

FIRST DIVISION

[G.R. No. 180914, November 24, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO DOMINGUEZ, JR., ALIAS "SANDY," ACCUSED-
APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

On appeal is the Decision^[1] dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02131 which affirmed with modifications the Decision^[2] dated February 6, 2006 of Branch 65 of the Regional Trial Court (RTC) of Bulan, Sorsogon, convicting accused-appellant Domingo Dominguez, Jr., also known as "Sandy," of three counts of rape and two counts of attempted rape of his minor daughter.

Consistent with our ruling in *People v. Cabalquinto*^[3] and *People v. Guillermo*,^[4] this Court withholds the real name of the private offended party and her immediate family members as well as such other personal circumstances or any other information tending to establish or compromise her identity. The initials AAA represent the private offended party, the initials BBB refer to her mother, and the initials CCC stand for one of her relatives.

Accused-appellant was indicted for four counts of rape and one count of attempted rape, all qualified by his relationship with and the minority of the private offended party. The criminal informations read:

Criminal Case No. 02-548 [Amended Information]

That on or about July 20, 2001 at more or less 7:00 o'clock in the evening, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.^[5]

Criminal Case No. 02-549 [Amended Information]

That on the 4th week of July 2001 at more or less 1:00 o'clock in the

afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.^[6]

Criminal Case No. 02-550 [Amended Information]

That in the second week of August 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.^[7]

Criminal Case No. 02-551 [Amended Information]

That in the second week of September 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, that is by taking advantage of his moral ascendancy being the father of the victim [AAA], a minor, 12 years of age, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said victim against her will and without her consent, to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.^[8]

Criminal Case No. 02-552

That on or about November 20, 2001 at more or less 1:00 o'clock in the afternoon, at barangay Anibong, municipality of Magallanes, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there, willfully, unlawfully and feloniously, commence the commission of the

crime of Rape directly by overt acts upon the person of [AAA], a minor, 12 years of age, through force and intimidation taking advantage of his moral ascendancy being the father, to wit: by undressing the victim, thereby removing all her clothing apparel with the intention of having carnal knowledge, against her will and without her consent, but said accused did not however perform all the acts of execution which should have produced the crime of rape, as a consequence, by reason of some causes or accident other than his own spontaneous desistance, that is because somebody saw them, and said acts produced psychological and emotional trauma to said [AAA], to her damage and prejudice.

The qualifying aggravating circumstances of minority and relationship are present considering that the victim is 12 years of age and the accused is the father.^[9]

Upon arraignment, accused-appellant pleaded not guilty to all charges. A pre-trial conference^[10] followed and, thereafter, the criminal charges were jointly tried.

The prosecution presented four witnesses, namely, the private offended party, AAA; ^[11] her mother, BBB; ^[12] her relative who claimed to be an eyewitness to the sexual abuse, CCC; ^[13] and the medico-legal who physically examined her for signs of sexual abuse, Dr. Irene V. Ella.^[14] The documentary exhibits of the prosecution consisted of the Medico-Legal Report^[15] dated November 23, 2001 issued by Dr. Ella; the Certificate of Live Birth of AAA^[16] issued by the Office of the Municipal Civil Registrar, Magallanes, Sorsogon; and the Marriage Contract of AAA's parents.^[17] The defense, on the other hand, presented the testimony of accused-appellant.^[18]

Based on the combined testimonies of the witnesses and documentary evidence for the prosecution, the RTC accounted the prosecution's version of the facts as follows:

The evidence for the prosecution shows and as narrated in open court by the victim herself [AAA]; that the first incident of rape happened before the fiesta of Magallanes which was in the month of July 2001. Her small siblings were already asleep and she was about to go to sleep also, when she noticed her father (the accused) already beside her. Her father (accused) undressed her while he also undressed himself, and as he was about to mount her for the purpose of raping her, her mother arrived and inquired why she was naked. Because of fear of bodily harm brought about by the threat coming from the accused who was then holding a bolo, the victim did not say anything. She positively identified her father (the accused) inside the courtroom when asked to do so by the public prosecutor. The accused failed to consummate the rape during the first incident.

The second rape happened after a week from the first attempt, which could be between the fourth week of July or first week of August 2001 because the victim stated that it was no longer in the month of July 2001. It happened in a coconut farm in Anibong, Magallanes, Sorsogon.

The victim was asked by her father to accompany him in getting coconut leaves because they are going to weave it in their house. When the two (2) of them reached the place, her father (accused) undressed her and thereafter undressed himself also and made her lie down then inserted his penis into her vagina. She felt weak and pain all over her body including her vagina which she felt to be swollen at that time. She tried to struggle but she was helpless, particularly so, that the accused was also armed with a bolo at that time. After the bestial act was consummated they proceeded home bringing with them the coconut leaves that they gathered. She did not tell anyone about the incident because of fear of the accused and the thought that they might not believe her.

The third incident of rape happened two (2) weeks after the second incident, which was sometime in the month of August 2001. While the fourth incident of rape happened three (3) weeks after the third incident which was sometime in the month of September 2001. The fifth and last incident of rape happened according to the victim sometime in the 20th of November 2001. All the 3rd, 4th and 5th incidents of rape happened in the same coconut farm although in the different places of the farm. The same pattern of execution was adopted by the accused. He would ask the victim to go with him to the coconut farm to gather coconut leaves, and once they reached the place the accused would undress the victim then undress himself also and have sexual intercourse with her against her will. The victim could not refuse or disobey the command of the accused (her father) because he will scold and threaten her with punishment if she would not go with him. She could not also tell her mother about it because of fear. At the time of the first and second rapes the victim was only 12 years old. She was already 13 years old when the third, fourth, and fifth incidents of rape happened. Her date of birth was January 3, 1989.

During the fifth incident of rape on November 20, 2001 the accused and the victim [were] again in the same coconut farm in order to get coconut leaves. Both of them were already naked and the accused was about to mount the victim when they were seen by prosecution eyewitness [CCC] who shouted at them, that's why the accused fled leaving the victim behind. Because of what happened the victim was able to gain enough courage to tell her mother and to report the incident to the barangay captain of their place, thus leading to the apprehension of the accused.

[19] (Citations omitted.)

The RTC pointed out that on cross-examination, AAA again narrated straightforwardly how, when, and where she was sexually abused by her own father:

On cross-examination the credibility of the victim was even enhanced by her consistent and very candid answers to the very important questions propounded on her by the defense counsel. This notwithstanding some

minor lapses on her part, which can be explained by her tender age and lack of exposure to a usually pressure packed court atmosphere. The minor-victim was consistent in her claim that accused Domingo Dominguez is her natural father; that she was raped by him; that nobody forced her to file these cases against her own father; that they are seven (7) children in the family; that the first attempted rape happened in the year 2001 before the fiesta in Magallanes at around 7:00 o'clock in the evening; their house is situated on a hill where there is no electricity and they are only using kerosene lamp in their house; there are no rooms in their house and usually sleep in one place; at the time of the first attempted rape she and her five small siblings together with her father were the only ones present in their house; her mother went to her lola's house in order to get a viand; while she was attending to her five small siblings making them sleep the accused undressed her; when her mother arrived she was already naked but her father (the accused) made an alibi that he was just dressing her up because they were going to the market; when her mother asked her about it she did not give any answer; nothing happened during that time because of the timely arrival of her mother; the first consummated rape (the second incident) happened in the coconut farm in Anibong, Magallanes, Sorsogon, which is far from their house at around 1:00 o'clock in the afternoon; it was her first sexual experience and her private part bled; she could not refuse to go with her father to the coconut plantation because of fear of punishment if she will not go with him, her mother could not go against her father; she did not tell her mother about the rape for fear that she might not believe her, because the culprit is her own father who is her own blood; during the second incident she threw her panty away because it was already stained with blood and just used her shorts; the third incident of rape (second consummated rape) happened in the same coconut plantation; the accused told her brother to fetch the carabao, when they were already alone the accused raped her and after he was through with her they gathered coconut leaves and when her brother together with the carabao arrived later, they loaded them on the carabao and proceeded home; during the 3rd incident there was no more bleeding of her vagina unlike the second she did not throw her panty after the rape, she used it again; she did not tell her mother, not even her friends nor her teacher nor her lola about the rape because of fear that they might laugh at her; the fourth incident of rape (3rd consummated rape) happened in the same coconut plantation under the same pattern of execution with the accused succeeding in inserting his penis into her vagina; the fifth and last incident of attempted rape happened on November 20, 2001 in the same coconut farm when [CCC] saw her and her father (accused) both naked; because of what happened the victim gained courage to open up to her lola and reported the incident to their barangay captain, knowing that [CCC] will support her accusation; that even if her father will be meted out the penalty of death she will not withdraw the case against her father and will insist in her accusation that she was raped by him.^[20] (Citation omitted.)

The RTC also summed up the corroborating evidence for the prosecution as follows: