

## THIRD DIVISION

[ G.R. No. 238839, February 27, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANTHONY MABALO Y BACANI, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

This is an appeal of the Decision<sup>[1]</sup> dated January 26, 2018 of the Court of Appeals (CA ) affirming the Judgment<sup>[2]</sup> dated 5, 2016 of the Regional Trial Court (RTC), ██████████ Branch 9, City of ██████████ in Criminal Case No. 08-262219, which found Anthony Mabalo y Bacani guilty beyond reasonable doubt of Simple Rape under Article 266-A, par. I(a) of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

The facts follow.

Private complainant, AAA<sup>[3]</sup> was allegedly 14 years old when the incident and lived with her family at a two-storey house located at ██████████, in the City of ██████████. The house had three (3) rooms on the first floor which were occupied by AAA, her parents, appellant and his wife, and another boarder. AAA stayed in one of the two rooms on the second floor.

Around 12:30 a.m. of June 24, 2008, appellant arrived at the house and went to his room. Meanwhile, AAA was alone in the living room watching television. At that time, appellant's wife left the former two days earlier after they quarreled. At 2:30 a.m., AAA noticed appellant coming out of his room and was surprised when appellant suddenly approached her and held her right thigh with his left hand. Appellant proceeded to push AAA on the floor on a lying position and covered her mouth with his left hand, while using his right hand to pull down his pants and underwear. After appellant was able to expose his penis, he lifted his hips, opened her legs and inserted his manhood into her vagina. AAA felt pain in her abdomen, while appellant made two (2) pumping motions before he ejaculated. AAA attempted to struggle against appellant but her asthma made her weak. Thereafter, appellant explicitly told AAA not to tell anyone about what happened between them.

A few hours after the incident, AAA told her mother while she was visiting the latter's workplace about what happened between her and appellant. Afterwards, AAA and her mother went to the ██████████ Police Station and executed a sworn statement. AAA was then given a general physical examination and an anogenital examination at the Philippine General Hospital. The Final Medico-legal Report yielded the following findings: *"anogenital findings are diagnostic of blunt force or penetrating trauma."*

On the same date, around 1:00 p.m., appellant was arrested.

Hence, an Information was filed against appellant for the crime of Rape, in relation to R.A. No. 7610 which reads as follows:

That on or about June 24, 2008, in the City of ██████████, Philippines, the said accused, did then and there[,] willfully, unlawfully, and feloniously, by means of force, violence and intimidation have (sic) carnal knowledge with said AAA, a minor, 14 years old, to wit: by then and there touching her thigh, forcibly holding her hands with his left arm, covering her mouth using his left hand, using his right hand on (sic) removing her short (sic) and pant (sic), kissing her neck, inserting his penis to the vagina of said AAA, succeeding in having carnal knowledge with her, against her will and consent, thereby gravely endangering her normal growth and development and to the damage and prejudice of said AAA.

Contrary to law.<sup>[4]</sup>

During his arraignment, appellant, without the assistance of a counsel and after manifesting his willingness and readiness to be arraigned, entered a plea of not guilty.

After pre-trial, the trial on the merits ensued.

The prosecution presented the testimonies of AAA, SPO1 Solomon Santos, SPO1 Napoleon Reyes, and Dr. Merle Tan.

Appellant, on the other hand, denied raping AAA. In his testimony, he claimed that at 3:00 a.m. of June 24, 2008, he was along ██████████ selling breakfast meals, soap, bread, and coffee. According to him, while he was working, he was in the company of his relatives. He was shocked to learn that he was being accused of raping AAA and could not think of any reason why he was implicated in the said crime. He only learned of such accusation when he was invited to the *barangay* hall where he was confronted by AAA's mother.

On September 5, 2016, the RTC rendered its judgment finding appellant guilty beyond reasonable doubt of the crime charged against him. The dispositive portion of the RTC's decision reads, as follows:

WHEREFORE, accused ANTHONY MABALO y BACANI is hereby found GUILTY beyond reasonable doubt of RAPE under Article 266-A paragraph I(a) of the Revised Penal Code. in relation to Republic Act No. 7610. He is sentenced to suffer the penalty of RECLUSION PERPETUA, and is ORDERED to pay the victim (75,000.00) as civil indemnity, (75,000.00) as moral damages, and P75,000.00 as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

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

Appellant elevated the case to the CA, and on January 26, 2018, the appellate court

dismissed appellant's appeal and found appellant guilty beyond reasonable doubt of the crime of Simple Rape, in a decision which has the following as its dispositive portion:

WHEREFORE, based on the foregoing, the Judgment dated 5 September 2016 of the Regional Trial Court, ██████████ in Crim. Case No. 08-262219 is hereby AFFIRMED *in toto*.

SO ORDERED.<sup>[6]</sup>

The CA ruled that, even though the prosecution failed to prove that AAA was a minor at the time the incident took place, appellant may still be convicted of simple rape as all the elements of the said crime have been proven beyond reasonable doubt.

Thus, appellant comes to this Court for the resolution of his appeal. According to appellant, the trial court erred in relying on AAA's testimony because it is not credible. Appellant also argues that he did not employ force, intimidation or violence upon AAA. Another contention raised by appellant is that the sexual organ of AAA was found negative for spermatozoa. Lastly, appellant claims that the prosecution failed to establish AAA's minority.

The appeal has no merit.

In this case, the RTC found appellant guilty beyond reasonable doubt of the crime of Rape in relation to R.A. No. 7610. On appeal, the CA found him guilty of Simple Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. This Court, in *People v. Joel Jaime*,<sup>[7]</sup> expounded on the difference between simple rape under Art. 266- A, par. 1(a) of the RPC and that of the provisions of R.A. 7610, thus:

Under Article 266-A, paragraph 1 of the Revised Penal Code, the crime of rape is committed when a man shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

On the other hand, Section 5(b), Article III of Republic Act No. 7610 provides:

Section 5. *Child Prostitution and Other Sexual Abuse.*- Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in

prostitution and other sexual abuse.

x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

x x x x

The essential elements of Section 5(b) are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age.[10] The imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

In *People v. Abay*,<sup>[8]</sup> the RTC found the accused "guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of R.A. No. 7610" and imposed upon him the death penalty; although, on appeal, the CA found the accused guilty only of simple rape and reduced the penalty imposed to *reclusion perpetua*. The Court instructs that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610, or rape under Article 266-A (except paragraph 1(d)) of the Revised Penal Code; but, he cannot be accused of both crimes. Otherwise, his right against double jeopardy will be prejudiced. Neither can these two (2) crimes be complexed. The Court's disquisition in the Abay case reads:

Under Section 5(b), Article III of RA 7610 in relation to RA 8353, of the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot

be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes, a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense by a special law.

Although the Information alleged that AAA was 14 years old at the time of the incident, no proof was presented to attest the truth of such statement. In *People v. Pruna*,<sup>[9]</sup> this Court laid down the guidelines in determining the age of the victim:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
  - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
  - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
  - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
6. The trial court should always make a categorical finding as to the age of the victim.