

FIRST DIVISION

[G.R. No. 221443, July 17, 2017]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINADOR LADRA, ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

On appeal^[1] is the Decision^[2] dated June 30, 2015 rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01160-MIN, which affirmed the Joint Decision^[3] dated February 6, 2013 of the Regional Trial Court of Cagayan de Oro City, Branch 22 (RTC) in FC Crim. Case Nos. 2008-426 and 2008-427 finding accused-appellant Dominador Ladra (accused appellant) guilty beyond reasonable doubt of Rape and Unjust Vexation.

The Facts

Private complainant AAA^[4] was born on September 3, 1995^[5] and the eldest of five (5) siblings. At the time material to these cases, she lived with her family in a remote area in Dumarait, Balingasag, Misamis Oriental.^[6]

On the other hand, it was alleged that accused-appellant was a relative of BBB, AAA's mother, who allowed him to stay with their family out of pity. He ran errands for them and attended to the children when BBB was busy washing clothes and her husband, CCC, was tending to their farm.^[7]

Sometime between 2000 to 2001,^[8] when AAA was around five (5) years old, she and her siblings were left at home with accused-appellant. After their meal, accused-appellant ordered them to sleep. Suddenly, AAA was awakened when she felt accused-appellant, who was already naked, on top of her, forced his penis into her vagina, and made push and pull movements, causing her pain. Accused-appellant threatened to kill her if she told anyone. Thereafter, accused-appellant repeatedly molested her, each time bringing his bolo with him.^[9] The sexual abuse ceased in 2002, when accused-appellant left their house.^[10]

Years later, or on the evening of April 16, 2008, AAA - who was already twelve (12) years old at the time - was surprised when she saw accused-appellant in their kitchen. To her shock, accused-appellant squeezed her vagina and told her that they were going to visit his house. Scared, AAA cried and told her cousin, DDD, about the incident.^[11] She also told DDD about the first rape incident and the subsequent ones committed by accused appellant. Eventually, AAA told BBB about her traumatic experiences in the hands of accused-appellant when she was five (5) years old. Together, they reported the incident to the barangay and thereafter, had the incident

recorded in the police blotter.^[12] Later, AAA filed criminal cases against accused-appellant, who was subsequently arrested.^[13]

On April 19, 2008, Dr. Ma. Josefina Villanueva Taleon (Dr. Taleon), Medical Officer III at the Northern Mindanao Medical Center, conducted a physical examination on AAA and found the presence of old healed lacerations in her genitalia at the three (3), eight (8), and ten (10) o'clock positions.^[14]

Hence, accused-appellant was charged with *violation of Section 5 (b) of Republic Act No. (RA) 7610* in an Information^[15] that reads:

Sometime in 2000 up to 2001, when the private complainant is about five to six [5 to 6] years old, at Dumarait, Balingasag, Misamis Oriental, Philippines, within the jurisdiction of the Honorable Court, the above-named accused knowing full well the minority, with obvious ungratefulness, did then and there willfully, unlawfully and feloniously commit acts of sexual abuse on one [AAA], five to six years old, by inserting his penis into her vagina, against her will and without her consent, and which act debases, degrades and demeans the intrinsic worth and dignity of [AAA] as a child and as a human being and is prejudicial to the child's development.

CONTRARY TO and in violation of Section 5 Paragraph B of RA 7610.^[16]

Likewise, accused-appellant was charged with *Acts of Lasciviousness* in an Information^[17] that reads:

On 16 April 2008 at about 8:00 o'clock in the evening in Dumarait, Balingasag, Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who knew full well the minority of the victim, through force and intimidation, actuated by lust or lewd design, did then and there willfully, unlawfully and feloniously commit a lascivious conduct on twelve-year [12] old [AAA] by squeezing her vagina against her will and to her damage and prejudice.

CONTRARY TO and in violation of Article 336 of the Revised Penal Code as amended.^[18]

When arraigned, accused-appellant entered a plea of not guilty to the offenses charged.^[19]

In defense, accused-appellant denied the charges and claimed that AAA's family were angry at him when he left their house, leaving no one to attend to their errands. He asserted that he left them because he could no longer understand what they were asking him to do for them.^[20]

The RTC Ruling

In a Joint Decision^[21] dated February 6, 2013, the RTC convicted accused-appellant of: (a) *Rape* in FC Crim. Case No. 2008-426, sentencing him to suffer the penalty of

reclusion perpetua and to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages; and (b) *Unjust Vexation* in FC Crim. Case No. 2008-427, sentencing him to suffer the penalty of imprisonment for a period of 30 days of *arresto menor* and to pay a fine of P200.00 with accessory penalties.^[22]

In finding accused-appellant guilty of Rape in FC Criminal Case No. 2008-426, the RTC found that although the allegations in the Information are sufficient to make out a case for child abuse, it also constitutes *Statutory Rape* under Article 266-A of the Revised Penal Code (RPC), as amended. Relative thereto, it found that AAA's narration of her defloration in the hands of accused-appellant more than sufficiently established the offense, as well as the identity of the offender. Despite her tender age, she was straightforward, clear, categorical, and positive in her testimony, indicating that she was telling the truth. Moreover, her account of the incident was supported by the medical findings of Dr. Taleon, who testified that there were healed lacerations in AAA's genitalia at the 3, 8, and 10 o'clock positions.^[23]

As regards FC Criminal Case No. 2008-427, the RTC found that the prosecution has established that on the evening of April 16, 2008, when AAA went to their kitchen, she encountered accused-appellant who, without warning, "just squeezed her vagina."^[24] The RTC opined, however, that the prosecution failed to establish the element of *lasciviousness or lewdness* as would justify accused-appellant's conviction for the crime of Acts of Lasciviousness. The overt act of accused-appellant of squeezing AAA's vagina did not show that he intended to gratify his sexual desires nor was it demonstrative of carnal lust. Nonetheless, AAA was clearly annoyed by the act; perforce, the RTC found accused-appellant guilty of Unjust Vexation, defined and penalized under Article 287^[25] of the RPC.^[26]

Conversely, the RTC brushed aside the defense proffered by accused appellant, which it found insufficient to debunk the positive evidence of the prosecution.^[27] Dissatisfied, accused-appellant appealed his conviction.^[28]

The CA Ruling

In its assailed Decision^[29] dated June 30, 2015, the CA affirmed *in toto*^[30] the RTC's Joint Decision convicting accused-appellant of Rape and Unjust Vexation. Apart from concurring with the RTC's findings and conclusions, the CA found no merit in accused-appellant's contention that it was impossible for him to commit the crime as AAA's younger brother was sleeping beside her at the time of the alleged rape incident. Disregarding the argument, the CA ruled that the presence of another person at the scene does not render it impossible for accused-appellant to commit the crime of Rape. As regards its affirmance of accused-appellant's conviction for Unjust Vexation, the CA did not proffer any justification.^[31]

Aggrieved, accused-appellant is now before the Court seeking the reversal of his conviction.^[32]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in affirming

accused-appellant's conviction for Rape and Unjust Vexation.

The Court's Ruling

The appeal has no merit.

Time and again, the Court has held that factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This rule, however, admits of exceptions such as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued, or where the trial court has acted arbitrarily in its appreciation of the facts.^[33]

In FC Criminal Case No. 2008-426, the Court accords credence to the RTC's finding, as affirmed by the CA, that accused-appellant indeed committed the crime of Rape against then five (5)-year-old AAA. As astutely observed by the RTC, which had the opportunity to personally scrutinize AAA's conduct and demeanor during trial, she was a credible witness whose testimony must be given great weight. The trial judge's evaluation, which the CA sustained, now binds the Court, leaving to the accused-appellant the burden to bring to the fore facts or circumstances of weight, which were otherwise overlooked, misapprehended or misinterpreted that would materially affect the disposition of the case differently if duly considered.^[34] Unfortunately for accused-appellant, he miserably failed to discharge this burden, and the Court finds no reason to reverse the CA's conclusions.

Moreover, the CA correctly disregarded accused-appellant's argument that he could not have committed the crime in the presence of AAA's younger brother, who slept beside her.^[35] It cannot be denied that the presence of AAA's brother in the room does not negate the commission of the crime. "Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. 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. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places."^[36]

In view thereof, the courts *a quo* correctly found accused-appellant guilty of Rape and sentenced him to suffer the penalty of *reclusion perpetua*. However, the Court modifies the amounts of damages awarded conformably with prevailing jurisprudence.^[37] Accordingly, accused-appellant is ordered to pay AAA the amount of P75,000.00 as moral damages, P75,000.00 as civil indemnity, and P75,000.00 as exemplary damages.

In FC Criminal Case No. 2008-427, however, the Court disagrees with the CA's affirmance of the RTC's finding that accused-appellant can only be held guilty of Unjust Vexation. After a punctilious review of the evidence, the Court finds that he should instead be convicted of Acts of Lasciviousness, as charged in the information, in relation to Section 5 (b) of RA 7610.

Acts of Lasciviousness is defined and penalized under Article 336 of the RPC, which reads:

Article 336. *Acts of lasciviousness.* - Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned on the preceding article, shall be punished by *prision correccional*.

Conviction for such crime requires the concurrence of the following elements: (a) that the offender commits any act of lasciviousness or lewdness; (b) that it is done under any of the following circumstances: (i) through force, threat, or intimidation, (ii) when the offended party is deprived of reason or otherwise unconscious, (iii) by means of fraudulent machination or grave abuse of authority, and (iv) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; and (c) that the offended party is another person of either sex.^[38]

Meanwhile, Section 5 (b) of RA 7610 provides:

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 subject 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; and

x x x x.

Before an accused can be held criminally liable for lascivious conduct under Section 5 (b) of RA 7610, the requisites of the crime of Acts of Lasciviousness as penalized under Article 336 of the RPC above-enumerated must be met in addition to the requisites for sexual abuse under Section 5 (b) of RA 7610, as follows: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) that the child, whether male or female, is below 18 years of age.^[39]

A judicious examination of the records reveals that all the elements of the crime of Acts of Lasciviousness under the RPC and lascivious conduct under Section 5 (b) of