

## FIRST DIVISION

[ G.R. No. 208623, July 23, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VIRGILIO ANTONIO Y RIVERA, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**REYES, J.:**

For review<sup>[1]</sup> is the Decision<sup>[2]</sup> rendered by the Court of Appeals (CA) on October 8, 2012 in CA-G.R. CR-HC No. 04149 affirming, albeit with modifications as to the damages imposed, the Judgment<sup>[3]</sup> dated September 4, 2009 of the Regional Trial Court (RTC) of Tuguegarao City, Branch 4, in Criminal Case Nos. 10244-10245, convicting Virgilio Antonio y Rivera (accused-appellant) of two counts of Rape committed against AAA,<sup>[4]</sup> a minor.

#### **Antecedents**

Two separate informations for rape were filed against the accused-appellant before the RTC, viz:

#### **Criminal Case No. 10244**

*That on or about and sometime in the year 2001, in the Municipality of Alcala, Cagayan and within the jurisdiction of this Honorable Court, the said accused, VI[R]GILIO ANTONIO, with lewd design and by the use of force, threat, and intimidation, did [then] and there, willfully, unlawfully and feloniously have sexual intercourse with the offended party, [AAA], a minor 14 years of age<sup>[5]</sup> against her will.*

*That in the commission of the offense[,], the aggravating circumstance of uninhabited place was present.*

*Contrary [to law].<sup>[6]</sup>*

#### **Criminal Case No. 10245**

*That on or about August 26, 2003, in the Municipality of Alcala, Province of Cagayan[,], within the jurisdiction of this Honorable Court, the said accused, VIRGILIO ANTONIO, being then the guardian of the private complainant [AAA], a minor 14 years of age[,], who was then under his care and custody[,], with lewd design and by the use of force, threat and intimidation, did, then and there willfully, unlawfully, and feloniously have sexual intercourse with the offended party, [AAA], a minor 14 years of [age] against her will.*

*Contrary to law.*<sup>[7]</sup>

The accused-appellant entered a not guilty plea during the arraignment.

On February 23, 2005, pre-trial was conducted. The prosecution proposed for the parties to stipulate on the following, which the defense admitted: (a) the identity of the accused-appellant; (b) his relationship as AAA's godfather; (c) the dates, times and places of the commission of rape; and (d) AAA's minority at the time the crimes were allegedly perpetrated.<sup>[8]</sup>

The prosecution marked and offered: (a) AAA's birth certificate indicating that she was born on May 28, 1989; (b) the medicolegal certificate dated September 2, 2003, which was prepared by Dr. Rafael Sumabat (Dr. Sumabat); and (c) AAA's affidavit. The defense, on its part, offered no documentary evidence.<sup>[9]</sup>

In the joint trial that ensued, the prosecution offered the testimonies of AAA and Dr. Sumabat. On the other hand, the accused-appellant was the defense's lone witness.

### **Version of the Prosecution**

The Office of the Solicitor General (OSG) aptly summed up the prosecution's version of the events as follows:

In March of 2001, eleven[-]year old [AAA] began living with [accused-appellant's] family in Maraburab, Alcala, Cagayan Province after her parents had separated. [Accused-appellant] and his wife, Rose, are [AAA's] godparents[, ] who treated her as one of their own children x x x.

Sometime in April 2001, [accused-appellant], who maintains a farm in the highlands of Cagayan, asked [AAA] to help him harvest palay there. Alone together, [accused-appellant] and [AAA], started for the farm very early that April morning. After an hour's walk, they reached the place and immediately began to harvest palay x x x.

Just before lunch time, [accused-appellant] led [AAA] to a bamboo grove within the farm. Once there, he threatened to kill her if she told anyone regarding what he was about to do. [Accused-appellant] lost no time in making [AAA] lie down. After which, he took off her shorts and underwear. Although very much alarmed, he likewise removed his own shorts and underwear. [AAA] could not do anything as she was afraid because they were alone x x x.

