

## FIRST DIVISION

[ G.R. No. 218399, March 02, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GODOFREDO COMBOY Y CRONICO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Godofredo Comboy y Cronico (Comboy) assailing the Decision<sup>[2]</sup> dated June 13, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 06194, which affirmed the Decision<sup>[3]</sup> dated February 22, 2013 of the Regional Trial Court of Tabaco City, Albay, Branch 16 (RTC) in Criminal Case Nos. T-5006, T-5009, and T-5010<sup>[4]</sup> finding Comboy guilty beyond reasonable doubt of two (2) counts of the crime of Statutory Rape, and one (1) count of Attempted Rape under the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,<sup>[5]</sup> otherwise known as the "Anti-Rape Law of 1997."

#### The Facts

On August 6, 2009, five (5) Informations were filed before the RTC charging Comboy of raping his minor biological daughter, AAA,<sup>[6]</sup> viz.:

#### **CRIM. CASE NO. T-5006**

That on or about 11:00 o'clock in the evening for the first time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

#### **CRIM. CASE NO. T-5007**

That on or about 11:00 o'clock in the evening for the second time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste

design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

**CRIM. CASE NO. T-5008**

That on or about 11:00 o'clock in the evening for the third time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

**CRIM. CASE NO. T-5009**

That sometime in the month of February 2008, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of the Honorable Court the above named accused, being the father of [AAA] with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an (sic) 12 year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

**CRIM. CASE NO. T-5010**

That on or about 2:00 o'clock in the morning of May 17, 2009, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA], with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of his own daughter [AAA], an (sic) 14 year old minor girl,<sup>[7]</sup> while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.<sup>[8]</sup>

The prosecution alleged that sometime in the year 2006, at around 11 o' clock in the

evening, AAA, who was sleeping beside her brother BBB,<sup>[9]</sup> suddenly woke up with her father, Comboy, already on top of her, and the latter's penis already inside her vagina. Startled by the pain she felt in her vagina, AAA pushed Comboy and scampered away from him in order to move closer to BBB. This left Comboy no choice but to leave the room.<sup>[10]</sup>

The incident was repeated sometime in February 2008, when AAA, while sleeping beside her brother, BBB, was similarly awakened by the presence of her father, Comboy, on top of her with his penis already inside her vagina. During this time, Comboy told AAA not to make any noise so as not to disrupt the sleep of the other members of their family.<sup>[11]</sup>

Finally, at around 2 o'clock in the morning of May 17, 2009, AAA, while again sleeping beside her brother, BBB, woke up with her father, Comboy, already on top of her and in the process of removing her underwear.<sup>[12]</sup> However, AAA was able to push Comboy away and thereafter, went closer to BBB, who was also awakened by the commotion. This prompted Comboy to simply leave the room. BBB then reported the matter to their stepmother.<sup>[13]</sup>

On May 28, 2009, AAA finally had the courage to report the foregoing incidents to Barangay Kagawad Donald Andres<sup>[14]</sup> Briobo, who in turn, helped AAA seek police assistance. AAA was then examined by Municipal Health Officer Dr. Sotera C. Copino, who found her to have sustained lacerations in her hymen which could have been caused by the penetration of a hard object, such as an erect penis.<sup>[15]</sup>

For his part, Comboy interposed the defenses of denial and alibi. He claimed that he was in Manila in February 2006 and February 2008, while AAA was in her mother's house in Albay, hence, he could not have raped her. Comboy, however, revealed that he was actually working in Olongapo City at the time of the incidents, and that on May 17, 2009, he was actually in Bicol but he was staying with his common-law spouse. He further averred that AAA fabricated the accusations against him as she was angry with him and his common-law spouse. He also presented his brother Juan (Juan) who corroborated his claims. Juan maintained that he stayed in Comboy's house to look after the latter's children, and that their mother's house was near Comboy's residence. He disclosed that Comboy occasionally visited Bolo from Manila to visit his children and that the latter would stay for one to two weeks.<sup>[16]</sup>

