

## THIRD DIVISION

[ G.R. No. 217024, August 15, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODEL BOLO Y MALDO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is an appeal from the Decision<sup>[1]</sup> dated March 12, 2014 of the Court Appeals (CA) in CA-G.R. CR-HC No. 05676 which affirmed the Decision<sup>[2]</sup> dated December 7, 2011 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 86, Quezon City, in Criminal Case No. Q-07-146758 for rape.

The antecedent facts are as follows:

In an Information<sup>[3]</sup> dated April 13, 2007, accused-appellant Rodel Bolo y Maldo was charged with the crime of rape by sexual assault under Article 266-A, paragraph 2, in relation to Article 266-B of the Revised Penal Code (RPC), committed by inserting his finger into the vagina of his 4-year-old daughter, AAA,<sup>[4]</sup> against her will and without her consent. The accusatory portion of said Information reads:

That on or about the 9<sup>th</sup> day of April, 2007, in Quezon City, Philippines, the said accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously insert his finger into the vagina of AAA, a minor, 4 years of age, his daughter, against her will and without her consent, to the damage and prejudice of the said offended party.

Contrary to law.<sup>[5]</sup>

Upon arraignment, appellant pleaded not guilty to the offense charged.<sup>[6]</sup> Thereafter, during trial, the prosecution presented the testimonies of the victim, AAA, the Medico-Legal Officer, Police S/Insp. Dr. Marianne S. Ebdane (*S/Insp. Ebdane*), and PO1 Simeon Masangaya.<sup>[7]</sup>

According to AAA, while she was standing by the gate of her maternal aunt's house in the evening of April 9, 2007, appellant kissed her on the neck and inserted his finger in her vagina. Consequently, she felt pain and, thereafter, she told the incident to her grandmother, who brought her to the police station.<sup>[8]</sup> Two (2) days after, acting on a request from Police Supt. Constante Agpaoa, Police S/Insp. Dr. Ebdane conducted a genital examination on AAA. In her Initial Medico-Legal Report, she stated that there was no evidence of injury or laceration on AAA's hymen. She explained that, generally, an insertion of a finger can cause irritation or redness of a victim's genitalia. But from the time of the occurrence of the incident up to the genital examination, however, fourteen (14) hours had already lapsed indicating that

any redness or irritation may have been already cured. She further explained that her finding that "there is no evident injury at the time of the examination and medical evaluation cannot exclude sexual abuse," meant that it was still possible for penetration to occur without injury on the hymen because AAA was only four (4) years old and the hymen of a child was elastic.<sup>[9]</sup>

In contrast, the defense presented the lone testimony of appellant himself, who simply denied the charges against him.<sup>[10]</sup> He claimed that while he was indeed with AAA, he could not have possibly raped his own daughter for at the time of the alleged incident he was engaged in a drinking session with a *kumpadre*. He added that the charge was merely fabricated by his mother-in-law who was mad at him for using *sumpak* and disturbing their place.<sup>[11]</sup>

On December 7, 2011, the RTC found appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 2, in relation to Article 266-B of the RPC, and sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages, plus costs of the suit. The dispositive portion of its Decision reads:

WHEREFORE, the accused Rodel Bolo y Maldo is hereby found guilty beyond reasonable doubt and convicted of Rape under Article 266-A, par. 2, in relation to Article 266-B, and he is hereby sentenced to suffer the penalty of *reclusion perpetua*.

The accused is adjudged liable to pay the victim: (1) Seventy-Five Thousand Pesos (P75,000.00) by way of civil indemnity *ex delicto*; (2) moral damages in the amount of Fifty Thousand Pesos (P50,000.00); (3) Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages; (4) as well as cost of suit.

SO ORDERED.<sup>[12]</sup>

According to the RTC, the prosecution was able to successfully prove the presence of all the elements of the crime charged herein in view of the fact that AAA testified on the event that transpired in a straightforward, consistent and coherent manner. She clearly narrated on the fact that while she was standing by the gate of her maternal aunt's house one evening, appellant kissed her on the neck and inserted his finger in her vagina.<sup>[13]</sup> The trial court added that while there is no finding of any injury upon physical examination of AAA, the Medico-Legal Examiner explained that the absence of a laceration was due to the elasticity of the minor's hymen, making it possible for there to be penetration without breakage or injury.<sup>[14]</sup> Nevertheless, it was ruled that full penetration, which would ordinarily result in hymenal rupture or laceration of the vagina, is not a consummating ingredient of the crime of rape. Furthermore, the court took note of the fact that all that appellant could offer was mere denial. He even admitted that he was with his daughter on the date of the alleged incident. While he claimed to have been engaged in a drinking session with a *kumpadre*, it was only from morning until the afternoon whereas the assault allegedly took place in the evening. Besides, the RTC added that said claim was, at best, self-serving for said *kumpadre* was never presented in court.<sup>[15]</sup>

On appeal, the CA affirmed the RTC Decision with modification, viz. :

**ACCORDINGLY**, the appeal is **DENIED**. The Decision dated December 7, 2011 is **MODIFIED**, imposing upon the appellant an indeterminate penalty of **12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum**, and directing him to pay P30,000.00 as civil indemnity, P30,000.00 as moral damages, and P30,000.00 as exemplary damages. The Decision is **AFFIRMED** in all other respects.

**SO ORDERED.** [16]

*First*, the CA rejected appellant's contention that the Information was defective as it failed to specify the exact nature of the charge against him. While the Information failed to specify the particular provision of law which appellant allegedly violated, the character of the crime is not determined by the specification of law but by the recital of the ultimate facts and circumstances of the case.[17] Since the body of the Information herein clearly alleged that appellant, through force and intimidation, inserted his finger into his daughter's vagina, a minor, thereby enumerating all the essential elements of the crime, appellant is considered sufficiently apprised of the charge against him.[18] *Second*, the CA reiterated the trial court's finding that hymenal rupture, vaginal laceration, or genital injury is not indispensable because the same is not an element of the crime of rape. AAA's testimony that she felt pain in her vagina during the sexual assault sufficiently corroborated her testimony that she was raped by appellant. Moreover, appellant's allegation that the crime charged was merely fabricated by his mother-in-law deserves scant consideration for it is highly unbelievable that a grandmother would expose her granddaughter to humiliation and the stigma of rape trial just to punish appellant for his alleged misdeeds.[19] *Third*, the appellate court likewise rejected appellant's claim for acquittal due to the prosecution's failure to prove the exact date and place of the commission of the crime. According to the CA, the same are not elements of the crime for what is decisive herein is the act of sexual assault.[20]

As for the imposable penalty, the appellate court held that under Article 266-B of the RPC, the penalty imposable for rape by sexual assault is *prision mayor* but is increased to *reclusion temporal* if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in the article. Here, the CA found that the prosecution successfully proved the qualifying circumstances of relationship and minority. With respect to the circumstance of relationship, there was no dispute that appellant is AAA's father, for appellant even admitted to such fact during trial. As for minority, the CA initially acknowledged the prosecution's failure to present the original or certified true copy of AAA's certificate of birth, or in their absence, similar authentic documents such as her baptismal certificate and school records. It nevertheless appreciated said qualifying circumstance ratiocinating that while it is settled that minority must be proved by independent evidence, other than the testimonies of prosecution witnesses and the absence of denial by the accused, the same is subject to the exception that the court can take judicial notice of the victim's minority when the fact of her being below the age of 10 is quite manifest. The trial court in this case would not have any difficulty ascertaining AAA's age from her appearance who was only 5 years old when she testified that she was raped by

appellant. Thus, applying the Indeterminate Sentence Law, the CA held that the maximum penalty shall be taken from the maximum period of the imposable penalty which is *reclusion temporal*, ranging from 17 years, 4 months, and 1 day to 20 years, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* ranging from 10 years and 1 day to 12 years.

Consequently, appellant filed a Notice of Appeal<sup>[21]</sup> on August 29, 2014. Thereafter, in a Resolution<sup>[22]</sup> dated June 22, 2015, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE [COURT OF APPEALS] ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[23]</sup>

Appellant reiterated the following arguments he raised before the appellate court: (1) the Information filed against him was defective as it failed to specify the exact nature of the charge against him; (2) the prosecution failed to prove by convincing proof the elements of the crime charged; (3) the prosecution failed to establish the exact time and place of the commission of the crime; (4) the prosecution failed to offer the original or certified true copy of the Certificate of Live Birth of AAA, and consequently, (5) the qualifying circumstance of minority and relationship were not proven beyond reasonable doubt.

We affirm appellant's conviction, but not of rape by sexual assault in its qualified form.

The enactment of Republic Act (RA) No. 8353 or the *Anti-Rape Law of 1997*, revolutionized the concept of rape with the reclassification of rape as a crime against persons and the introduction of rape by "sexual assault" as differentiated from the traditional "rape through carnal knowledge" or "rape through sexual intercourse."<sup>[24]</sup> By virtue of said Act, the provision on rape in the RPC was incorporated with Article 266-A providing for the elements of the crime of rape:

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;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- 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;

**2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person**<sup>[25]</sup>

Under the new provision, therefore, rape can now be committed in two ways: (1) through sexual intercourse under Article 266-A, paragraph 1, also known as "organ rape" or "penile rape," the central element of which is carnal knowledge, which must be proven beyond reasonable doubt; and (2) by sexual assault under Article 266-A, paragraph 2, also called "instrument or object rape," or "gender-free rape," which must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. <sup>[26]</sup>

Thus, the elements of the crime of rape by sexual assault are:

- (1) That the offender commits an act of sexual assault;
  - (2) That the act of sexual assault is committed by any of the following means:
    - (a) By inserting his penis into another person's mouth or anal orifice; or
    - (b) By inserting any instrument or object into the genital or anal orifice of another person;
  - (3) That the act of sexual assault is accomplished under any of the following circumstances:
    - (a) By using force and intimidation;
    - (b) When the woman is deprived of reason or otherwise unconscious; or
    - (c) By means of fraudulent machination or grave abuse of authority; or
    - (d) When the woman is under 12 years of age or demented.
- <sup>[27]</sup>

In the instant case, both the trial and appellate courts conclusively found appellant guilty beyond reasonable doubt of the crime of rape by sexual assault for inserting his finger inside his daughter's vagina. Accordingly, the Court does not find any reason to depart from the findings of the courts below. In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony. Since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof.

Here, the courts below expressly found that AAA testified on the event that transpired in a straightforward, consistent and coherent manner. As aptly observed by the RTC, she clearly narrated on the fact that while she was standing by the gate of her maternal aunt's house one evening, appellant kissed her on the neck and inserted his finger in her vagina. We quote AAA's testimony on the matter: