

SECOND DIVISION

[G.R. No. 218574, November 22, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. RAUL
MACAPAGAL Y MANALO, ACCUSED-APPELLANT.**

DECISION

PERALTA, J.:

This is an appeal from the Decision^[1] dated August 8, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05495 which affirmed with modification the Decision^[2] dated July 19, 2011 of the Regional Trial Court (RTC) of Naga City, Branch 20, finding appellant Raul Macapagal y Manalo guilty beyond reasonable doubt of two (2) counts of rape through sexual intercourse, and one (1) count of rape through sexual assault.

In three (3) separate Informations, appellant Raul Macapagal y Manalo was charged with three (3) counts of violation of Article 266-A and Article 266-B of the Revised Penal Code,^[3] (RPC) in relation to Republic Act (R.A.) No. 7610,^[4] the accusatory portions of which read:

In Criminal Case No. RTC-2003-0294:

That on or about a week after April 13, 1998 at about 10:00 o'clock in the evening and for several similar occasions thereafter in the Municipality of ██████████, Province of ██████████, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in inserting his finger inside the vagina of "BBB,"^[5] his 11-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0295:

That sometime during summer vacation in the year 1999 at about 2:00 o'clock in the afternoon and for several occasions thereafter in the Municipality of ██████████, Province of ██████████, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having sexual intercourse with "BBB," his 13-year-old daughter who is a minor, against

her will and without her consent to her damage and prejudice in such amount as may be awarded by the Court.

ACTS CONTRARY TO LAW.

In Criminal Case No. RTC-2003-0296:

That sometime on March 30, 2003, at about 8:00 o'clock in the evening in the Municipality of ██████████, Province of ██████████, Philippines and within the jurisdiction of the Honorable Court, the said accused, with grave abuse of confidence being the father of the private offended party, by means of force and intimidation did, then and there, with lewd designs, willfully, unlawfully and feloniously succeed in having intercourse with "BBB," his 16-year-old daughter who is a minor, against her will and without her consent to her damage and prejudice in such amount as may be awarded by the Honorable Court.

ACTS CONTRARY TO LAW.^[6]

Before appellant was arraigned, a motion to quash was filed on the ground that the Informations charged more than one offense. The prosecution opted to amend the Informations by deleting the phrase "and for several similar occasions thereafter," which the court granted.

On March 25, 2004, appellant, assisted by counsel, was arraigned and pleaded not guilty to all rape charges. During pre-trial, the parties stipulated on the identities of the parties, the fact that the birth certificate^[7] shows that BBB is the daughter of appellant and a minor at the time of the alleged rape incidents. Joint trial of the cases followed.

In Criminal Case No. RTC-2003-0294, the incident of rape through sexual assault happened in April 1998 when BBB was only 11 years old. While sleeping with her mother and appellant in the sala of their house, BBB was awakened by someone rubbing her back. BBB did not recognize appellant at first because it was dark until he threatened her with a knife and told her not to make any noise. Appellant then forcibly removed BBB's shorts and panty, and inserted his finger into her genital, causing her to feel pain. Appellant also lifted BBB's shirt, held her breasts and molested her for an hour, during which she only cried.

In Criminal Case No. RTC-2003-0295, the incident rape through carnal knowledge occurred in March 1999 when BBB was 13 years old. While BBB was alone in their house watching TV, appellant told her to get inside the room, but she refused. Appellant got mad, slapped her face and dragged her inside the room. He then removed her shorts, slapped her again and covered her mouth when she tried to shout for help. After removing her bra and panty, appellant laid BBB on the bed, held her breasts and inserted his penis in her vagina, causing her to feel severe pain. BBB kept mum about the incident as she was afraid that he might kill her.

In Criminal Case No. RTC-2003-0296, the other incident of rape through carnal knowledge took place on March 30, 2003 when BBB was already 16 years old. Only appellant and BBB were at home that day since her mother and siblings went to Naga City. At about 8:00 p.m., BBB was preparing her beddings in their sala when appellant told her to undress herself. Since appellant threatened to kill her, BBB

obeyed, Appellant also undressed himself, held BBB's breasts, kissed her and inserted his penis into her vagina for an hour.

When BBB's mother learned of the rape incidents, she accompanied BBB at NBI Naga City to file a complaint against appellant. Dr. Jane Fajardo conducted a medico-legal examination and came up with these findings: (1) old, deep, but healed hymenal lacerations at the 6 and 9 o'clock positions, (2) the edges are round and coaptible, and; (3) the hymenal orifice measures 2.5 cms. as to allow complete penetration by an average-sized adult Filipino male organ in full erection without producing hymenal injury.

Appellant denied all the rape charges against him for the following reasons: (1) after his wife gave birth on April 13, 1998, the lights in their bedroom were turned on all night; (2) in the summer of 1999, all his children stayed home all the time for no one among them took summer classes, and he was busy taking care of his one-year-old daughter; (3) in September 2002, he only required her daughter BBB to take a urine test because he learned that she missed her period.^[8] He dismissed the allegations against him as a mere fabrication of his wife's relatives who were against their marriage. He also claimed that BBB allowed herself to be part of such malicious scheme, as she was angry at him for having slapped and hurt her when he learned that she has a boyfriend and she missed two menstruation periods. He also denied having caused the abortion of BBB's baby in Manila, but admitted that he went there with BBB to visit his sister Rebecca who had arrived from the United States.

On July 19, 2011, the RTC rendered a judgment, convicting appellant of one (1) count of rape by sexual assault and two (2) counts of rape by sexual intercourse, thus:

WHEREFORE, premises considered, the judgment is hereby rendered finding accused **Raul Macapagal y Manalo** guilty beyond reasonable doubt of rape, on two counts, through **sexual intercourse** and one count of rape through **sexual assault**.

