

SECOND DIVISION

[G.R. No. 189297, June 03, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GUILLERMO LOMIQUE, ACCUSED-APPELLANT.**

D E C I S I O N

BRION, J.:

For review is the July 30, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03163 affirming the Judgment^[2] of the Regional Trial Court (RTC), Branch 94, Quezon City, finding accused-appellant Guillermo Lomique (appellant) guilty of seven counts of Rape by Sexual Intercourse, one count of Rape by Sexual Assault, and one count of Acts of Lasciviousness.

Factual Antecedents

Appellant was charged under separate Informations for 13 counts of Rape by Sexual Intercourse allegedly committed against his stepdaughter "AAA"^[3] on June 5, 1999 (Criminal Case No. Q-00-96389), February 11, 1999 (Criminal Case No. Q-00-96390), second week of January 1999 (Criminal Case No. Q-00-96391), last week of December 1998 (Criminal Case No. Q-00-96392), November 2, 1998 (Criminal Case No. Q-00-96393), October 24, 1998 (Criminal Case No. Q-00-96394), September 13, 1998 (Criminal Case No. Q-00-96395), April 27, 1998 (Criminal Case No. Q-00-96396), April 17, 1998 (Criminal Case No. Q-00-96397), January 2, 1998 (Criminal Case No. Q-00-96398), September 20, 1996 (Criminal Case No. Q-00-96399), March 17, 1999 (Criminal Case No. Q-00-96400), and September 16, 1996 (Criminal Case No. Q-00-96401).^[4] Except as to the aforementioned dates of occurrence and the age of "AAA" at the time of the commission of the crimes, the accusatory portions in the Informations are similarly worded as the Information in Criminal Case No. Q-00-96389 which reads:

The undersigned, upon prior sworn complaint of "AAA" accuses GUILLERMO LOMIQUE of the crime of RAPE (Paragraph 1 of Article 266-A of the Revised Penal Code as amended by RA 8353 in relation to Section 5 of RA 7610) committed as follows:

That on or about the 5th day of June 1999 in Quezon City, Philippines, the above-named accused with force and intimidation did then and there willfully, unlawfully and feloniously commit acts of sexual assault upon the person of one "AAA" his own stepdaughter a minor 14 years of age by then and there removing her shorts and inserting his penis inside her vagina and thereafter had carnal knowledge of her against her will and without her consent.

CONTRARY TO LAW.^[5]

In addition, appellant was also charged with Acts of Lasciviousness in relation to Section 5 of Republic Act (RA) No. 7610,^[6] as amended, in Criminal Case No. Q-00-96402, the accusatory portion of which reads:

The undersigned, upon prior sworn complaint of "AAA" accuses GUILLERMO LOMIQUE of the crime of ACTS OF LASCIVIOUSNESS IN RELATION TO SECTION 5 OF R.A. 7610, committed as follows:

That on or about the 8th da[y] of May 1993 in Quezon City, Philippines, the above-named accused with force and intimidation did then and there willfully, unlawfully and feloniously commit acts of lewdness upon the person of one "AAA" his own stepdaughter a minor 8 years of age by then and there caress[ing] her breast, and her vagina, smell[ing] her private parts and insert[ing] his finger inside her vagina, which are acts prejudicial to the child's psychological and emotional development, debase, demean and degrade the intrinsic worth and dignity of said "AAA" as a human being.

CONTRARY TO LAW.^[7]

At arraignment, appellant entered a plea of not guilty to all the Informations. Soon the cases were set for Pre-Trial where only the minority of "AAA" was stipulated upon. Accordingly, the joint trial on the merits ensued.

Version of the Prosecution

The CA summarized the evidence for the prosecution based on the Decision of the RTC and the records of the case as follows:

AAA was born on September 15, 1985 to BBB by her first husband. She was about eight (8) years old at the time Lomaque started abusing/molesting her.

The first act of molestation happened on May 8, 1993 when Lomaque asked AAA to remove his growing mustache and take out white hair from his head. Lomaque, while lying on AAA's lap, started to smell and sniff her private parts, and thereafter inserted his finger inside her vagina.

At that time, she did not understand what Lomaque did to her. But to avert any further incident, she decided to sleep more often in the house of her aunt DDD. When her mother, BBB, inquired why she often slept in her Aunt's house, AAA told her mother that accused-appellant touched her private parts. BBB confronted Lomaque and they quarreled. For a while, Lomaque stopped molesting her so AAA returned to their house to sleep there again. In the evening of September 16, 1996, while almost

everybody was asleep, AAA was awakened by Lomaque who embraced her and slowly removed her shorts, and immediately inserted his penis into her vagina. She was then only [11] years old.

On September 20, 1996, when everybody in the room was already asleep, Lomaque again embraced AAA, slowly removed her shorts, and against her will, inserted his penis into AAA's vagina while her back was against him.

On January 2, 1998, when BBB was in the hospital, Lomaque again sexually abused AAA, this time removing all the clothes of AAA, and thereafter inserting his penis into her vagina. AAA could not shout as Lomaque, with a gun, threatened to kill her and her mother if she reported the incident.

Again, on April 17, 1998, while everyone was watching the television, Lomaque positioned himself at the back of AAA, and pinned AAA's thigh with his own legs. Lomaque slowly removed AAA's shorts and inserted his penis into her vagina. AAA could not do anything as she recalled Lomaque's threat to kill her and her mother if she reported the matter to BBB.

On April 27, 1998, while they were watching TV in their house, Lomaque touched and held AAA's vagina. Again, she could not do anything as she was scared.

