

## THIRD DIVISION

[ G.R. No. 229100, November 20, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO AGONCILLO Y VISTO, ACCUSED-APPELLANT.**

### DECISION

**GESMUNDO, J.:**

This is an appeal from the Decision,<sup>[1]</sup> dated November 27, 2015, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06254, which affirmed the Decision,<sup>[2]</sup> dated August 16, 2012, of the Regional Trial Court, Branch 49, Urdaneta City, Pangasinan (RTC) convicting accused-appellant Romeo Agoncillo y Vista (*accused-appellant*) for three (3) counts of rape in Criminal Case Nos. U-13564, U-13565 and U-13566 and for one (1) count of acts of lasciviousness in Criminal Case No. U-13569.

Under five Informations,<sup>[3]</sup> identically dated December 1, 2004, accused-appellant was charged with the following:

Criminal Case No. U-13564

That sometime in the year 2001 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA, **minor, 9 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1<sup>st</sup> par., as amended by R.A. No. 8353.

Criminal Case No. U-13565

That sometime in the year 2002 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with AAA, **minor, 10 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1<sup>st</sup> par., as amended by R.A. No. 8353.

Criminal Case No. U-13566

That sometime in the year 2003 at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have sexual intercourse with

AAA, **minor, 11 years old**, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1<sup>st</sup> par., as amended by R.A. No. 8353.

Criminal Case No. U-13567

That on or about 3:00 o'clock in the afternoon of September 9, 2004 at Brgy. XXX and within the jurisdiction of this Honorable Court, the above-named accused, being the **adoptive father of CCC, minor, 3 years old**, possessing moral ascendancy over the latter, did then and there wilfully, unlawfully and feloniously have sexual intercourse with said CCC, against her will and without her consent, to her damage and prejudice.

CONTRARY TO Art. 266-A, par. 1 in rel. to Art. 266-B, 1<sup>st</sup> par., as amended by R.A. No. 8353.

Criminal Case No. U-13569

That on or about 12:30 o'clock in the afternoon of August 14, 2004, at XXX, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously perform lascivious conduct upon AAA, **minor, 12 years old**, by embracing her and holding her vagina against her will and without her consent, to her damage and prejudice, which acts degrade and demean the intrinsic worth and dignity of said minor as a human being.

CONTRARY TO Art. 366, Revised Penal Code in relation to Section 5, par. B, of R.A. 7610.

Upon arraignment on February 10, 2005,<sup>[4]</sup> accused-appellant pleaded "not guilty" to the charges. Thereafter, trial ensued.

*Evidence of the Prosecution*

The prosecution presented private complainant AAA, her mother BBB, Dr. Josephine B. Guiang (*Dr. Guiang*) and PO3 Mandy Ribo. Their combined testimonies established the following:

AAA was born on May 26, 1992, as shown in her Certification of Fact of Birth<sup>[5]</sup> issued by the Office of the Civil Registrar of XXX, Pangasinan. Accused-appellant is AAA's uncle, being the husband of BBB's sister.

AAA narrated that the first incident occurred in 2001 when she was nine (9) years old. While AAA was inside the comfort room, accused appellant entered and placed his hands between her legs. She tried to remove his hands but she was not able to. Suddenly, AAA felt accused-appellant insert his index finger in her vagina, and she felt pain. He poked a knife at her and threatened to kill her and her family if she will report the incident. Accused-appellant then left the comfort room.

The second incident occurred in 2002 when AAA was ten (10) years old and was in Grade V. At about noon time, while she was sleeping in her bedroom on the second floor of their house, she sensed somebody unzipping her shorts. She then saw accused-appellant and she warded off his hands. Accused-appellant then put saliva on his finger and inserted it in her vagina. She tried to resist and shout but she felt a knife poking on her side, and he threatened to kill her if she makes a sound. Thereafter, accused-appellant tried to insert his penis to her vagina but failed.

The third incident happened in 2003 when AAA was eleven (11) years old. While AAA was defecating in the common comfort room, about twenty (20) meters away from their house, accused-appellant entered. He told her to wash up and stand. Thereafter, accused-appellant leaned AAA against the wall and inserted his penis into her vagina. He held a knife on his other hand and again threatened AAA that he will kill her if she tells anybody about the incident.

The fourth incident of sexual abuse allegedly transpired in 2004 while AAA was in the comfort room.

BBB, mother of AAA, testified that on September 11, 2004, AAA told her that her uncle accused-appellant raped her several times. She immediately reported the incident to the Barangay Council.

Dr. Guiang conducted a physical examination on AAA. She noted healed incomplete lacerations on AAA's hymen at the 1, 5, 8 and 11 o'clock positions and that the vagina admits two (2) fingers with ease, as shown in the Medico-Legal Certificate.<sup>[6]</sup>

The other private complainant CCC in Criminal Case No. U-13567 did not testify in court.

### *Evidence of the Defense*

The defense presented accused-appellant as its sole witness. His testimony sought to establish the following:

Accused-appellant testified that he resides at XXX, Pangasinan. He knew AAA because she was the niece of his wife and was also his neighbor. Accused-appellant denied the charges against him and narrated that on August 5, 2001, he was hired to work as a landscaper in Ayala, Alabang under an employer named Benjamin Inalbis. He worked there for more than three years and returned to XXX only on January 10, 2004. Thus, he denied having sexually abused AAA in 2001. Accused-appellant also denied having sexual intercourse with her in 2002 and 2003.

While accused-appellant admitted that there was a common comfort room in their compound at XXX, he denied having met AAA inside the said comfort room. He likewise denied entering AAA 's house and raping her there.

### *The RTC Ruling*

In its decision, dated August 16, 2012, the RTC found accused-appellant guilty of three (3) counts of statutory rape in Criminal Case Nos. U-13564, U-13565 and U-13566; one (1) count of acts of lasciviousness in Criminal Case No. U-13569; and

dismissed the case against him in Criminal Case No. U-13567.

The RTC found that accused-appellant raped AAA on the dates of the alleged incidents. It gave weight and credibility to the consistent testimony of AAA that accused-appellant forcibly had sexual intercourse with her and he also committed acts of lasciviousness against her. The RTC underscored that accused appellant's defense of alibi was unsubstantiated and cannot prevail over the positive identification of AAA. The charge of rape against CCC, however, was dismissed because the latter failed to testify before the court. The *fallo* reads:

WHEREFORE, this Court renders judgment as follows:

(1) Criminal Case No. U-13564

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. Accordingly, he is sentenced to suffer the penalty of Reclusion Perpetua;

(2) Criminal Case No. U-13565

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. He shall suffer the penalty of Reclusion Perpetua;

(3) Criminal Case No. U-13566

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of statutory rape. Likewise, he is sentenced to serve the penalty of Reclusion Perpetua;

(4) Criminal Case No. U-13567

The case against accused ROMEO AGONCILLO is DISMISSED for failure of the prosecution witness to prove his guilt beyond reasonable doubt.

(5) Criminal Case No. U-13569

The accused ROMEO AGONCILLO is found GUILTY beyond reasonable doubt of Acts of Lasciviousness. He shall suffer the penalty of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal*.

In Criminal Case Nos. U-13564, U-13565 and U-13566, the accused shall pay civil indemnity to the offended party AAA Fifty Thousand Pesos (Php50,000.00) for each count of statutory rape or a total of One Hundred Fifty Thousand Pesos (Php150,000.00) and moral damages of the same amount. In Criminal Case No. U-13569, the accused shall pay her Thirty Thousand Pesos (Php30,000.00) for one count of acts of lasciviousness by way of moral damages.

Accused shall be committed to the Bureau of Corrections, Muntinlupa City, without unnecessary delay.

No costs.

SO ORDERED.<sup>[7]</sup>

Aggrieved, accused-appellant appealed to the CA. In his Appellant's Brief,<sup>[8]</sup> accused-appellant argued that AAA's testimony was unconvincing; that there was no sexual intercourse in the first and second alleged rape incidents; that mere allegation of lascivious conduct without concrete evidence cannot suffice to support his conviction; and that the prosecution's failure to prove that there was carnal knowledge necessitates his acquittal.

### *The CA Ruling*

In its assailed decision, dated November 27, 2015, the CA affirmed with modification the trial court's decision. It found that AAA clearly conveyed her harrowing experience during trial and she categorically stated that she was raped by accused-appellant. It also highlighted that AAA's testimony was corroborated by the medical findings stating that she sustained hymenal lacerations. The CA further observed that accused-appellant's acts of touching AAA's legs and vagina are lascivious conducts. It, however, modified the damages awarded to AAA. The CA disposed the case in this wise:

WHEREFORE, in view of the foregoing premises, the appealed Judgment dated 16 August 2012 by Branch 49 of the Regional Trial Court in Urdaneta City, Pangasinan, is AFFIRMED with the following MODIFICATIONS:

1. In Criminal Case Nos. U-13564, U-13565 and U-13566, appellant is sentenced to suffer the penalty of *reclusion perpetua* for each count of rape. Appellant is ordered to indemnify AAA P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages for each count.
2. In Criminal Case No. U-13569, appellant is sentenced to suffer the indeterminate penalty of fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. He is likewise ordered to indemnify AAA P20,000 as civil indemnity, P30,000 as moral damages, and P30,000 as exemplary damages.
3. Appellant must also pay interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.

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

Hence, this appeal.

### **ISSUE**

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.