As regards rape through **sexual intercourse**, accused is hereby sentenced to suffer *Reclusion Perpetua* for each count without eligibility for parole and to pay the offended party civil indemnity in the amount of P75,000.00, moral damages of P75,000.00 and exemplary damages of P30,000.00, in each of the two cases.

As regards the rape committed through **sexual assault**, accused is hereby sentenced to suffer the indeterminate penalty of imprisonment often (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00.

SO ORDERED.^[9]

The RTC found BBB's testimony credible as she was able to narrate clearly and unwaveringly how each of the rape incidents was done to her by appellant, her very own father, despite rigid cross-examinations conducted by the defense. The RTC

noted that the genital examination conducted on BBB, showing the presence of old hymenal lacerations, is consistent with the finding of previous sexual intercourse.

With respect to appellant's defenses, the RTC held that his lame excuses of presence of other family members, lights turned on overnight and open bedroom door during the rape incidents, cannot prevail over the categorical narration of BBB of her defloration in the hands of appellant. As to the claim that BBB was angry at appellant as she suffered severe bruises when appellant learned that she was impregnated by her boyfriend, the RTC pointed out that he failed to prove that BBB indeed had a boyfriend that time. The RTC was also not impressed by appellant's claim that the malicious accusations against him are orchestrated by the family of his wife, considering that his in-laws even gave his family material and financial support. Anent the delay in the reporting of the incidents, the RTC found the same as justified in view of appellant's constant showing of his knife to BBB, and his verbal threat upon her while she was being raped to the effect that he would kill her should she tell anyone about the incidents. Although BBB cannot state precisely the dates of the rape incidents, the RTC stressed that the supposed inconsistencies merely refer to minor details, which have no effect on her credibility, and that the exact dates of the commission of the crime are not the element of the offense.

Aggrieved by the RTC judgment, appellant, through the Public Attorney's Office, filed an appeal. Appellant argued that while the last rape incident as testified to by BBB happened on March 30, 2003, the hymenal lacerations diagnosed by Medico-Legal Officer Dr. Jane Fajardo on April 3, 2003 are old and healed lacerations which were inflicted more than a month or a year before. Faulting BBB's credibility, appellant contended that not only did she tell anyone about the rape incident, she also tolerated similar incidences for the past five (5) years from April 1998 to April 3, 2004, which is rather odd because there were times when she was only with her mother at the clinic. Assuming that she was raped by her father, appellant claimed that BBB could have found solace in a safe house or in government institutions rendering social services for rape victims.

The Office of the Solicitor General insisted that appellant's guilt for the crimes charged had been proven beyond reasonable doubt by the prosecution's testimonial and documentary evidence.

On August 8, 2014, the CA rendered a Decision affirming the RTC judgment with modification on the damages awarded:

WHEREFORE, in view of the foregoing, the Decision dated July 19, 2011 of the Regional Trial Court of Naga City, Branch 20, is hereby **AFFIRMED with MODIFICATION**, to read as follows:

1. In Criminal Case No. RTC-2003-0294, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of the crime of Rape Through Sexual Assault and he is hereby sentenced to suffer the Indeterminate penalty of imprisonment of Ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, and to indemnify the offended party civil indemnity of Thirty Thousand Pesos (P30,000.00), moral damages of Thirty

Thousand Pesos (P30,000.00) and exemplary damages of Thirty Thousand Pesos (P30,000.00);

2. In Criminal Case No. RTC Nos. 2003-0295 and 2003-0296, appellant Raul Macapagal is hereby held GUILTY beyond reasonable doubt of two (2) counts of Rape Through Sexual Intercourse and that, for each count, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (P75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (P75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (P30,000.00);

3. Appellant Raul Macapagal is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum until the same are fully paid.

SO ORDERED.^[10]

The CA agreed with the RTC that BBB's testimony is credible, as she was firm and unwavering in her narration of her traumatic experience during the rape incidents perpetrated by her own father. The CA also ruled that the medical report and the testimony of the medico-legal officer on BBB's deep and healed hymenal lacerations are consistent with BBB's allegations of rape against appellant. The CA observed that prior to the last rape incident, BBB had been victimized by appellant to countless sexual abuses which started in 1998, which explains the healed lacerations in BBB's genitals. The CA noted that BBB initially preferred to conceal her dishonor because the culprit was her own flesh and blood, who even threatened her life should she report the rape incidents to anyone. With respect to the inconsistencies pointed out by appellant, the CA ruled that they even tend to bolster her credibility as they are proofs of an unrehearsed testimony. Anent the claim that BBB could have avoided the rape incident by finding solace in a safe house or in a government institution, the CA stressed that BBB could hardly be expected to know what to do under such circumstances as she was only 11 years old when the first rape incident took place. The CA also ruled that it is unnatural for grandparents to use their grandchild in a scheme of malice against her own father, not to mention that it will subject the child to embarrassment and stigma.

Dissatisfied with the CA Decision, appellant filed a notice of appeal.

The appeal is devoid of merit.

After a careful review of the records, the Court finds no reason to reverse the RTC's judgment of conviction, but a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed, are in order.

In Criminal Case No. RTC-2003-0294, appellant should be held liable for acts of lasciviousness under Art. 336^[11] of the RPC, in relation to Section(b), Art. III of R.A. No. 7610^[12] instead of rape through sexual assault under Art. 266-A, paragraph 2 of the RPC.^[13]