In the evening of September 13, 1998, accused-appellant again sexually abused AAA, while everyone was asleep. He laid beside AAA, embraced her, lowered her shorts, and then inserted his penis into her vagina.

Another incident happened on October 24, 1998. This time, while AAA was embracing her mother BBB apologizing for something she did earlier, Lomaque positioned himself at the back of AAA, and initially held BBB's breasts, he then lowered his hand towards AAA's waist, and slowly removed AAA's shorts. Lomaque then inserted his penis into AAA's vagina.

During the last week of December 1998, Lomaque, while clad only with towel, summoned AAA to go upstairs. He asked AAA to hold his penis, had it inserted into AAA's mouth, and also rubbed his penis against her lips.

On February 11, 1999, while AAA was about to sleep, Lomaque went on top of her, and inserted his penis into her vagina while kissing her.

AAA's harrowing experience with Lomaque continued and she eventually became pregnant. It was during the last week of November 1999, when Lomaque asked BBB to bring AAA to the doctor for medical check-up, that BBB discovered that AAA was pregnant.

BBB inquired who the father was and AAA told her that it was Lomaque, a matter which Lomaque admitted. However, when BBB became

hysterical, Lomaque retracted and concocted a story that somebody else caused the pregnancy of AAA.

After giving birth, AAA returned to their house. There she saw Lomaque kissing her younger sister, CCC. Afraid that CCC might suffer the same fate she had, she decided to file a complaint against Lomaque with the help of Bantay-Bata 163.

On June 19, 2000, AAA with her aunt DDD went to Bantay-Bata 163 to seek assistance. There, AAA disclosed to social worker Liwayway Ilao, what Lomaque did to her. Ilao conducted further interview and counseling on AAA and her sister CCC; submitted AAA for medico-legal examination; and assisted AAA in filing a complaint before the Women and Children Concern Office at Camp Crame, among others.

Dr. Jaime Rodrigo Leal ("Dr. Leal"), the medico-legal officer who conducted the physical examination on AAA, testified that AAA had an attenuated hymen and deep healed lacerations, indicating chronic penetration. While the same was consistent with vaginal delivery, Dr. Leal however explained that his findings validate the fact that AAA was indeed sexually abused several times, and that she gave birth on April 1, 2000.

[8]

Version of the Defense

Appellant denied his complicity in the crimes charged by alleging alibi. His testimony was synthesized by the CA in this wise:

Lomaque testified that he started to live with BBB in 1993, bringing with him his own set of children by his first marriage.

He denied that he sexually abused AAA, claiming that he could not have committed the crimes charged because as a bio-medical technician, he was deployed all over the country to repair hospital equipment. He offered several plane tickets in support of this allegation. These plane tickets were dated: June 2, 1992; February 21, 1994; March 5, 1994; August 14, 1994; August 25, 1994; November 9, 1994; November 27 (year illegible); and January 7, 1997. He likewise testified that his parents-in-law and sister-in-law were living with them.[9]

Ruling of the Regional Trial Court

After trial, the RTC found "AAA" to be a credible witness and rejected the defense of denial and alibi proffered by the appellant. Consequently, it rendered a Decision^[10] dated October 23, 2007 which declared appellant guilty of seven counts of rape by sexual intercourse (Criminal Case Nos. Q-00-96390, Q-00-96394, Q-00-96395, Q-00-96397, Q-00-96398, Q-00-96399 and Q-00-96401), one count of rape by sexual assault (Criminal Case No. Q-00-96392) and one count of Acts of Lasciviousness (Criminal Case No. Q-00-96402). Accordingly, the RTC sentenced appellant to

imprisonment and ordered him to pay damages, viz:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Guillermo Lomaque:

- 1) In Crim. Case No. Q-00-96389, **NOT GUILTY** on ground of reasonable doubt with costs *de-officio*.
- 2) In Crim. Case No. Q-00-96390, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party "AAA" the sum of P75,000; moral damages in the sum of P50,000 and to pay the costs.
- 3) In Crim. Case No. Q-00-96391, **NOT GUILTY** of the crime of Rape on ground of reasonable doubt.
- 4) In Crim. Case No. Q-00-96392, **GUILTY** beyond reasonable doubt and sentences accused with the indeterminate penalty ranging from FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* in its medium period as minimum to TEN (10) YEARS of *prision mayor* in its medium period as maximum.
- 5) In Crim. Case No. Q-00-96393, **NOT GUILTY** on ground of reasonable doubt with costs *de-officio*.
- 6) In Crim. Case No. Q-00-96394, **GUILTY** beyond reasonable doubt and sentences accused to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party ("AAA") the sum of P75,000; to pay moral damages in the sum of P50,000 and to pay the costs.
- 7) In Crim. Case No. Q-00-96395, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party ("AAA") the sum of P75,000; to pay moral damages in the sum of P50,000; and to pay the costs.
- 8) In Crim. Case No. Q-00-96396, **NOT GUILTY** on ground of reasonable doubt with costs *de-officio*.
- 9) In Crim. Case No. Q-00-96397, **GUILTY** beyond reasonable doubt and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnity the offended party ("AAA") the sum of P75,000; to pay moral damages in the sum of P50,000; and to pay the costs.
- 10) In Crim. Case No. Q-00-96398, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnify the offended party ("AAA") the sum of P75,000; to pay moral damages in the sum of P50,000; and to pay the costs.
- 11) In Crim. Case No. Q-00-96399, **GUILTY** beyond reasonable doubt of the crime of Rape and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; to indemnity the offended party ("AAA") the sum of P75,000; to pay moral damages in the sum of P50,000; and to pay the costs.
- 12) In Crim. Case No. Q-00-96400, **NOT GUILTY** on ground of