

THIRD DIVISION

[G.R. No. 201106, August 03, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERALD BALLACILLO, ACCUSED-APPELLANT.**

DECISION

PERALTA, J.:

Before this Court is an appeal filed by accused-appellant Gerald Ballacillo (*Ballacillo*) assailing the June 30, 2011 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR.-HC No. 03648, which affirmed with modification the Decision^[2] dated August 7, 2008 of the Regional Trial Court (RTC) of Bangued, Abra, Branch 2, in Criminal Cases No. 1999-419, 2000-21, 2000-22, 2000-23.

The accused Gerald Ballacillo was charged with the crime of rape in four (4) separate Informations, viz.:

Criminal Case No. 1999-419

That on the 14th day of April 1999, at 3:30 o'clock p.m., at Sitio Nagsayangan, Barangay Tagodtod, Municipality of Lagangilang, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 2000-21

That on or about April 17, 1999, in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659

Criminal Case No. 2000-22

That on or about April 27, 1999 in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and

intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659

Criminal Case No. 2000-23

That on or about April 29, 1999 in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659.^[3]

Upon arraignment, Ballacillo pleaded not guilty to all four charges of rape. Thereafter, the trial on the merits ensued.

The evidence of the prosecution is summed up as follows:

At the request of his cousin, AAA's father, Ballacillo was staying at the house of AAA's parents in Laang, Lagangilang, Abra.^[4] He helped in the household chores, and drove the family's passenger tricycle.

In the afternoon of April 14, 1999, AAA's mother asked Ballacillo to gather bamboo shoots (*rabong*) at Tagodtod.^[5] He drove the tricycle, and went with AAA to a woody area in Nagsayangan, Tagodtod.^[6] When they decided to return after an unsuccessful search for any bamboo shoot, Ballacillo called for AAA from beneath a mango tree. He forced AAA down, removed her shorts and underwear, and undressed himself. He poked a knife at AAA's neck, and quipped that "nobody can hear her scream." He inserted his penis into her vagina and made a push-and-pull movement. AAA struggled to flee but was overpowered by the stronger Ballacillo. She felt pain during the ordeal, and then felt something seeping from her vagina. Afterwards, Ballacillo stood up and dressed. While AAA cried, he nonchalantly told her to dress up and board the tricycle. He threatened to kill her and her family if she reported the incident.

Around midnight of April 27, 1999, AAA was asleep on a bamboo bed when she felt someone removing her shorts.^[7] When she awakened, AAA saw Ballacillo on top of her bed. He covered her mouth, pushed her down, and threatened to kill her if she did not acquiesce. After undressing AAA and himself, Ballacillo inserted his penis into her vagina by making the push-and-pull movement. AAA felt hot fluid gushing into her vagina. After satiating his bestial desires, Ballacillo stood and threatened to kill AAA or her father if she informs her father of the harrowing episode.

The ordeal was repeated on April 29, 1999 with Ballacillo successfully satisfying his lewdness by threatening AAA with a knife if she screams and does not submit.

During the entire occurrence, Ballacillo remained living with them and continued driving the tricycle and doing household chores. AAA did not confide to anyone for fear that her father, who has a violent temper, might kill the accused if he discovers the same, and their family will be left with no support if her father is imprisoned.^[8] It was only in September 1999 that AAA opened up to her friend. On October 13, 1999, AAA's mother was shocked when she learned through her cousin who was a teacher from AAA's school that her daughter was six months pregnant as a consequence of Ballacillo's abuse.^[9]

AAA's testimony was corroborated by the medical findings of Dr. Liberty Banez who conducted a medical examination on AAA showing that since she was already six months pregnant with the last menstrual period in April 1999, the alleged incidents of rape coincided with the period of AAA's pregnancy.^[10]

In contrast, Ballacillo fervently denied the charges against him. On April 8, 1999 to April 30, 1999, Ballacillo attended a Catholic youth recollection seminar in Baay, Licuan, Abra wherein he actively attended lectures and played basketball.^[11] Jonathan, Jordan and Darwin, all with the surname of Crisologo, corroborated Ballacillo's attendance of the seminar.

On April 27, 1999, the participants of the recollection came to the parish church of Lagangilang for a youth encounter where Ballacillo played basketball. That night, they slept in one of the cottages in the compound. Jordan was sure that Ballacillo was always in their company and was never out of his sight the entire time.^[12] They stayed the next day, April 28, 1999, when a *santacruz* and a basketball tournament were held, until April 29, 1999 for the culminating activities and a Tingguian Program. It was only on April 30, 1999 that they returned home.

