

SECOND DIVISION

[G.R. No. 217975, November 23, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDINO BIALA, ACCUSED-APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the November 5, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01078-MIN, which affirmed with modification the February 6, 2011 Joint Judgment^[2] of the Regional Trial Court, Branch 20, Tacurong City, Sultan Kudarat (RTC), convicting accused-appellant Bernardino Biala (*Biala*) of Attempted Rape in Criminal Case No. 1990; of Statutory Rape in Criminal Case No. 2220; and of Qualified Rape in Criminal Case No. 2221. The CA affirmed the RTC decision in Criminal Case Nos. 2220 and 2221 but modified it in Criminal Case No. 1990 by finding Biala guilty of Acts of Lasciviousness instead of Attempted Rape.

The Antecedents

Biala was charged with three (3) counts of rape that he committed against AAA^[3] in three (3) separate Informations, the accusatory portions of which read as follows:

Criminal Case No. 1990

That sometime in the evening of November 1999 at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.

Criminal Case No. 2220

That following the first offense of rape that was committed by the accused in November 1999, and before the last offense of rape was committed in June 2001 against the victim in this case at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having repeated carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.

Contrary to law.

Criminal Case No. 2221

That sometime in June 2001 at x x x, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who is the guardian of [AAA], with lewd and unchaste design and by means of force and intimidation, and with grave abuse of authority, did then and there, wilfully, unlawfully, and feloniously, lie and succeeded in having carnal knowledge of [AAA], a child under twelve (12) years old girl against her will and consent.^[4]

Contrary to law.

When arraigned, Biala pleaded not guilty to the charges against him. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

AAA was born on December 5, 1988 as shown in her Certificate of Live Birth. In her testimony, she claimed to have been raped thrice by Biala in their house, during which times, her guardian-mother and half-sister were not around. She stated that she was raped on two successive nights in November 1999 and then once in June 2001.

The first rape incident, subject of Criminal Case No. 1990, happened at around 7:00 o'clock in the evening. AAA narrated that while she was already lying in bed inside the bedroom, Biala approached her and suddenly took off her dress. When she was about to stand up, he immediately kissed her and then removed her panty. She shouted but he punched her twice in the abdomen which made her feel dizzy and fall on the bed. Upon regaining her consciousness, AAA found herself naked and she felt pain in her vagina. She noticed that there was blood oozing from it. Finding Biala sleeping right next to her, she went to the water pump to wash up and, thereafter, to the kitchen where she slept.

The second rape incident, subject of Criminal Case No. 2220, was perpetrated on the following night. AAA recalled that she was about to sleep when Biala held her left arm, led her to the bedroom and pushed her to the bed. After Biala kissed her face for three minutes, he undressed her, forced her to spread her legs, punched her to weaken her resistance, and forcibly inserted his penis into her vagina. Biala made a push and pull movement for about ten minutes. With a gun near him, Biala threatened to kill AAA if she would tell anyone about the incident. After her ordeal, she went to the kitchen, cleaned her body and slept there.

The last rape incident, subject of Criminal Case No. 2221, took place sometime in June 2001 at around 9:00 o'clock in the evening. AAA testified that while she was looking for a shirt which Biala asked for, he suddenly pulled her dress and pushed her to the bed. He placed himself on top of her and started kissing her on the neck and lips. She pushed him away and said, "Do not do that Tay" Biala did not stop and, instead, undressed her and kissed her breast and abdomen. When she was totally naked, Biala inserted his penis into her vagina and made a push and pull movement. After a few minutes, Biala withdrew his penis from her vagina and

kissed her breast. Later, he again inserted his penis into her vagina and made a push and pull movement, leaving her in pain. Biala threatened and warned her not to tell anyone, otherwise, he would kill her. Terrified, AAA went out and washed herself in the kitchen. Then, she went back inside their room and cried all night.

AAA never informed anyone about Biala's bestial acts. Instead, she ran away and went to stay with their neighbor, Spouses Sotelo. While with them, she was able to muster enough courage to break her silence on how Biala sexually ravished her. After learning of what happened to her, Spouses Sotelo accompanied her to the police station to report the commission of the offense.

Dr. Efraim Collado (*Dr. Collado*) conducted a genital examination on AAA and found that she sustained a healed hymenal laceration at the 9:00 o'clock position. Dr. Collado determined that the laceration was more than 10 days old because the hymen was already healed, and that it could have been caused by one or several times of sexual intercourse.

Version of the Defense

Biala claimed that during those times when the alleged rape incidents occurred in November 1999 and in June 2001, AAA was sleeping either in his brother's house or in her grandmother's house. He bared that he and AAA's guardian mother had been living together for twenty-four (24) years but had no children of their own. They took her as their own child when she was still two (2) years old. He added that her guardian mother was actually her grandmother. When he was asked as to what could have been the reason why AAA accused him of such grave offense, Biala surmised that she was instigated by Spouses Sotelo to fabricate the charges because they had an axe to grind against him for his supposed failure to pay an indebtedness, which he denied having incurred.

Biala's common-law spouse took the witness stand and claimed that she was in Manila in November 1999 when the rape incidents allegedly took place; that she brought AAA to her grandmother in New Isabela, Tacurong City, in June 2001; that AAA did not relate anything to her about the rape incidents; that she never witnessed any of the said incidents; and that she was unsure if AAA was telling the truth.

The RTC Ruling

On February 6, 2011, the RTC rendered the Joint Judgment^[5] finding Biala guilty of Attempted Rape, Statutory Rape and Qualified Rape in Criminal Case Nos. 1990, 2220 and 2221, respectively.

In Criminal Case No. 1990, the RTC opined that Biala could not be convicted of statutory rape because the most important element of having carnal knowledge of her was not clearly and convincingly established. According to the RTC, however, Biala should be held criminally liable for attempted rape because evidence on records showed that he had performed overt acts preliminary to the consummation of the crime of rape. In Criminal Case No. 2220, the RTC was convinced of the guilt of Biala for statutory rape. It declared that the prosecution was able to prove beyond reasonable doubt that he had carnal knowledge of AAA, who was only 11 years old at that time. Finally, the RTC adjudged him guilty of qualified rape in

Criminal Case No. 2221. It explained that the commission of the crime was attended by the qualifying circumstances of her minority and her relationship to him as her guardian, which circumstances were duly alleged in the Information and proven with certainty and clarity as the crime itself during the trial.

Accordingly, the RTC disposed:

WHEREFORE, upon all the foregoing considerations, the court hereby renders judgment as follows:

IN CRIMINAL CASE NO. 1990

1. **FINDING** accused **BERNARDINO BIALA** **GUILTY** beyond reasonable [doubt] to the crime of Attempted Rape and **SENTENCING** him to suffer the indeterminate penalty of imprisonment ranging from eight (8) years and one (1) day as minimum, to ten (10) years and one (1) day, as maximum; and
2. **ORDERING** him to pay [AAA] the following:
 - 2.a.The amount of P50,000.00 as moral damages;
 - 2.b.The amount of P30,000.00 as civil indemnity;
and
 - 2.c.The amount of P25,000.00 as and by way of exemplary damages.

To pay the costs.

For being a detention prisoner, his entire preventive imprisonment shall be credited in full in the service of sentence imposed on him provided that he shall abide in writing with the same disciplinary rules imposed upon convicted prisoners, otherwise with only four-fifths (4/5) thereof.

IT IS SO ORDERED.

IN CRIMINAL CASE NO. 2220

1. **FINDING** accused **BERNARDINO BIALA** **GUILTY** beyond reasonable [doubt] to the crime of Statutory/Qualified Rape and **SENTENCING** him to suffer the penalty of **RECLUSION PERPETUA**; and
2. **ORDERING** him to pay [AAA] the following:
 - 2.a.The amount of P50,000.00 as and by way of moral damages;
 - 2.b.The amount of P75,000.00 as and by way of civil indemnity; and
 - 2.c.The amount of P30,000.00 as and by way of exemplary damages.

To pay the costs.

Pursuant to current circular of the Supreme Court, the said accused shall be committed to the National Bilibid Prisons in Muntinlupa City.

IN CRIMINAL CASE NO. 2221

1. **FINDING** accused **BERNARDINO BIALA GUILTY** beyond reasonable [doubt] to the crime of Qualified Rape and **SENTENCING** him to suffer the penalty of **RECLUSION PERPETUA**; and
2. **ORDERING** him to pay AAA the following:
 - 2.a. The amount of P50,000.00 as and by way of moral damages;
 - 2.b. The amount of P75,000.00 as and by way of civil indemnity; and
 - 2.c. The amount of P30,000.00 as and by way of exemplary damages.

To pay the costs.

Pursuant to current circular of the Supreme Court, the said accused shall be committed to the National Bilibid Prisons in Muntinlupa City.

IT IS SO ORDERED.^[6]

Not satisfied, Biala appealed the RTC Joint Judgment before the CA.

The Ruling of the CA

The CA found no cogent reason to deviate from the findings of facts and conclusions reached by the RTC. The CA gave full faith and credence to the testimony of AM, which was corroborated by the medical findings of Dr. Collado, and found the same to be sufficient to sustain Biala's conviction for statutory rape and qualified rape. It rejected his twin defenses of denial and alibi for being flimsy and for want of material corroboration.

The CA, however, was of the view that Biala could not be convicted of attempted rape in Criminal Case No. 1990 considering that not a shred of evidence, direct or circumstantial, was adduced by the prosecution to prove that he actually commenced the act of penetrating the vagina of AAA but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, was not completed. The CA, nonetheless, found that sufficient evidence existed to support his conviction for Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC).^[7] It wrote that Biala's acts of undressing AAA, kissing her and removing her panty reflected lewdness and lust for her. The dispositive portion of the decision reads:

FOR THESE REASONS, the Joint Judgment dated 06 February 2011 of the Regional Trial Court, Branch 20, Tacurong City is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Bernardino Biala is adjudged **GUILTY** beyond reasonable doubt of: