

# FIRST DIVISION

[ G.R. No. 232308, October 07, 2020 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. XXX<sup>[1]</sup>,  
ACCUSED-APPELLANT.**

## D E C I S I O N

**LAZARO-JAVIER, J.:**

### The Case

This appeal<sup>[2]</sup> seeks to reverse and set aside the Decision<sup>[3]</sup> dated June 22, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06146 which affirmed, with modification the trial court's verdict of conviction<sup>[4]</sup> against appellant XXX for qualified rape. Its dispositive portion reads:

**WHEREFORE**, the decision dated April 11, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 4 (RTC) in Criminal Case No. 12711 is AFFIRMED with MODIFICATION in that accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of rape defined under Article 266-A No. 1(a) and penalized under the first paragraph of Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7610. The award of Seventy-five Thousand Pesos (P75,000.00) as civil indemnity, Thirty Thousand Pesos (P30,000.00) as exemplary damages and Seventy-five Thousand Pesos (P75,000.00) as moral damages is affirmed. Accused-appellant is ordered to pay the victim interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

**SO ORDERED.**<sup>[5]</sup>

### The Information

Appellant was charged with qualified rape under the following Information, *viz.*:

The undersigned City Prosecutor of Tuguegarao City accuses [XXX] for the crime of RAPE defined and penalized under Article 266-A No. 1(a) in relation to Article 266-B, 6th paragraph of the Revised Penal Code as amended by Republic Act 8353 in relation to R.A. 7610, committed as follows:

That on August 4, 2009, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused [XXX], invited the private complainant [AAA]<sup>[6]</sup> to go upstairs of his house to choose some package that was sent by his wife from Singapore, to which the private

complainant politely acceded; that when the private complainant was already choosing some packages, the accused, with lewd design, and by means of force, threat and intimidation, did then and there, willfully, unlawfully and feloniously lift the uniform of the private complainant, lay her on the floor, and despite her resistance and struggle, he did lie and succeed in having sexual intercourse with the private complainant, against her will[,] that due to the incident, the accused was brought to the Cagayan Police Provincial Office, Camp Triso H. Gador, Tuguegarao City for proper disposition.

That the acts of the accused were aggravated by the fact that the private complainant was a [17-year-old] minor at the time of the incident, and that accused is the uncle of the private complainant, he being the first cousin of the father of the private complainant.

That the acts of the accused debased, degraded, and demeaned the intrinsic worth and dignity of the private complainant and which is prejudicial to her normal growth and development as a minor.

CONTRARY TO LAW.<sup>[7]</sup>

The case was raffled to the Regional Trial Court - Tuguegarao City, Cagayan, Branch 4 and docketed as Criminal Case No. 12711.

### **The Proceedings Before the Trial Court**

On arraignment, appellant pleaded "not guilty."<sup>[8]</sup>

During the trial, complainant AAA, her mother and her aunt, and Dr. Marriane Rowena Diasen (Dr. Diasen) testified for the prosecution while appellant alone testified for the defense.

The prosecution too presented in evidence complainant's sworn statement, joint affidavit of SPO2 William M. Guzman (SPO2 Guzman) and PO2 Robert Rivero (PO2 Rivero), complainant's mother's affidavit, complainant's certificate of live birth, and complainant's medico-legal certificate.<sup>[9]</sup>

### **The Prosecution's Version**

**Complainant** testified that she was born on May 3, 1992. Appellant is her uncle, being her father's first cousin. Appellant lives in Cataggaman Pardo, which is only two (2) streets or two to three (3) minute walk away from her house.<sup>[10]</sup>

On August 4, 2009, around 1 o'clock in the afternoon, she went to the house of her cousin in Cataggaman Pardo, but the latter was not around. She proceeded to her grandfather's house located in the same barangay, but no one was there either. She then decided to take a rest inside appellant's tricycle parked in front of his house, near her grandfather's house.<sup>[11]</sup>

Appellant later arrived from a drinking spree and invited her into his house to choose some clothes sent by his wife from Singapore. She obliged and went upstairs for the clothes. As she was sorting through them, appellant lifted her skirt and embraced her from behind. She tried to shout but appellant inserted his fingers into her mouth. Appellant forced her to lie down on the floor, undressed her, and kissed her lips, neck, and vagina. Appellant then forcefully inserted his penis into her vagina, which caused her pain.<sup>[12]</sup> He told her he would only remove his penis after he shall have already ejaculated.<sup>[13]</sup> She did not shout anymore because appellant told her he was ready to go to jail and even die with her. Each time she tried to get up and run away, appellant pulled her feet to prevent her from escaping.<sup>[14]</sup>

After ravishing her, appellant told her to take a bath, change her clothes, and go home. Crying, she headed straight to her grandfather's house but still no one was there. She proceeded to the school of her aunt and told the latter she wanted to commit suicide because appellant had raped her. She was scared to go home as appellant might rape her again since he earlier told her to come back in the evening. She, thus, spent the night in a boarding house in Caritan, Tuguegarao City.<sup>[15]</sup>

**Complainant's mother** testified that on August 4, 2009, she got home from work around 7 o'clock in the evening. As complainant was still not home, she went to Cataggaman Pardo to look for her, but she did not find her there. The next day, she saw complainant crying in front of Otto Shoe Department Store in Centro, Tuguegarao. Complainant told her that appellant raped her and she was scared of him. They went to the Provincial Philippine Command to report the rape. Thereafter, they proceeded to Cagayan Valley Medical Center (CVMC), where complainant underwent a medico-legal examination.<sup>[16]</sup>

**Complainant's aunt** testified that on August 4, 2009, complainant sent her a text message saying she had a problem. During her break around 2:30 o'clock in the afternoon, she waited for complainant in front of her school. Complainant came to her crying. Complainant told her that appellant raped her and she wanted to commit suicide.

**Dr. Diasen** testified that she examined complainant. She found multiple fresh lacerations, abrasions, and some blood stains in and around complainant's hymenal and peri-hymenal area which strongly indicated that a sexual incident occurred within twenty-four (24) hours prior to the examination.<sup>[17]</sup> She testified that her findings supported complainant's revelation that she had been sexually abused the day before the physical examination.<sup>[18]</sup>

### **The Defense's Version**

Appellant denied the charge. He testified that in the morning of August 4, 2009, he and his two (2) children were cleaning their house while their neighbors were preparing food for the barangay fiesta.<sup>[19]</sup> In the afternoon, he went for a drinking spree with his friends Angel Pattad, Jesus Bacud, Nestor Olivo, Rogelio Latta, Eusebio Chato and Ninoy Bucayu in his neighbor's house, about thirty (30) to forty (40) meters away from his house. He did not see complainant that day.<sup>[20]</sup>

On cross, appellant testified that he left his house as early as 6:30 o'clock in the morning when his friend picked him up for a drinking spree in their neighbor's house. He stayed there until noon time, then returned home to check on his two (2) children.<sup>[21]</sup> He was quite close to complainant's father. He, complainant, and her father had no ill-feelings against each other.<sup>[22]</sup>

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

By Decision dated April 11, 2013,<sup>[23]</sup> the trial court convicted appellant of the offense charged, *i.e.*, rape, qualified by minority and relationship under Article 266-A No. 1(a) in relation to Article 266-B 6th paragraph of the RPC, as amended. It gave greater weight to complainant's positive testimony over appellant's denial and alibi. It ruled that the presence of other people in the crime scene did not negate the commission of rape. Thus:

From the evidence on hand, this court is convinced that the accused [XXX] raped [AAA] as stated in the information.

XXX    XXX    XXX

**WHEREFORE**, PREMISES CONSIDERED, finding accused **XXX "GUILTY"** beyond reasonable doubt for the crime of RAPE defined and penalized under Article 266-A No. 1(a) in relation to Article 266-B, 6th paragraph of the Revised Penal Code as amended by Republic Act 8353, in relation to R.A. No. 7610, this Court hereby sentences him to reclusion perpetua and to suffer the accessory penalties provided by law, particularly Article 41 of the Revised Penal Code. For the civil liability, he is condemned to pay the amount of P75,000.00 as actual, P30,000.00 as exemplary damages and P75,000.00 as moral damages.

The accused who is a detained prisoner is hereby credited in full of the period of his preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

SO DECIDED.<sup>[24]</sup>

### **The Proceedings before the Court of Appeals**

On appeal, appellant faulted the trial court for finding him guilty of qualified rape despite the prosecution's purported failure to prove his guilt beyond reasonable doubt and for appreciating the aggravating circumstance of minority, albeit without competent proof thereof. Appellant essentially argued: (1) the conflicting factual narration of complainant rendered her credibility questionable. In her sworn statement, complainant alleged that his father heard her pleas and went upstairs when he was molesting her. But at the trial, complainant testified that no one else was present in his house; and (2) a mere photocopy of complainant's certificate of live birth was not sufficient to establish her minority.<sup>[25]</sup>

On the other hand, the Office of the Solicitor General (OSG)<sup>[26]</sup> maintained that the prosecution was able to establish appellant's guilt beyond reasonable doubt. Too, the trial court did not err in admitting in evidence a photocopy of complainant's

certificate of live birth to establish the aggravating circumstance of minority.<sup>[27]</sup>

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

In its assailed Decision dated June 22, 2016,<sup>[28]</sup> the Court of Appeals affirmed, with modification. It ruled that appellant's conviction ought to be for simple rape only instead of qualified rape. It explained that paragraph 6 of Article 266-B of the Revised Penal Code (RPC) cannot be applied to qualify the rape because the relationship between appellant and complainant is beyond the third civil degree. Thus:

Based on the foregoing discussion, this Court affirms the conviction of accused-appellant of rape under Article 266-A No. 1(a) of the Revised Penal Code, as amended by R.A. 8353, in relation to R.A. No. 7610. However, this Court finds that the dispositive portion of the RTC's decision, which includes the application of the 6th paragraph of Article 266-B, should be modified. The aggravating circumstance of relationship alleged in the information cannot be appreciated because accused-appellant is the first cousin of AAA's father. The relationship between AAA and accused-appellant is beyond the 3rd civil degree of relationship that is considered under No. 1 of the 6th paragraph of Article 266-B. Nevertheless, this Court affirms the penalty of *reclusion perpetua* imposed upon accused-appellant pursuant to Article 266-B, paragraph 1 of the Revised Penal Code, with the accessory penalties provided by law.

xxx    xxx    xxx

**WHEREFORE**, the Decision dated April 11, 2013 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 4 (RTC) in Criminal Case No. 12711 is AFFIRMED with MODIFICATION in that accused-appellant [XXX] is found GUILTY beyond reasonable doubt of the crime of rape defined under Article 266-A No. 1(a) and penalized under the first paragraph of Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7610. The award of Seventy-five Thousand Pesos (P75,000.00) as civil indemnity, Thirty Thousand Pesos (P30,000.00) as exemplary damages and Seventy-five Thousand Pesos (P75,000.00) as moral damages is affirmed. Accused-appellant is ordered to pay the victim interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

**SO ORDERED.**<sup>[29]</sup>

### **The Present Appeal**

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with the Court's Resolution<sup>[30]</sup> dated October 2, 2017, both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.<sup>[31]</sup>

### **Issue**