

FIRST DIVISION

[G.R. No. 208469, August 13, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SAMUEL "TIW-TIW" SANICO, ACCUSED-APPELLANT.**

R E S O L U T I O N

REYES, J.:

For review^[1] is the Decision^[2] rendered by the Court of Appeals (CA) on November 19, 2012 in CA-G.R. CR-HC No. 00769-MIN affirming, but with modifications as to the penalties, damages and interests imposed, the conviction by the Regional Trial Court (RTC) of Butuan City, Branch 1,^[3] of Samuel "Tiw-Tiw" Sanico (accused-appellant) for one count of rape under paragraph 1(a) of Article 266-A^[4] of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353,^[5] and lascivious conduct under Article 336^[6] of the same code, in relation to R.A. No. 7610,^[7] otherwise known as "*The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.*"

Antecedents

Two separate Informations were filed against the accused-appellant before the RTC, viz:

In Criminal Case No. 12021 for Acts of Lasciviousness

That at more or less 1:00 P.M. of April 19, 2006 at XXX City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of AAA,^[8] a twelve (12) year [old] minor, by touching her breast against her will, to the damage and prejudice of the latter in such amount as may be proven in Court.

CONTRARY TO LAW: (Article 336 of the Revised Penal Code, as amended in relation to R.A. [No.] 7610)^[9] (Citation omitted)

In Criminal Case No. 12022 for Rape

That sometime in the year 2005 at XXX City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a twelve (12) year old minor, against her will.

CONTRARY TO LAW: (Article 266-A, par. (1)(a), in relation to Article 266-B, par. 6(10) of R.A. [No.] 8353 in relation to R[.]A[.] [No.] 7610)^[10]
(Citation omitted)

The accused-appellant went into hiding but was subsequently arrested in his hometown in Leyte on May 13, 2008. He was arraigned on August 26, 2008, during which he entered a not guilty plea.^[11]

During the pre-trial, the prosecution and the defense stipulated on the following: (a) the identity of the accused-appellant and the fact of his arrest in Leyte; (b) AAA was more than 12 but less than 13 years of age at the time the acts complained of were allegedly committed by the accused-appellant; and (c) the incident on April 19, 2006 occurred in AAA's residence.^[12]

In the joint trial that ensued, the prosecution offered the testimonies of AAA, her mother BBB, and Dr. Roslyn D. Orais (Dr. Orais), medico-legal officer of the National Bureau of Investigation, Caraga Region. On the other hand, the accused-appellant was the defense's lone witness.^[13]

Version of the Prosecution

As indicated in her birth certificate, AAA was born on June 14, 1993. Her mother BBB works as a cook, while her father is a "trisikad" driver. AAA was 12 years old when the acts complained of were allegedly committed by the accused-appellant, but was already 15 years of age at the time she testified in court.^[14]

The accused-appellant was a pig butcher and ice cream vendor. He and his children rented a room for about ten (10) to eleven (11) years in the house where AAA lives with her family. Thereafter, the accused-appellant's family moved to their own house built near AAA's residence.^[15]

AAA claimed that the accused-appellant raped her in 2005, but she could not recall the exact month and date. She remembered though that she was raped at around 2:00 p.m. while she was washing dishes in the kitchen. There was nobody else in the house except her and the accused-appellant. He approached and held her hands tightly. She boxed the accused-appellant, but he pushed her. Thereafter, he threatened to kill her if she would shout. Knowing that the accused-appellant was a pig butcher, AAA was overcome by fear. He then succeeded in removing her clothes and undergarments and pushing her against the wall. He took off his short pants and briefs and inserted his penis into her vagina for two to three minutes. She felt pain. The accused-appellant then pulled up his short pants and laid down in the sofa.^[16]

AAA alleged that she was again raped for six or seven times, but she endured the harrowing experiences in silence due to the accused-appellant's threat to kill her. She also dreaded the possibilities of quarrels and deaths, which would ensue if her parents find out.^[17]

On April 19, 2006, at around 1:00 p.m., AAA was napping in a room with her niece. AAA woke up when she felt that the accused-appellant was touching her. AAA rose and repeatedly boxed the accused-appellant, but the latter held her tightly, pulled up her clothes and mashed her breast. Her father, CCC, was just in another room at that time, but out of fear, AAA kept quiet. When the accused-appellant took off his short pants and inserted his penis into AAA's vagina, the latter resisted. Being merely built out of wood, the house shook, which caused CCC to wake up. CCC lost consciousness for a short period of time when he caught the accused-appellant performing lascivious acts on AAA. The accused-appellant then seized the opportunity to flee.^[18]

At around 4:00 p.m. on the same day, Dr. Orais performed a medico- genital examination on AAA and found the latter to have suffered from sexual abuse. AAA's hymen was "coaptated" or slightly open and bore "*old healed laceration at 3 and 9 o'clock positions*". The hymenal laceration was possibly caused by "*an injury secondary to intravaginal penetration by a blunt object*". No human spermatozoa was found in AAA's vagina. Dr. Orais, however, explained that even in the presence of seminal fluid, there are cases when no sperm can be found. Dr. Orais likewise noted no physical or extra-genital injuries on AAA, but found ample evidence of sexual intercourse having occurred more than one but less than four month/s ago. Dr. Orais also testified that AAA was at times uncooperative, timid, and emotionally restrained.^[19]

BBB testified that it was CCC who saw the accused-appellant touching AAA's breast. BBB sought payment of moral damages.^[20]

Version of the Defense

The accused-appellant was the lone witness for the defense. At the time he testified in court, he was 53 years old. He stated that for years, he had lived in the house of AAA's family, but was no longer a resident therein when the acts complained of were allegedly committed.^[21]

On April 19, 2006, the accused-appellant had a drinking spree with CCC in the latter's house lasting from 8:00 a.m. to 12:00 p.m. As the two were both drunk, the accused-appellant slept in the *sala* while CCC did so in his room. The accused-appellant woke up from slumber when AAA touched the former's pocket to search for money. She got some coins and bills. The accused-appellant, in turn, touched AAA's chest and asked the latter to remove her short pants. AAA complied. As the accused-appellant was touching AAA's breast, CCC woke up. Upon seeing what was taking place, CCC got a *bolo* to hack the accused-appellant, but the latter escaped.^[22]

The accused-appellant testified that he had never inserted his penis in AAA's vagina. He admitted touching AAA on April 19, 2006 but he did so only because the latter initiated it. He also claimed that he was very close to AAA and he treated her as if she were his own child.^[23]

The Ruling of the RTC

On October 13, 2009, the RTC rendered an Omnibus Judgment^[24] convicting the

accused-appellant of one count of rape and of acts of lasciviousness. The RTC found AAA's testimony of what had transpired as sincere and truthful, noting though that a specific allegation as to the exact date and month of the commission of rape in 2005 was absent. The trial court thus pointed out the settled doctrine that in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of rape, not the time of its commission,^[25] the latter not being an element of the crime.^[26] Further, the accused-appellant cannot ascribe any ill-motive against AAA which could have induced the latter to fabricate such grave charges. The accused-appellant's flight after he learned that charges were filed against him likewise worked to disfavor him. If he were indeed innocent, he would have stayed to vindicate himself from the accusations.^[27]

The dispositive portion of the RTC decision reads:

WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt in the offenses as charge[d], in criminal case no. 12022 for rape[,], he is sentenced to *reclusion perpetua*, to pay [AAA][,] through her father[,], the sum of Fifty Thousand Pesos ([P]50,000.00) as civil indemnity and another Fifty Thousand Pesos ([P]50,000.00) as moral damages. In criminal case no 12021 for acts of lasciviousness, he is sentenced to suffer imprisonment of 4 years, 2 months and 1 day to 6 years. He is further ordered to pay [AAA] the sum of Twenty Five Thousand Pesos ([P]25,000.00) as moral damages and another Twenty Five Thousand Pesos ([P]25,000.00) as exemplary damages.

He shall serve his sentence at Davao Prison and Penal Farms, Panabo City, Davao del Norte. In the service of his sentence[,], he shall be credited with the full time benefit of his preventive imprisonment provided he agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners[,], otherwise[,], if he does not[,], he shall be entitled with only four-fifths (4/5) of his preventive imprisonment pursuant to Article 29 as amended of the [RPC].

SO ORDERED.^[28]

The Parties' Arguments Before the CA

The accused-appellant challenged the above disquisition before the CA.^[29] He argued that while the time of the commission of the crime is not an essential element of rape, a complainant's inability to give the exact dates, during which she was allegedly raped, puts her credibility in question.^[30]

AAA alleged that she was raped on April 19, 2006, at around 1:00 p.m. However, Dr. Orais, who conducted a medical examination on AAA three hours after the incident, testified that human spermatozoa was absent in AAA's vagina and the hymenal lacerations found were possibly inflicted more than a month ago.^[31]

The accused-appellant admitted though that he could be held liable for acts of

lasciviousness for touching AAA's breast and asking her to remove her short pants.
[32]

The Office of the Solicitor General (OSG), on its part, sought the dismissal of the appeal.[33] It contended that the accused-appellant's denial of the charges against him cannot prevail over AAA's positive testimony. Further, the date of the commission of rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge thereon.[34] Such circumstance does not obtain in the case under review.[35]

The accused-appellant was also nonchalant in admitting that he touched AAA's breast and asked her to remove her short pants. The accused-appellant's behavior exhibited no less than his lewd designs on AAA.[36]

The Ruling of the CA

On November 19, 2012, the CA rendered the herein assailed decision,[37] the decretal portion of which states:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The October 13, 2009 Omnibus Judgment of the [RTC] of Butuan City, Branch 1, is hereby **AFFIRMED with MODIFICATION** as follows:

- 1) In Criminal Case No. 12021, [the accused-appellant] is sentenced to 8 years and 1 day of *prision mayor* as minimum to 17 years, 4 months and 1 day of *reclusion temporal* as maximum. The moral and exemplary damages of [P]25,000.00 each awarded by the court *a quo* are reduce[d] to [P]15,000.00 each. He is further ordered to pay civil indemnity of [P]20,000.00 and a fine of [P]15,000.00.
- 2) In Criminal Case No. 12022, being in accordance with the law and the evidence, [the accused-appellant] is sentenced to *reclusion perpetua*. In addition to the awards of civil indemnity of [P]50,000.00 and moral damages of [P]50,000.00, [the accused-appellant] is further ordered to pay AAA exemplary damages in the amount of [P]30,000.00.
- 3) [The accused-appellant] is further ordered to pay interest at the rate of twelve percent (12%) *per annum* on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.[38]

In additionally directing the payment of fine and civil indemnity, and modifying both the penalty imposed upon the accused-appellant and the award of damages to AAA as regards Criminal Case No. 12021 for lascivious conduct, the CA explained that: