

# FIRST DIVISION

[ G.R. No. 231358, July 08, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
ERNESTO AVELINO, JR. Y GRACILLIAN,<sup>[\*]</sup> ACCUSED-APPELLANT.**

## D E C I S I O N

**DEL CASTILLO, J.:**

The appellant Ernesto Avelino, Jr. y Gracillan assails the August 31, 2016 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R CR HC No. 07543 which affirmed with modification the May 28, 2015 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Caloocan City, Branch 131, finding him guilty beyond reasonable doubt of rape.

### ***Factual Antecedents***

Appellant was criminally charge rape in relation to Republic Act (RA) No. 7610, in an Information which states:

That sometime in May 2006 in Caloocan City, M.M.[,] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threats[,], and intimidation, did then and there willfully, unlawfully[,], and feloniously lie and have carnal knowledge of one AAA,<sup>[3]</sup> a mental retardate, a minor and 15 years of age, against her will and without her consent.

CONTRARY TO LAW.<sup>[4]</sup>

Appellant pleaded not guilty to the charge of rape during his arraignment held on September 5, 2007.<sup>[5]</sup>

At the pre-trial, the prosecution and the defense stipulated: (1) the jurisdiction of the trial court to try the case; (2) the identity of the appellant as charged in the Information; (3) that the victim was a minor, subject to presentation of the birth certificate; and (4) the existence of the medico-legal certificate.<sup>[6]</sup>

### ***Version of the Prosecution***

The prosecution presented the testimonies of AAA and Police Chief Inspector Jesille Cui Baluyot (PCI Baluyot) of the Philippine National Police (PNP) Crime Laboratory at Camp Crame, Quezon City. The prosecution's version of the rape incident is, as follows:

AAA narrated that she and her family had been renting a house from appellant's father since May 2006, which house was adjacent to the house where appellant and his family were staying.<sup>[7]</sup> Sometime in May 2006, AAA was on the second floor of appellant's house putting the latter's son to sleep.<sup>[8]</sup> After appellant's son had

already fallen asleep, AAA decided to leave but she was prevented by appellant, who was armed with a knife. Appellant threatened AAA that he would kill "all" of them, presumably referring to AAA's family.<sup>[9]</sup>

AAA testified that while poking a knife at her, appellant told her to lie down and thereafter undressed her. She resisted but appellant went on undressing her, after which he removed his own shorts and briefs. Appellant then went on top of AAA and inserted his penis into her vagina. After the sexual intercourse, appellant told AAA, while poking a knife at her, not to tell her parents about what had happened.<sup>[10]</sup>

AAA narrated that it was only when she and her family had already transferred to another house and when she became pregnant that her family learned about the rape incident. Thereafter, AAA and her family reported the incident to the police, which led to the filing of the complaint for rape against appellant.<sup>[11]</sup>

On September 30, 2006, AAA had an anogenital examination at the PNP Crime Laboratory in Camp Crame, Quezon City. Police Senior Inspector Edilberto S. Antonio (PSI Antonio), in his Medico-Legal Report No. R06-1894, found clear evidence of blunt force or penetrating trauma. PSI Antonio likewise found that AAA's hymen had a shallow healed laceration. During trial, PCI Baluyot testified on the findings of PSI Antonio, as the latter was no longer connected with the PNP Crime Laboratory in Camp Crame. In her testimony, PCI Baluyot categorically stated that the shallow healed laceration in AAA's hymen, as indicated in Medico-Legal Report No. R06-1894, could have been caused by a blunt penetrating trauma, such as an erect penis.<sup>[12]</sup>

### ***Version of the Defense***

As set forth in his Accused-Appellant's Brief,<sup>[13]</sup> appellant denied that he personally knew AAA. While he acknowledged that AAA's family rented the adjacent house owned by his father, appellant claimed that he lived with his own family in a two-storey house. Appellant averred that his wife took care of their two children, ages five and two, while he was at work. He strongly denied that he hired AAA to take care of his children. He insisted that he did not know how long AAA and her family had been renting their house because it was his father who had dealt with them with respect to the lease. On the day of the alleged rape, he claimed that neither he nor his family left their house. He did not know of any reason why AAA filed a rape case against him.

Appellant's father corroborated his son's testimony. According to appellant's father, he lived with the appellant and the latter's family, while AAA and her family stayed at the adjacent house which he owned and rented out to AAA's family for P1,500.00 per month. Appellant's father likewise declared that, whenever he or the appellant would go out of the house, there would always be someone left to look after the appellant's two children.

### ***Ruling of the Regional Trial Court***

On May 28, 2015, the RTC of Caloocan City, Branch 131, found that the prosecution had successfully discharged the burden of proving that appellant did in fact rape AAA. It held that all the elements of the crime had been duly established. The RTC upheld the credible and positive declaration of the victim as against the weak

defense of alibi and denial by the appellant. The dispositive portion of the Decision reads:

WHEREFORE, accused ERNESTO AVELINO, JR. y GRACILLAN, is found GUILTY beyond reasonable doubt for the crime of Rape defined and punishable under Article 266-A paragraph I in relation to Article 266-B par. 1 of the Revised Penal Code, as amended by R.A. 8353 and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

Likewise, he is ordered to pay complainant civil indemnity in the amount of P50,000.00, moral damages of P50,000.00, and P50,000.00 as and by way of exemplary damages.

SO ORDERED.<sup>[14]</sup>

From this judgment, appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

In its August 31, 2016 Decision, the CA affirmed with modification the appellant's conviction of rape. The dispositive portion of the CA's Decision reads:

WHEREFORE, the instant appeal is DISMISSED. The *Decision* dated 28 May 2015 of Regional Trial Court of Caloocan City, Branch 131, in *Criminal Case No. C-77813* is hereby AFFIRMED with MODIFICATION, in that Accused-Appellant Ernesto Avelino, Jr. y Gracillian is ORDERED to pay AAA P30,000.00 as exemplary damages.

SO ORDERED.<sup>[15]</sup>

Dissatisfied with the CA's Decision, appellant filed this appeal with the Court.

### **Issue**

Whether or not appellant is guilty of rape.

According to appellant, the RTC gravely erred in convicting him of rape and giving weight and credence to the inconsistent testimony of AAA. He also claims that the RTC erred in failing to take into consideration his defense of denial. Finally, he asserts that the RTC erred in sentencing him to *reclusion perpetua* since the proper penalty should have been that provided for in Section 5 of RA 7610.

### **Our Ruling**

After a careful review of the records, the Court finds the appeal unmeritorious, there being no cogent reason to reverse the CA in affirming with modification the RTC's ruling which found appellant guilty beyond reasonable doubt of rape. Both the RTC and the CA correctly found that all the elements of rape had been sufficiently established by the prosecution. More particularly, the prosecution had proved that appellant had carnal knowledge of AAA without her consent and through force, threat, and intimidation with the use of a knife.

Moreover, the Court upholds the findings of the RTC which were affirmed by the CA, that AAA's testimony was credible. It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear