

## FIRST DIVISION

[ G.R. No. 244609, September 08, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. XXX,<sup>[\*]</sup>  
ACCUSED-APPELLANT.**

**REYES, J. JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated October 8, 2018 of the Court of Appeals - Cebu City (CA) in CA-G.R. CEB CR-HC No. 02356, affirming with modification the Decision<sup>[2]</sup> dated July 11, 2016 of the Regional Trial Court (RTC), Branch 16, Naval, Biliran in Criminal Case No. N-2881.

In an Information dated September 13, 2012, XXX was charged with the crime of rape in relation to Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act. The Information reads:

That on or about the 8<sup>th</sup> day of May 2012, at around 1:00 o'clock early dawn, more or less, in x x x and within the jurisdiction of this Honorable Court, above-named accused, being the brother-in-law of AAA,<sup>[3]</sup> a 13-year old girl, actuated by lust and with evident premeditation, did then and there, willfully, unlawfully, and feloniously, undress said AAA and had carnal knowledge with said minor-victim, against the latter's will, to her damage and prejudice.

Contrary to law and with aggravating circumstance of minority.<sup>[4]</sup>

When arraigned on July 3, 2014, XXX entered a plea of not guilty to the crime charged.<sup>[5]</sup> Trial on the merits ensued.

At the time of the alleged commission of the crime, XXX and AAA were at the house of AAA's aunt. XXX is the live-in partner of AAA's sister.

### **Version of The Prosecution**

On May 8, 2012, at around 1:00 a.m., AAA and her two cousins were sleeping on the floor of the main sala of her aunt's house. She averred that she was dragged by XXX towards the place where their plates were placed. XXX undressed AAA, inserted his penis into her vagina and made a push and pull movement. She tried to shout but XXX covered her mouth. After satisfying himself, XXX threatened AAA that he would kill her mother if she tells anyone about the incident.<sup>[6]</sup> A few days after, AAA told her sister-in-law about her experience in the hands of XXX. Thereafter, she reported the rape incident to the police.<sup>[7]</sup>

On June 29, 2012, Dr. Fernando B. Montejo (Dr. Montejo), Municipal Health Officer

of the place where AAA resides, examined her and found that her vaginal orifice manifested signs that it had been penetrated.<sup>[8]</sup>

### **Version of the Defense**

XXX testified in his defense. He averred that on the date of the alleged rape incident, he and his live-in partner slept in a room while AAA, her parents, and her cousins slept in the sala of the house of AAA's aunt. He maintained that he has a good relationship with his live-in partner and AAA.<sup>[9]</sup>

### **The RTC Ruling**

On July 11, 2016, the RTC rendered a Decision finding XXX guilty of the crime charged, viz.:

WHEREFORE, judgment is hereby rendered finding [XXX] guilty beyond reasonable doubt of the crime of Rape in relation to R.A. 7610 and imposing upon him the penalty of Reclusion Perpetua. The accused is ordered to pay moral damages in the amount of P75,000.00 and exemplary damages of P50,000.00

SO ORDERED.<sup>[10]</sup>

The RTC rejected XXX's defense of denial in light of the prosecution's positive identification that it was him who raped AAA. Citing *People v. Espenilla*,<sup>[11]</sup> the court *a quo* stressed that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial if she was not in fact raped. It enunciated that by the quantum of evidence presented against XXX, the prosecution has overcome the presumption of his innocence and proved his guilt beyond reasonable doubt.

Aggrieved, XXX appealed his conviction.

### **The Court of Appeals Ruling**

In its Decision dated October 8, 2018, the CA-Cebu affirmed the RTC's ruling with modification by increasing the exemplary damages to P75,000.00 and ordering XXX to pay P75,000.00 as civil indemnity *ex delicto*. It found no cogent reason to deviate from the findings of the RTC regarding the credibility of AAA and the prosecution witnesses who testified in a straightforward and convincing manner about the victim's ravishment.<sup>[12]</sup> The appellate court clarified that the applicable law in the instant case is R.A. No. 8353, otherwise known as The Anti-Rape Law of 1997, and not R.A. No. 7610.<sup>[13]</sup>

Hence, the instant appeal.

### **The Court's Ruling**

The appeal is without merit.

On the basis of AAA's testimony, the RTC and the CA uniformly found that XXX had carnal knowledge of AAA against her will or without her consent. AAA testified in a clear, consistent, and categorical manner:

Q (Public Prosecutor): While you were in that house, what happened?

A [AAA]: During that time, my mother was not in the house, only the three of us, my cousins were sleeping, after that, I was dragged.

Q: You said you were dragged, who dragged you?

A: [XXX].

x x x x

Q: You said that you were dragged, in what part of the house were you brought by [XXX]?

A: Towards the place where the plates were placed.

Q: After you were brought to that portion of the house, what happened next?

A: He undressed me.

Q: After he undressed you, what happened next?

A: After that, he inserted his penis to my vagina and made a push and pull movement.

Q: Did you not shout?

A: I tried to shout but my mouth was covered by him.

Q: You said that he inserted his penis into your vagina, why did you know that his penis was inserted into your vagina?

A: I know it because I felt pain.

Q: You said that the accused made push and pull movement after he inserted his penis into your vagina, what happened next after he made that act?

A: After that, he told me that if ever I will tell anyone of what he did, he will kill my mother, so, I did not tell my mother.

Q: Going back to where you said he was making a push and pull movement while his penis was inserted into vagina, were (sic) not able to shout at that moment?

A: I was not able to shout, he was covering my mouth.

Q: Did you not try to resist from his aggression?

A: No, Sir, he is strong, I am overpowered by him.<sup>[14]</sup>

We see no reason to depart from the trial court's assessment of AAA's credibility, which was affirmed by the appellate court. AAA's recollection of her ordeal clearly established that XXX had carnal knowledge of her at the time when everyone in the house was in their deep slumber. XXX dragged AAA by her feet, pulled her to a solitary spot behind the television set, undressed her, and inserted his penis into her vagina despite her objection and resistance. It bears reiterating that the Court accords great respect and even confer finality to the findings of the trial court as to matters which are factual in nature as well as its assessment of the credibility of witnesses. The trial court's firsthand observation and direct estimation of the witnesses place it in a unique position to observe and weigh that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying.<sup>[15]</sup> Thus, when there is no clear showing that the trial court's factual findings were tainted with arbitrariness or that the trial court overlooked or misapplied relevant facts and circumstances, or inadequately calibrated the witnesses' credibility, the reviewing court is bound by its assessment,<sup>[16]</sup> as in this case.

Furthermore, AAA's narration as to the fact of sexual intercourse was corroborated by the medical certificate issued by Dr. Montejo indicating that the latter's "hymen [was] not appreciated" and that her "vaginal orifice was penetrated."<sup>[17]</sup> In his direct examination, Dr. Montejo testified:

COURT:

Q: When is the hymen intact?

A: It is untouched.

Q: Was there a laceration?

A: I did not see the hymen.

Q: No more hymen. In your opinion as an expert, what caused the loss of the hymen?

A: It was touched.

Q: One has sexual intercourse?

A: Yes. Sir.

Q: Here, the hymen was lacerated through sexual intercourse? A:  
Yes, Sir.<sup>[18]</sup>

In bidding for acquittal, XXX impugns AAA's credibility and questions her claim that she was dragged on her feet while she was sleeping and that she was only awakened when he penetrated her. XXX asserts that AAA should have been awakened when she was dragged or during the time when she felt her short pants and underwear were being removed.<sup>[19]</sup>

The argument fails to persuade.

The prosecution has sufficiently established the sexual congress between XXX and AAA against the latter's will. XXX pulled AAA away from where she was sleeping and, when he found a convenient spot to satisfy his lust, forced himself on her, covered her mouth and let her suffer in silence. Such fact cannot be negated by AAA's account of the events that transpired prior to the sexual attack which XXX finds incredible.

XXX contends that the victim's narration is unbelievable considering that in the normal course of things, AAA should have been awakened at the time she was dragged or when her shortpants and underwear were being removed. It is worthy to stress that AAA was attacked in the middle of the night while she was sleeping beside her two cousins. There is nothing absurd about the fact that AAA remained in slumber until the rape incident for XXX could not have carried out his sexual advances had he been unwary and reckless in pulling AAA out of their floor bed set up and awakened her at once. Furthermore, ordinary human experience would tell us that it is not impossible for a young child to not be awakened while being dragged because those who have children know that most young children, and even those in their pre-teens, can be transferred, moved, or even lifted from one place to another by their parents and can even be undressed and dressed up without waking up.

Suffice it to state that XXX's contention pertains to an insignificant detail which does not bear on the very fact of the commission of the offense. Neither does it render XXX's bestial act physically impossible nor inconceivable. For the gravamen of rape is sexual intercourse with a woman against her will or without her consent,<sup>[20]</sup> which was fully sustained by the evidence presented by the prosecution.

Moreover, the Court cannot concede to XXX's asseveration that the rape incident was improbable because other members of the household were present in the same room where the rape was perpetrated. It has been repeatedly announced that lust respects no time and place; rape defies constraint of time and space.<sup>[21]</sup> The abominable crime of rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is known to happen even in the most unlikely places. Hence, it is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed.<sup>[22]</sup>

In view thereof, the courts below correctly found XXX guilty of rape.

The RTC convicted XXX of rape in relation to R.A. 7610 but the CA, on appeal, modified the July 11, 2016 RTC Decision as to the damages awarded and the nomenclature of the offense and convicted XXX of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by R.A. No. 8353.

The Court agrees with the CA that all the elements for the crime of rape under Article 266-A (1) are extant in this case, to wit: (1) the male offender had carnal knowledge of a woman; and (2) he accomplished the said act through force, threat