Ballacillo was adamant that it was his brother Sonny Boy who had carnal knowledge of the victim AAA, thereby impregnating her.^[13] Sonny Boy stayed with them at AAA's house for three days in May 1999 and in July 1999, and visited again in September 1999. Sometime in July 1999, Ballacillo and AAA visited Sonny Boy. AAA stayed when Ballacillo left. Their father, Rodrigo Ballacillo, saw AAA and Sonny Boy asleep on one bed, and was happy together during AAA's stay.^[14] After Ballacillo's arrest, Sonny Boy confessed to their father that he was the father of AAA's child.^[15]

The RTC convicted Ballacillo of three counts of rape, but acquitted him in Criminal Case No. 2000-21 for utter lack of evidence. The decretal portion of the decision reads:

In view of the foregoing, judgment is hereby rendered:

1. ACQUITTING the accused Gerald Ballacillo of the crime of Rape in Criminal [C]ase No. 2000-21 on the ground of utter lack of evidence;
2. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 99-419 and pursuant to Article 63 of the Revised Penal Code hereby

sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [P]50,000.00 as civil indemnity and [P]100,000.00 as moral damages.

3. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 2000-22 and pursuant to Article 63 of the Revised Penal Code hereby sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [P]50,000.00 as civil indemnity and [P]100,000.00 as moral damages.

4. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 2000-23 and pursuant to Article 63 of the Revised Penal Code hereby sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [P]50,000.00 as civil indemnity and [P]100,000.00 as moral damages.

SO ORDERED.^[16]

The RTC gave full faith and credence to AAA's testimony regarding the same as clear and straightforward with no adornments designed to elicit sympathy, as corroborated by the medical findings of the physician who examined her.^[17]

In a Decision dated June 30, 2011, the CA denied the appeal filed by Ballacillo and affirmed with modification the decision of the RTC. The CA held that the prosecution positively established the elements of rape and upheld the credibility of AAA. The *fallo* of the decision provides:

WHEREFORE, the appeal is DENIED. The Regional Trial Court Decision in Criminal [Cases No.] 99-419 and 2000-22 to 23 finding accused-appellant Gerald Ballacillo guilty of the crime charged is AFFIRMED with MODIFICATION. Gerald Ballacillo is ordered to pay private complainant, for each count of rape, civil indemnity in the amount of [P]50,000.00, moral damages in the amount of [P]50,000.00 and exemplary damages in the amount of [P]30,000.00. No costs.

SO ORDERED.^[18]

Hence, the instant appeal before this Court was instituted.

In its Manifestation and Motion in Lieu of Supplemental Brief^[19] dated August 16, 2012, the Office of the Solicitor General (OSG) informed this Court that it opted not to file a supplemental brief considering that accused-appellant Ballacillo has not raised any new issue, and considered the case deemed submitted for decision.

Similarly, Ballacillo indicated that he no longer intends to file a supplemental brief and is adopting *in toto* all the arguments he raised in his Appellant's Brief which has extensively discussed and established his innocence.^[20]

Basically, the issue to be resolved by this Court in this appeal is whether the prosecution was able to prove beyond reasonable doubt that Ballacillo is guilty of the crime of rape.

Finding no cogent reason to depart from the ruling of the lower courts, We sustain the conviction of the accused-appellant Ballacillo.

Before all else, it is noted that the four Informations filed against the accused charged him with the crime of rape under Act No. 3815, or the Revised Penal Code (RPC). Consequently, the RTC convicted and sentenced, as affirmed by the CA, Ballacillo for rape under Article 335 of the RPC. However, Republic Act (R.A.) No. 8353, otherwise known as the Anti-Rape Law of 1997, became effective on October 22, 1997. The law reclassified rape as a crime against persons, thus, repealing Article 335 of the RPC. The new provisions on the crime of rape are now found in Articles 266-A to 266-D of the RPC. As established, the crime of rape was committed on April 14, 27, and 29, 1999. Thus, R.A. No. 8353, amending provisions of the RPC, is the law applicable in the instant case. The RTC and the CA erred in specifying violation of Article 335 of the RPC in convicting the accused of three counts of rape. Nevertheless, as we have recently ruled in the case of *People v. Victor P. Padit*,^[21] the failure to designate the offense by the statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.^[22] Neither by the caption or preamble of the information nor by the specification of the provision of the law alleged to have been violated determines the character of the crime but by the recital of the ultimate facts and circumstances in the complaint or information.^[23] In this case, the acts alleged to have been committed by the accused are averred in the Informations, and the same describe acts punishable under Article 266-A, in relation to 266-B of the RPC, as amended.

The pertinent provisions of Articles 266-A and 266-B of the Revised Penal Code, as amended, provide:

Art. 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.

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ART. 266-B. *Penalties. — Rape under paragraph 1 of the next preceding*