

THIRD DIVISION

[G.R. No. 192821, March 21, 2011]

PEOPLE OF THE PHILIPPINES, VS. APPELLEE, SIXTO PADUA Y FELOMINA, APPELLANT.

D E C I S I O N

BRION, J.:

We decide the appeal filed by appellant Sixto Padua y Felomina from the September 10, 2009 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CRHC No. 03023.

The Factual Antecedents

On June 20, 2001, the appellant was charged with rape before the Regional Trial Court (RTC), Branch 89, Quezon City,^[2] committed against his 6-year old niece AAA sometime in April 1991. The appellant pleaded not guilty on arraignment. In the trial that followed, AAA testified on the details of the crime.

Sometime in April 1991, between 1:00 and 2:00 p.m., AAA, then six years old, was playing at the balcony of their house in *Barangay* Payatas, Quezon City. BBB (AAA's mother) was downstairs cleaning the house, while AAA's sisters were outside the house.⁵ The appellant (*BBB's brother*) was watching TV. The appellant called AAA and told her to lie beside him.^[6] He then asked her to remove her shorts and underwear. He also removed his shorts, laid her down, and inserted his penis inside her vagina.^[7] AAA felt pain but she did not cry out. Thereafter, the appellant told her not to report the incident to her mother or to anyone else.^[8]

AAA did not tell anyone about the incident since she did not know that what had been done to her was wrong. AAA only realized that her sexual experience with her uncle was wrong when she was already 12 or 13 years old, or at about the time she was in Grade VI. She did not disclose the incident to anyone then as she was afraid.^[9] It was not until after her graduation from elementary school that she finally disclosed the incident to CCC (*AAA's older sister*). CCC, in turn, also revealed that a similar incident had happened to her when she was at about the same age as AAA when the latter's experience happened. AAA and CCC never before told their father about their experience because they feared for his health, but subsequently, the incident came to their father's knowledge after CCC had a bitter confrontation with him. Thereafter, AAA and her father went to the police station where she executed her sworn statement and underwent a medical examination that confirmed that she was no longer a virgin.^[11]

The appellant, interposing denial and alibi, claimed that he was in San Vicente, Bicol, sometime in April 1991.^[12]

The RTC Ruling

In its March 26, 2007 decision, the RTC found the appellant guilty of rape. It relied on AAA's clear, direct and positive testimony, and rejected the appellant's alibi for his failure to show that it was physically impossible for him to have committed the rape. It noted that AAA's delay in reporting the rape was not indicative of a fabricated charge, considering her young age and her family ties with the appellant; AAA only came to know that the sexual incident was wrong when she was in Grade VI, and she feared for her father's health should the latter learn of the incident. The RTC appreciated AAA's minority, noting that the appellant failed to rebut AAA's testimony that she was 6 years old when she was raped. With the abolition of the death penalty under Republic Act No. 9346,^[13] the RTC sentenced the appellant to *reclusion perpetua*. It also ordered the appellant to pay AAA P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P50,000.00 as exemplary damages.^[14]

The CA Ruling

On intermediate appellate review, the CA noted that AAA's minority cannot be appreciated as the prosecution failed to present the certificate of live birth or any other authentic document to prove the age of AAA at the time of the commission of the offense. It noted further that the appellant did not expressly admit AAA's age. Instead, the appellate court appreciated force and intimidation, noting that the appellant's relationship to AAA had been proven by his own admission. It stressed that in incestuous rape, the moral ascendancy of the accused over the victim takes the place of force and intimidation. Thus, it convicted the appellant of simple rape under Article 266-A(I) of the Revised Penal Code and sentenced him to *reclusion perpetua*, but reduced to P50,000.00 the civil indemnity to AAA.^[15]

From the CA, the case was elevated to us for final review.

Our Ruling

We affirm the appellant's conviction.

We find no reason to deviate from the findings of the RTC and the CA. Jurisprudence is replete with rulings that an appellant can justifiably be convicted of rape based solely on the credible testimony of the victim. We consider, too, that nothing in the records indicates to us that the RTC and the CA overlooked or failed to appreciate facts that, if considered, would change the outcome of the case.

We agree with the CA that the appellant cannot be held liable for qualified, much less statutory, rape; the prosecution failed to prove by *independent evidence* the age of AAA, much less the allegation that she was under the age of 12 when she was raped. The appellate court properly appreciated force and intimidation. In rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.^[16]

Thus, the CA properly convicted the appellant for simple rape whose penalty is