.00) pesos** as exemplary damages plus costs. **The victim is also entitled to an interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.**

**SO ORDERED.**

SO ORDERED.<sup>[10]</sup>

Citing Section 4,<sup>[11]</sup> Rule 120 of the Rules on Criminal Procedure, the CA agreed with the RTC that while Aycardo may not be convicted of the charge of rape by sexual assault, he may still be held liable for acts of lasciviousness, because such crime is necessarily included in the said rape charge which was duly proved in court. The CA gave credence to the testimony of AAA that Aycardo failed in his attempt to remove her shorts and underwear, but was still able to touch her vagina with his finger. Contrary to Aycardo's contention, the CA ruled that AAA's belated disclosure of sexual abuse, as well as her act of returning to his house, do not weaken or discredit her straightforward testimony. The CA stressed that the delay in reporting of such abuse does not imply that the charge is untrue, because the victim may prefer to bear the ignominy of pain in silence rather than reveal her harrowing experience to the shame of the world. Besides, AAA did not have much choice but to return to Aycardo's house, since she was then residing therein and was dependent on him for support.

Dissatisfied with the CA Decision, Aycardo filed a notice of appeal. In compliance with the Court's Resolution dated June 22, 2015, notifying the parties to file their respective supplemental briefs, both Aycardo<sup>[12]</sup> and the Office of the Solicitor General<sup>[13]</sup> (OSG) manifested that they will no longer file such briefs, considering