With both their private parts now uncovered, [accused-appellant] inserted his penis into [AAA's] vagina. She felt pain course through her genitals. Helpless, [AAA] could only cry and mutter "aray". After awhile, she felt liquid emitting from [accused-appellant's] penis. Satiated, [accused-appellant] threatened [AAA] with death once again if she reveals to anyone that he had abused her. They went home later that afternoon. Fearful of [accused-appellant's] threat, [AAA] did not dare to

reveal to anyone regarding her ordeal and went on to stay with [accused-appellant] and his family x x x.

On the evening of August 26, 2003, Rose Antonio, together with her two children with [accused-appellant], went to the town proper of Alcala to celebrate its fiesta. [AAA] and [accused-appellant] were left alone in the house on that night. She went to bed around eight in the evening. However, around 10PM, she was awakened by the weight of [accused-appellant] bearing down on her body. [Accused-appellant] was wearing a shirt and nothing else. She realized to her horror that her shorts and underwear had already been removed. [Accused-appellant] soon began to insert his penis into her vagina. He made a push-pull movement for awhile. [AAA] was not able to shout a single word inside the room which had no light on x x x.

[In] the morning of August 27, 2003, May Dumalay, [accused-appellant's] niece, confronted [AAA] regarding her suspicions that something happened between her and [accused-appellant]. [AAA] finally admitted that [accused-appellant] had raped her. May Dumalay then told [accused-appellant's] wife, Rose Antonio what [AAA] related to her. In turn, Rose Antonio told [AAA's] father regarding the unfortunate developments. When her father and the barangay captain of Maraburab confronted [AAA], she told all the incidents of sexual abuse committed by [accused-appellant] x x x.

On August 28, 2003, Barangay Captain Rey De Luna of Maraburab accompanied [AAA] to the local office of the Department of Social Welfare and Development (DSWD). After being interviewed, [AAA] was brought to the police station in Alcala[,] Cagayan x x x. Eventually, she was examined by the Medico-legal Officer of Alcala, Dr. Rafael Sumabat x x x. His findings on [AAA] were: 1) On examination[,] abdomen is soft, palpable mass noted. External genitalia and thighs are normal. No evidence of trauma; 2) On examination of genitalia, there are old lacerations of hymen at 3-6-9 o'clock respectively; 3) Vagina admits one finger easily and presence of whitish secretions inside vagina. Pregnancy test negative x x x.<sup>[10]</sup>

### **Version of the Defense**

The accused-appellant was vehement in denying the charges against him. He insisted that AAA only started living with them in May of 2002. Hence, he could not have perpetrated the rape ascribed to him which allegedly occurred in April of 2001. As to what transpired in August of 2003, he narrated that Rose, his wife, and AAA left their house to attend a town fiesta on August 25, 2003. The two returned home drunk on August 28, 2003. Rose and the accused-appellant then had a fight because the latter received an information that the former and AAA had a male companion while attending the town festivities. Rose and AAA denied the accusation, which irked the accused-appellant, who in turn ordered the two to leave their house.<sup>[11]</sup>

### **Ruling of the RTC**

On September 4, 2009, the RTC rendered a Judgment<sup>[12]</sup> convicting the accused-appellant of two counts of rape. The trial court found that AAA had no ill motive to testify against the accused-appellant, whom she had considered as her guardian or foster father. Further, AAA's testimony as to the sordid acts committed by the accused-appellant was spontaneous and categorical, and her statements were corroborated by Dr. Sumabat's medical findings. On the other hand, the accused-appellant's defenses of denial and *alibi* were weak and could not prevail over AAA's positive testimony. The dispositive portion of the RTC decision thus reads:

**ACCORDINGLY**, accused **VIRGILIO ANTONIO** y Rivera is hereby found GUILTY beyond reasonable doubt for the crime of Rape for two (2) counts, in Criminal Case Nos. 10244 and 10245 defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659 and further amended by Republic Act No. 8353; and Article 266 (A) No. 1 in relation to Article 266 (B) No. 1 of the Revised Penal Code, as amended by Republic Act No. 8353 and hereby sentences him to suffer the penalty of reclusion perpetua in each case; to pay [AAA] the amount of ONE HUNDRED FIFTY THOUSAND ([P]150,000[.00]) PESOS as civil indemnity, ONE HUNDRED FIFTY THOUSAND ([P]150,000.00) PESOS as moral damages and FIFTY THOUSAND ([P]50,000.00) PESOS as exemplary damages.

The preventive imprisonment of the accused shall be credited in full in his favor if he abided in writing by the rules imposed upon convicted prisoners.

No pronouncement as to costs.

SO ORDERED.<sup>[13]</sup>

### **The Contending Parties' Arguments Before the CA**

The accused-appellant challenged the above disquisition before the CA. He pointed out that according to AAA herself, Dr. Sumabat performed a physical examination on her on August 29, 2003, or three days after the alleged second rape incident occurred. However, this did not complement Dr. Sumabat's explanation that the healed lacerations at "3-6-9 o'clock" positions could have been inflicted at least seven days prior to the examination. The accused-appellant further claimed that it was unusual for a rape victim, whose virtue was allegedly at stake, not to have (a) shouted at all to repel the sexual advances, (b) tried to escape when she had the chance to do so, and (c) prevented at all cost that she be left alone in the company of her assailant.<sup>[14]</sup>

The OSG, on its part, argued that AAA's failure to shout during the rape incidents should not affect the credibility of her claims. AAA was then a minor, and understandably, she must have been overcome by feelings of helplessness especially since her assailant is her godfather and de facto guardian. AAA likewise cried during the trial dispelling insinuations that her testimony was rehearsed.<sup>[15]</sup>

## Ruling of the CA

On October 8, 2012, the CA rendered a Decision<sup>[16]</sup> affirming the accused-appellant's conviction and imposing upon him the penalty of *reclusion perpetua* for each of the two counts of rape. However, for each count, the CA reduced the award of (a) civil indemnity to P50,000.00, (b) moral damages to P50,000.00, and (c) exemplary damages to P30,000.00.

The CA declared that any inconsistency in AAA's testimony anent the date she was examined by Dr. Sumabat was not enough to destroy her credibility. As a child witness, she cannot be expected to perfectly remember all the details of her harrowing experience. Besides, Dr. Sumabat merely made nothing more but a rough estimate that AAA's hymenal lacerations could have been inflicted at least seven days prior to the examination. Citing *People v. Corpuz*,<sup>[17]</sup> the CA emphasized that AAA was intimidated by the accused-appellant and her alleged lack of resistance did not signify voluntariness or consent to the sexual advances.

Anent the appreciation of the aggravating circumstances alleged in the informations, the CA slightly differed from the RTC in the following wise:

In Our review of the penalty imposed on [accused-appellant], We have noted that the trial court considered the qualifying aggravating circumstance of relationship, since [accused-appellant] is supposedly the guardian of [AAA].

In ***People v. Flores***, the Supreme Court held that the guardian must be a person who has legal relationship with his ward. The court adhered to the theory that a guardian must be one who has been legally appointed.

In this case, however, We note with great significance that the fact of being a guardian was not alleged in the Informations as a qualifying aggravating circumstance. Instead, there was merely a stipulation during the pre-trial hearing that accused-appellant was the "godfather" of [AAA], without showing that accused-appellant was legally constituted in law as the "guardian" of [AAA]. On the other hand, the fact of minority of [AAA] has been proven by her birth certificate and confirmed by her physical appearance.

Consequently, on the first count of rape, We find the existence of the aggravating circumstances of minority of [AAA] and commission of the sexual abuse in an uninhabited place. On the second count of rape, We find the fact of minority of [AAA] as the sole aggravating circumstance. Both crimes are penalized by Reclusion Perpetua. However, We shall reduce the award of civil indemnity from P75,000.00 to P50,000.00 and moral damages from P75,000.00 to P50,000.00, for each count of rape since accused-appellant is only guilty of simple rape. On the other hand, the award of exemplary damages in the amount of P25,000.00 should be increased to P30,000.00, for each count of rape in line with the recent jurisprudence, to set an example for public good.<sup>[18]</sup> (Citations omitted)