Upon his arraignment on October 23, 2009, Comboy pleaded not guilty to each of the charges levelled against him. At the pre-trial conference, the parties stipulated that AAA is a minor, as evidenced by her Birth Certificate, and that Comboy is her father.<sup>[17]</sup>

### **The RTC Ruling**

In a Decision<sup>[18]</sup> dated February 22, 2013, the RTC found Comboy guilty beyond reasonable doubt of two (2) counts of Statutory Rape (Crim. Case Nos. T-5006 and T-5009) and one (1) count of Attempted Rape (Crim. Case No. T-5010) and, accordingly, sentenced him as follows: (a) in Crim Case No. T-5006, he was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral "damages,

P30,000.00 as exemplary damages, and to pay the costs; (b) in Crim. Case No. T-5009, he was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P30,000.00 as exemplary damages, and to pay the costs; and (c) in Crim. Case No. T-5010, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum and was ordered to pay the amounts of F30,000.00 as moral damages, and to pay the costs. Comboy, was however, acquitted in Crim. Case Nos. T-5007 and T-5008 for insufficiency of evidence.<sup>[19]</sup>

The RTC found that the prosecution successfully established that Comboy had carnal knowledge of AAA twice, the first time occurring sometime in 2006 and the other time in February 2008 (Crim. Case Nos. T-5006 and T-5009). Anent the incident that happened on May 17, 2009, the RTC found that while Comboy was already on top of AAA and was in the act of removing her underwear, he failed to realize his lustful desires as BBB woke up and exclaimed the word "ate" to AAA, prompting Comboy to leave the room. In this regard, the RTC opined that Comboy commenced the performance of an act which indicated his intent to rape AAA but was stopped by a reason other than his own desistance, *i.e.*, BBB's intervention. On the other hand, the RTC did not lend credence to Comboy's defenses of denial and alibi in light of AAA's clear and categorical testimony which was corroborated by the medical findings.<sup>[20]</sup>

Dissatisfied, Comboy appealed<sup>[21]</sup> his conviction to the CA.

### **The CA Ruling**

In a Decision<sup>[22]</sup> dated June 13, 2014, the CA affirmed the RTC's ruling *in toto*. It held that Comboy's moral ascendancy and influence over AAA as the latter's biological father were sufficient to comply with the force and intimidation required by law for one to have carnal knowledge without her consent.<sup>[23]</sup> Further, the CA gave scant consideration to Comboy's assertion that AAA merely fabricated the accusations against him as she was angry at him for being too strict, opining that such reason is "too flimsy and insignificant for a daughter to falsely charge her father with so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial."<sup>[24]</sup>

Hence, the instant appeal.<sup>[25]</sup>

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not Comboy is guilty beyond reasonable doubt of two (2) counts of Rape and one (1) count of Attempted Rape.

### **The Court's Ruling**

The appeal is bereft of merit.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire

case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.<sup>[26]</sup>

Proceeding from the foregoing, the Court deems it proper to modify Comboy's conviction from two (2) counts of Statutory Rape and one (1) count of Attempted Rape to **two (2) counts of Qualified Rape and one (1) count of Attempted Qualified Rape**, as will be explained hereunder.

Article 266-A (1) (a) and (d), in relation to Article 266-B (1), of the RPC, read as follows:

Article 266-A. Rape: When and How Committed. - Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation; x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x

The elements of Rape under Article 266-A (1) (a) are: (a) the offender had carnal knowledge of a woman; and (b) said carnal knowledge was accomplished through force, threat or intimidation.<sup>[27]</sup> The gravamen of Rape is sexual intercourse with a woman against her will.<sup>[28]</sup> On the other hand, Statutory Rape under Article 266-A (1) (d) is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of it, to the sexual act. Proof of force, threat, or intimidation, or consent of the offended party is unnecessary as these are