

## THIRD DIVISION

[ G.R. No. 183090, November 14, 2011 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BERNABE  
PANGILINAN Y CRISOSTOMO, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before us is an appeal filed by appellant Bernabe Pangilinan which seeks to reverse and set aside the Decision<sup>[1]</sup> dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00197. The CA decision affirmed the judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Tarlac City, Branch 63, convicting appellant of the crimes of rape under Article 266-A of the Revised Penal Code, as amended, and sexual abuse under Section 5 (b) of Republic Act (RA) No. 7610<sup>[3]</sup> with modification as to the amount of damages awarded to the offended party.

Consistent with our ruling in *People v. Cabalquinto*,<sup>[4]</sup> we withhold the real name of the victim and her immediate family members, as well as any information which tends to establish or compromise her identity. The initials AAA represent the victim, the initials BBB stand for her aunt, appellant's wife, and the initials CCC refer to one of her relatives.

On October 3, 2001, the prosecution filed two (2) Informations charging appellant of the crimes of Rape<sup>[5]</sup> and Child Sexual Abuse under Section 5 (b) of RA No. 7610. The Informations respectively read:

Criminal Case No. 11768

That on or about July 27, 2001, at around 10:00 o'clock in the evening at Brgy. Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with [his] stepdaughter AAA, a minor, 13 years of age, against her will and consent.

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

Criminal Case No. 11769

That on or about 1995 up to about June 2001, at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts

of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.

That accused is the stepfather of AAA, who was born on January 29, 1988.

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

Upon his arraignment on February 21, 2002,<sup>[8]</sup> appellant, duly assisted by counsel, entered a plea of "Not Guilty" in both cases.

Trial on the merits thereafter ensued.

The prosecution presented the testimonies of Dr. Marissa M. Mascarina, the attending physician, and the victim, AAA.

Dr. Mascarina testified that she examined AAA, as the latter was allegedly raped by appellant.<sup>[9]</sup> She made physical as well as internal examinations on AAA. Based on her examination, she issued a Medical Certificate,<sup>[10]</sup> which stated, among others, that there was no hymenal laceration.

AAA testified that she was born on January 20, 1988.<sup>[11]</sup> She had lived with her Aunt BBB, first cousin of her father, and her husband, herein appellant, since she was two years old until July 27, 2001.<sup>[12]</sup> At around 10 p.m. of July 27, 2001, while her aunt was working in Angeles, Pampanga, and she was watching television in their house, appellant arrived and ordered her to cook chicken adobo which she did. Suddenly, appellant approached her and pointed a samurai at her. Appellant then kissed her neck and mashed her breast.<sup>[13]</sup> It was not the first time that appellant did that to her.<sup>[14]</sup>

AAA further testified that she remembered three incidents wherein appellant abused her. The first time was when appellant kissed her and touched her private parts.<sup>[15]</sup> The second time was when appellant pointed a samurai at her, took her to a room and removed her clothes and kissed her on her lips and touched her private organ. He then laid on top of her and tried to insert his penis to her private organ. His organ touched her vagina; that she felt pain in her vagina but there was no blood.<sup>[16]</sup> And the third time was when appellant kissed her and mashed her breast.<sup>[17]</sup> She did not tell her aunt of appellant's sexual molestations, because he threatened to kill her and her aunt.<sup>[18]</sup> She intimated that her aunt BBB and appellant treated her like their own daughter.<sup>[19]</sup>

On redirect examination, AAA testified that appellant inserted his penis to her vagina and that it was painful when he did it.<sup>[20]</sup>

On the other hand, the defense presented appellant himself, his wife, BBB, and their two neighbors.

BBB testified that she and appellant have treated AAA as their real daughter by

providing her with all her needs for which reason her relatives envied AAA.<sup>[21]</sup> She was able to talk with AAA while the latter was in the custody of the Department of Social Welfare and Development (DSWD), Tarlac City, and AAA told her that it was her cousin CCC who molested her.<sup>[22]</sup> BBB intimated that her relatives were mad at appellant because he was jobless and she was the one working for her family.<sup>[23]</sup>

For his part, appellant denied the accusations that he raped or molested AAA. He testified that on July 27, 2001, he was at his neighbor's house dressing chickens. When he went home at around 10 p.m., AAA told him that CCC, a cousin, molested her.<sup>[24]</sup> Appellant and AAA were on their way to file a complaint against CCC when they met CCC's mother who forcibly took AAA by beating her with an umbrella.<sup>[25]</sup> Appellant insinuated that AAA was just forced by his wife's relatives to file the charges against him since they were against their relationship.<sup>[26]</sup>

Appellant's testimony was corroborated by his two neighbors.

On February 19, 2003, the RTC rendered its Judgment, the dispositive portion of which reads:

WHEREFORE, from the foregoing evidence, the Court hereby finds the accused Guilty Beyond Reasonable Doubt on both cases (Criminal Case No. 11768 and Criminal Case No. 11769) for Rape and Sexual Abuse, respectively, and he is hereby sentenced as follows:

I. Under Criminal Case No. 11768

1. to suffer the penalty of *Reclusion Perpetua*; and
2. to indemnify the private complainant in the amount of P50,000.00 as actual damages, P50,000.00 as moral damages, and P20,000.00 as fine to answer for the private complainant's rehabilitation at the DSWD, Tarlac City.

II. Under Criminal Case No. 11769

1. to suffer the penalty of imprisonment of six (6) months and one (1) day of *Prision Correccional* medium, as the minimum to seven (7) years of *Prision Mayor* minimum, as the maximum; and
2. to indemnify the private complainant in the amount of P30,000.00 as damages.

SO ORDERED.<sup>[27]</sup>

Appellant's motion for reconsideration was denied in an Order<sup>[28]</sup> dated March 19, 2003.

Appellant filed a Notice of Appeal.<sup>[29]</sup> On January 14, 2004, we accepted the appeal.<sup>[30]</sup> However, pursuant to the Court's ruling in *People v. Mateo*,<sup>[31]</sup> we transferred the case to the Court of Appeals.<sup>[32]</sup>

On January 25, 2008, the CA rendered its decision which affirmed the RTC Decision, finding the appellant guilty of the crimes charged, but modifying the award of damages, the dispositive portion of which reads:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the appealed Decision dated 19 February 2003 of Branch 63, Regional Trial Court (RTC), Tarlac City, Third Judicial Region, in Criminal Cases Nos. 11768 and 11769, finding the accused guilty beyond reasonable doubt in both cases imposing the sentence of *Reclusion Perpetua* for the crime of Rape and the penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY of *Prision Correccional* medium, as the minimum to SEVEN (7) YEARS of *Prision Mayor* minimum, as the maximum for the crime of Sexual Abuse, is hereby AFFIRMED with the following modifications as to the award of damages:

1. In Criminal Case No. 11768, to indemnify the offended party the amount of FIFTY THOUSAND PESOS (P50,000.00) as exemplary damages; civil indemnity of SEVENTY-FIVE THOUSAND PESOS (P75,000.00) and moral damages of SEVENTY-FIVE THOUSAND (P75,000.00), instead of FIFTY THOUSAND PESOS (P50,000.00); and
2. In Criminal Case No. 11769, to pay the offended party the amount of TWENTY-FIVE THOUSAND PESOS (P25,000.00) as exemplary damages.<sup>[33]</sup>

In so ruling, the CA found unmeritorious appellant's argument that the allegation of "on or about 1995 up to about June 2001 was unconscionably spacious which violated his right to be informed of the nature and cause of the accusation against him." The CA ruled that the precise time of the commission of the offense need not be alleged in the complaint or information unless time is an essential element of the crime charged which is not so in the crime of acts of lasciviousness; and that since appellant did not move for a bill of particulars or quashal of the Information, he could no longer question on appeal the alleged defect in the Information.

As to appellant's claim that there was no evidence showing that he had carnal knowledge of AAA on July 27, 2001, the CA found that AAA was only 14 years old and had been subjected to abuse by appellant since she was seven years old; thus, she could not remember the details and the dates when she was abused; however, it was established that she was raped which happened before the Information was filed. The findings of Dr. Mascarina that there was no hymenal laceration did not categorically discount the commission of rape and full penetration was not required to convict appellant for rape. The CA found no reason for AAA to fabricate lies as she considered appellant her father who treated her like his own daughter.

The CA did not give probative value to the alleged written statement of AAA filed with it which seemed to exonerate appellant from the offense charged against him.

A Notice of Appeal<sup>[34]</sup> was subsequently filed by appellant. In a Resolution<sup>[35]</sup> dated July 23, 2008, we accepted the appeal and ordered the parties to file their respective supplemental briefs if they so desire.

Appellee filed a Manifestation<sup>[36]</sup> to be excused from filing a supplemental brief as the brief filed with the CA had adequately addressed the issues and arguments raised in the appellant's brief dated June 20, 2005.

Appellant filed a Supplemental Brief<sup>[37]</sup> wherein he alleged that assuming appellant raped AAA, the RTC gravely erred in imposing the penalty of *reclusion perpetua*. He claims that he should have been prosecuted for rape under RA 7610 since AAA was already more than 12 years old on that fateful day, thus, the penalty should have been *reclusion temporal* in its medium period to *reclusion perpetua*.

In his Appellant's Brief, he presented the following assignment of errors, to wit:

## I

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF ACTS OF LASCIVIOUSNESS DESPITE THE FAILURE OF THE PROSECUTION TO ALLEGE AND ESTABLISH WITH PARTICULARITY THE DATE OF THE COMMISSION OF THE OFFENSE.

## II

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIMES CHARGED DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT. <sup>[38]</sup>

It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not. <sup>[39]</sup>

In this case, appellant was charged under two separate Informations for rape under Article 266-A of the Revised Penal Code and sexual abuse under Section 5 (b) of RA No. 7610, respectively. However, we find the Information in Criminal Case No. 11769 for sexual abuse to be void for being violative of appellant's constitutional right to be informed of the nature and cause of the accusation against him. We again quote the charging part of the Information for easy reference, thus:

That on or about 1995 up to about June 2001 at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd