

THIRD DIVISION

[G.R. No. 216987, June 05, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WILFREDO PACAYRA Y MABUTOL, ACCUSED-APPELLANT,**

DECISION

TIJAM, J.:

Accused-appellant Wilfredo Pacayra y Mabutol challenges in this appeal the September 30, 2014 Decision^[1] promulgated by the Court of Appeals (CA), Special Eighteenth Division in CA-G.R. CR H.C. No. 01534, which affirmed the judgment of conviction for four counts of Rape rendered against the accused-appellant on August 24, 2012^[2] by the Regional Trial Court (RTC), Branch 33 of Calbiga, Samar in Criminal Case Nos. CC-2006-1609, CC-2006-1610, CC-2006-1611, and CC-2006-1612.

The accused-appellant was charged with four counts of Rape under separate Informations, the accusatory portions of which read:

Criminal Case No. CC-2006-1609

That sometime in 2004 at Barangay XXX^[3], Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA^[4], a 12 year old minor, without her consent and against her will.

Criminal Case No. CC-2006-1610

That on or the 18th day of December 2005, at about 2:00 o'clock in the afternoon, more or less, at Barangay YYY, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy imd influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, a 13 year old minor, without her consent and against her will.

Criminal Case No. CC-2006-1611

That sometime in 1999 at Barangay XXX, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, then 7 year old minor, without her consent and against her will.

Criminal Case No. CC-2006-1612

That sometime in 2000 at Barangay XXX, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and lustful intent and exercising moral ascendancy and influence over the victim, his daughter, did then and there, willfully, unlawfully and feloniously had carnal knowledge with one AAA, then 8 year old minor, without her consent and against her will.^[5]

During arraignment, accused-appellant pleaded not guilty.^[6] Thereafter, trial ensued.

The pertinent facts of the case, as summarized by the CA, are as follows:

The Version of the Prosecution

Private complainant AAA was born on February 28, 1993 to parents BBB and herein appellant Wilfredo Pacayra.

When AAA was in the first grade and was about seven (7) years old, BBB gave birth to a child named CCC. The family was then living in Bagacay, Hinabangan; Samar. Appellant told AAA to stop going to school so that she can attend to her household chores including taking care of CCC. AAA's siblings (sic) still went to school so that she was often left alone at home taking care of CCC.

One day, AAA was about to change CCC's clothes when appellant suddenly arrived at home, took her hand, placed himself on top of her, and used his weight to immobilize her. BBB called her downstairs and asked her what she and her father were doing upstairs. AAA replied that she was merely changing CCC's diaper and that her father was not doing anything. Appellant then took off AAA's shorts and panties. While on top of her, he also took off his pants, took out his penis and inserted it into her vagina. AAA felt immense pain and kept crying during the entire ordeal. AAA did not tell her mother about appellant's bestial acts for fear that they would quarrel.

The following day, AAA left their house and went to her friend's house. She did not go home until around five o'clock in the afternoon. When she arrived, appellant scolded her and asked her where she went and why

she was roaming around when she had to take care of her sibling. Appellant took out a broom and hit her. BBB was not at home at the time since she was out gambling.

Appellant raped AAA a second time less than a year after the first incident and while they were still living in XXX, Samar.

Thereafter, due to the financial difficulties they were facing, appellant decided to bring his family to his mother's house in YYY, Samar.

One evening, while in Calbiga, BBB went out to see a benefit dance. Appellant asked for BBB's whereabouts and upon learning that she was at a benefit dance, ordered AAA to fetch her. When BBB arrived at the house, she and appellant quarrelled after which she went back to the dance and left appellant alone at the house with their children – AAA, DDD and CCC. Once DDD and CCC fell asleep, appellant removed AAA's shorts and panties. Appellant's actions awakened DDD and CCC but he simply kicked DDD and pushed CCC away. Appellant then placed himself on top of AAA and inserted his penis into her vagina. AAA could not bear the pain but he was unable to do anything but cry. AAA did not tell her grandmother about the incident because she was afraid that the latter would quarrel with appellant.

Thereafter, appellant and his family moved to appellant's brother's house which was also in YYY, Samar. At one point during their stay there, appellant was left alone at the house with AAA, DDD and CCC because BBB went to XXX, Samar to attend the town fiesta. Appellant and his three children slept in the same room. That night, appellant told AAA to sleep beside him because it was cold. As AAA was about to go to sleep, appellant suddenly placed himself on top of her, removed her short pants, and inserted his penis into her vagina. Appellant held AAA and used his weight to render her immobile. Afraid that her parents would fight because of her, AAA did not tell her mother about her father's most recent dastardly deeds but she did relate the incidents to her older sister, EEE. However, the latter did not do anything to help her.

AAA eventually told her mother BBB, about the sexual abuse that she suffered at the hands of appellant. However, BBB refused to believe her. She got angry, scolded AAA, and accused her of lying. BBB turned her back on her child and chose to side with appellant.

Sometime in January 2006, AAA went to Gloria Tacad, their neighbor in XXX, Samar, to ask for help. AAA told Tacad that she was being sexually molested by her father. Tacad asked her why she did not immediately report the abuse and AAA replied that it was because she was afraid that appellant would kill her. Tacad brought AAA to the Barangay Captain of XXX, Samar to file a complaint. Afterwards, Tacad took AAA to the office of the Department of Social Welfare and Development (DSWD) in Hinabangan, Samar.

On February 7, 2006, AAA was brought to the Eastern Visayas Regional Center in Tacloban City where she was examined. The medical

examination revealed that AAA had incomplete, old hymenal lacerations at 3 and 9 o'clock positions. The attending physician prepared a Medico-Legal Report which states that the physical injuries found on AAA's body were compatible with the alleged date of infliction, i.e., within the last five years.

The Version of the Defense

On the other hand, the appellant interposed the defense of denial.

The defense presented Wilfredo Pacayra (appellant) and Evangelina Alcoy dela Cruz to establish appellant's denial.

Appellant testified that AAA is his daughter and is the fourth child out of his six children. He denied all the charges of rape against him and asserted that it was all made-up by AAA. He claimed that BBB, his wife, directed AAA to file these fabricated cases against him to prevent him from filing a case against BBB who abandoned him. He alleged that BBB left him for another man in 2002. He also insisted that Gloria Tacad lied when she testified that she assisted AAA because Gloria Tacad does not even let her own nephew and niece to come to her house how much more AAA.

Evangelina Alcoy dela Cruz testified that she knew the appellant's family being neighbors in Barangay XXX, Hinabangan, Samar for thirty years. She claimed that she was present when the appellant was arrested by the police authorities who were accompanied by AAA and Mrs. Tacad. During cross examination she testified that she was requested by appellant's wife, BBB, to testify for her husband in his defense.

On August 24, 2012, the RTC convicted accused-appellant of four counts of rape, to wit:

WHEREFORE, premises considered, the Court finds accused **WILFREDO PACAYRA Y MABUTOL GUILTY** beyond reasonable doubt of four (4) counts of Rape defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code.

Accordingly, he is sentenced to suffer the penalty of ***reclusion perpetua*** for each count.

Accused is likewise ordered to indemnify AAA the following:

- a. P75,000.00 as civil indemnity for each count or a total of P300,000.00;
- b. P50,000.00 as moral damages for each count or a total of P200,000.00; and
- c. P25,000.00 as exemplary damages for each count or a total of P100,000.00.

SO ORDERED.^[7]

On appeal, the CA affirmed with modifications the decision of the RTC, to wit:

WHEREFORE, the appeal is **DENIED**. The Decision dated August 24, 2012 of the Regional Trial Court, Branch 33, Calbiga, Samar in Crim. Case Nos. CC-2006-1609, CC-2006-1610, CC-2006-1611, and CC-2006-1612 is hereby **AFFIRMED**, finding accused-appellant WILFREDO PACAYRA Y MABUTOL, **GUILTY** beyond reasonable doubt of four (4) counts of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, with **MODIFICATIONS** in that:

a. In Criminal Case No. CC-2006-1609, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of **reclusion perpetua** without eligibility for parole and ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages.

b. In Criminal Case No. CC-2006-1610, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of **reclusion perpetua** without eligibility for parole and ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages.

c. In Criminal Case No. CC-2006-1611, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of **reclusion perpetua** without eligibility for parole and ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages.

d. In Criminal Case No. CC-2006-1612, WILFREDO PACAYRA Y MABUTOL is sentenced to suffer the penalty of **reclusion perpetua** without eligibility for parole and ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, P30,000.00 as exemplary damages.

He is further ordered to pay the victims interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.^[8]

Hence, this appeal, with accused-appellant raising this lone assignment of error:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN