

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 01070-MIN, December 09, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TITO AMOC Y MAMBATALAN, ACCUSED-APPELLANT.

D E C I S I O N

PEREZ, J.:

Accused-appellant Tito Amoc y Mambatalan (accused-appellant) appeals from the Judgment^[1] of the Regional Trial Court of Tagum City, Branch 2, dated 23 July 2012, finding him guilty beyond reasonable doubt of two counts of rape in *Criminal Cases No. 16705 and No. 16961*.

Accused-appellant was charged with two (2) counts of Rape in two separate Informations:

For Criminal Case No. 16705:

"That on or about July 12, 2009, in the Municipality of Talaingod, Province f Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA,^[2] his step-daughter, a thirteen (13) year old minor, against her will."^[3]

For Criminal Case No. 16961:

"That sometime in April 2009, in the Municipality of Talaingod, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, his step-daughter, a thirteen (13) year old minor, against her will."^[4]

During arraignment, accused-appellant pleaded "not guilty" to both accusations. Trial ensued thereafter.

The Facts

The prosecution presented three (3) witnesses, which include the minor private complainant AAA, her aunt CCC, and Dr. Maureen Dazo (Dr. Dazo).

AAA averred that at around 6:00 o'clock in the morning of April 2009, when she was thirteen (13) years of age, accused-appellant Amoc (Amoc) called her into the

bedroom of their house and undressed her. Amoc took off all her clothes, tied AAA's legs with a rope, undressed himself, and proceeded to have carnal knowledge of AAA. When AAA tried to shout, Amoc covered her mouth. AAA could not flee because her legs were tied. She was likewise petrified with fear because Amoc pointed a knife at her and tried to stab her.^[5] AAA could not tell her mother of what Amoc did to her then because he was always tailing her.^[6]

AAA further alleged that Amoc sexually abused her again on 12 July 2009. Amoc once again brought her inside the room, undressed her, tied her feet, and had carnal knowledge of her. AAA's resistance was futile in the face of Amoc's bestial desire to corrupt her. Amoc also warned her not to tell her aunt about the incident, otherwise the two of them will be incarcerated.^[7]

Prior to July 2009, AAA's mother BBB (BBB) had noticed that AAA was growing thin, and this worried her. BBB relayed her apprehensions to her sister CCC, a barangay health worker. On 13 June 2009, CCC went to BBB's house to check on AAA. Noticing that AAA's stomach had a slight bulge, she examined it with her hands and suspected that AAA was pregnant. After conducting a pregnancy test on her, it was confirmed that AAA was indeed pregnant.^[8]

BBB and CCC both interrogated AAA as to who was the father of the child she was carrying. Upon persistent interrogation of the two women, AAA divulged that Amoc had been raping her and that he is the father of her baby. AAA gave birth to a baby girl in December 2009.^[9]

AAA was brought to the Davao Regional Hospital on 4 July 2009 for medical examination. In the Medical Certificate issued by the aid hospital through Dr. Maureen Dazo (Dr. Dazo), AAA was found to have "Notching at 3:00, 6:00, 9:00 and 11:00 o'clock positions" and that "Pregnancy uterine, Unknown age of gestation, Not in labor, G1PO". Dr. Dazo confirmed these findings when she testified in court.^[10]

Appalled, BBB and CCC decided not to immediately disclose the incident to their relatives knowing that in the Ata-Manobo tribe, the same is taboo and the rule is that the offender must be killed. CCC wanted time to refer the matter to police authorities so that Amoc may be proceeded against in accordance with laws.^[11]

On 14 July 2009, the women brought the matter to the Women's Desk of the Talaingod Police Station, which investigated the matter and filed the appropriate complaint with the Prosecutor's Office of the Province of Davao del Norte.^[12]

For his defense, accused-appellant admitted that he had sexual congress with AAA but insisted that the same was consensual. Amoc claimed that it was an accepted practice among the Ata-Manobo, an indigenous cultural group, to take one's daughter as a second wife.^[13]

On 23 July 2012, the lower court rendered a Judgment^[14] finding the accused-appellant guilty beyond reasonable doubt of two (2) counts of rape. The dispositive portion of the Judgment reads:

WHEREFORE, by his own admission, there being proof beyond reasonable doubt, accused TITO AMOC Y MAMBATALAN is hereby found GUILTY of the rape of AAA as charged in both of the above-entitled cases and is:

1. Sentenced to suffer the penalty of reclusion perpetua for each count of rape; and
2. Likewise for each count of rape, he is ordered to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages.

Aggrieved, appellant raises before Us the following assignment of errors:

THE PROSECUTION FAILED TO PROVE THE ELEMENT OF FORCE AND INTIMIDATION; AND

APPELLANT'S ADMISSION OF CARNAL KNOWLEDGE WITH AAA DOES NOT AMOUNT TO RAPE.

The Court's Ruling

The appeal is without merit.

Rape through force and intimidation, established

Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

xxx

Appellant argues in the main that his sexual intercourse with AAA was with her consent, and no amount of force or intimidation was employed by him.

We are not convinced.

A careful scrutiny of the evidence on records would show that appellant employed force, threat and intimidation in carrying out his sexual advances upon the person of AAA.

Contrary to appellant's allegations that AAA did not offer any amount of resistance, AAA was actually constrained from doing the same because appellant tied her legs, went on top of her, and covered her mouth to prevent her from asking help.^[15] Appellant likewise verbally threatened her that she and her aunt will be incarcerated should she divulge her ordeal to her, and that he will be killed if she reports the incident.^[16] We agree with the Solicitor General's contention that the thought of a stepfather being incarcerated and the burden of carrying the guilt of knowing that

he may even be killed because you reported his misdoings were effective threats to seal AAA's lips and bear the repeated rape in silence.^[17] Appellant also pointed a knife at her neck and even attempted to stab AAA so she will yield to his demands.^[18]

Human experience will validate that it is plausible that a thirteen-year old girl like AAA, beset with such fragility and immaturity, can easily succumb to an aggressor's attack on her person, honor and dignity when faced with the foregoing circumstances. The fact that she tried to resist appellant's attack on her is well-supported by the evidence on record.

Even *assuming arguendo* that AAA failed to resist, the same does not necessarily amount to consent to appellant's criminal acts on her part, and is inconsequential in view of AAA's clear and positive testimony about the incident and the identity of her aggressor.

It bears stressing that lack of resistance is not an element of rape and the law does not impose on the prosecution the burden of establishing the same. Lack of physical resistance cannot be considered consent. Failing to resist the advances of her malefactor is not a manifestation of consent, but rather an indication of involuntary submission or helpless surrender to the inevitable.^[19]

Moreover, We accord credence to the trial court's ruling that even assuming that the force or intimidation employed by Amoc against AAA could not have been to such a degree that she could not have offered stiff resistance to it, the fact that appellant was exercising parental authority over AAA substitutes for intimidation, considering the moral ascendancy of Amoc over AAA. In *People v. Arpon y Juntilla*,^[20] the Supreme Court espoused that:

That the carnal knowledge in this case was committed through force, threat or intimidation need no longer be belabored upon. "[I]n rape committed by close kin, such as the victim's father, **step-father**, 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 and intimidation.** [Emphasis Supplied]

AAA's account on what appellant did to her was straightforward, candid and has the disturbing ring of sordid truth. Her account deserves full faith and credit. She vividly recounted how appellant forced himself on her and succeeded in inserting his penis into her vagina. We quote the pertinent portions of her testimony, to wit:

Q: After he called you, where did you go?

A: He was at home, he was calling me.

Q: After he called you, where did you go?

A: I went upstairs.

Q: Once you were already upstairs, what happened if any?

A: He undressed me.

Q: What were those clothes that were removed from your body?

A: He took off all my clothes.

Q: And after he undressed you, what else did he do?

A: He tied my legs.

Q: And after he tied your legs, what else did he do?

A: Then he inserted his penis into my vagina.

Q: Why did you not shout for help when he undressed you?

A: I attempted to shout but he covered my mouth.

Q: Can you recall if he also undressed himself?

A: Yes, he also undressed himself.

Q: While he was removing his clothes, why did you not run away?

A: I tried to run away but my legs were tied. xxx

Q: After he tied your feet and covered your mouth, what else did he do?

A: He executed the push and pull movement.

Q: What was your position when he executed the push and pull movement?

A: He was on top of me.

Q: And how about you, what was your position during that time?

A: I was laying on my back.

Q: How did accused insert his penis inside your vagina when your feet were tied?

A: He spread my legs.