

## SECOND DIVISION

[ G.R. No. 205888, August 22, 2018 ]

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

### D E C I S I O N

**CAGUIOA, J:**

This is an appeal<sup>[1]</sup> filed under Section 13(c), Rule 124 of the Rules of Court from the Decision<sup>[2]</sup> dated April 19, 2012 (questioned Decision) of the Court of Appeals - Cebu City, Nineteenth Division (CA), in CA-G.R. CRHC No. 00332, which affirmed in part the Joint Decision<sup>[3]</sup> dated February 16, 2005 (RTC Decision) of the Regional Trial Court of Bais City, Branch 45 (RTC) in Criminal Case Nos. F-02-03-A, F-02-01-A, F-2001-171-A, F-02-02-A, and F-2001-170-A, convicting herein accused-appellant XXX for three (3) counts of Rape.

#### *The Facts*

Four (4) separate Informations for Rape and one (1) Information for Attempted Rape were filed in the RTC against XXX, as follows:

#### **CRIMINAL CASE NO. F-02-03-A (For: Attempted Rape)**

That on or about the 18<sup>th</sup> day of July, 1999 in the Municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the said accused, being the father of the 16-year-old girl, [AAA],<sup>[4]</sup> and taking advantage of his ascendancy and influence over his daughter did then and there, willfully, unlawfully and feloniously with the use of force, violence and intimidation, commence to commit the crime of rape directly by overt acts to wit: that while [AAA] was sleeping in their house, accused suddenly covered her mouth with his hand, forcibly took off her short and panty, then thereafter, accused mounted his body over his daughter's body, then proceeded to the push and pull movement over her body, accused endeavoring to have sexual intercourse with his daughter but not succeeding thereat because of the struggle of his daughter [AAA] and her persistent resistance. Thus, the said accused has commence (*sic*) the execution of which would have produce (*sic*) the said crime for reason of some cause other than his spontaneous desistance.

Contrary to Article 266-A in relation to Article 5 and 51 of the Revised Penal Code.<sup>[5]</sup>

#### **CRIMINAL CASE NO. F-02-01-A (For: Rape)**

That on or about the 8<sup>th</sup> day of April, 2001, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the said accused being the father of the 16-year-old girl, (AAA), and taking advantage of his ascendancy and influence over his daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code.<sup>[6]</sup>

**CRIMINAL CASE NO. F-2001-171-A (For: Rape)**

That on or about the 15<sup>th</sup> day of April, 2001, at about 7:00 o'clock in the evening, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code, as amended.<sup>[7]</sup>

**CRIMINAL CASE NO. F-02-02-A (For: Rape)**

That on or about the 15<sup>th</sup> day of April, 2001, at about 9:00 o'clock in the evening, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code, as amended.<sup>[8]</sup>

**CRIMINAL CASE NO. F-2001-170-A (For: Rape)**

That on or about the 15<sup>th</sup> day of April, 2001, at about 12:00 o'clock midnight, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code, as amended.<sup>[9]</sup>

Upon arraignment, XXX pleaded "not guilty" to all charges.<sup>[10]</sup> Trial on the merits ensued thereafter. During trial, the victim, AAA, died on January 4, 2003 before she could be subjected to cross-examination.<sup>[11]</sup>

As summarized in the RTC Decision, the antecedents are as follows:

In her direct testimony, [AAA] testified that the accused is her father, and she is the eldest of the three children. Her younger brother [BBB] is 13 years old, and the youngest, [CCC] is 7 years old. She recalled that in the evening of July 18, 1999, her mother was in Dumaguete City to sell mats, and when they settled for the night, she slept with her two younger brothers and her father, the accused. Later in the evening, she was awakened, and she found out that she had no more short pants and panty, and her father was beside and behind her, and felt that the penis of her father was directed to her anus. She managed to keep her legs together, and thus, accused was not successful in inserting his organ into her vagina. She was fourteen (14) years old at that time. Her father warned her not to tell her mother otherwise he would kill her.

[AAA] further recalled that April 8, 2001 was her birthday. She was prepared to be alone in their house for the night as her father and mother in company with her younger brothers were in the house of her grandmother in Campuan - a neighboring barangay. But suddenly, her father arrived in their house at about 5:00 in the afternoon, and immediately held her, and took off her short pants and panty. In spite of her struggle to resist, her father was able to lay her down on the floor of their house, and was successful in inserting his penis into her sexual organ. She felt pain, as this was her first sexual intercourse. He threatened her with death if she would tell her mother about the incident.

[AAA] further testified that in the afternoon of April 15, 2001, she was in the house of her aunt, [DDD] when her father arrived and told her to go home with him as he told her that her mother was crying because she left home without permission. But, when she and her father arrived at their house, she found out that her mother was not there. Her father held and hugged her, and took off her short pants and panty, laid her down, and inserted his sexual organ into hers. After the sexual abuse by her father, she wanted to get out of their house, but her father locked the door. At about 9:00 in the evening of that same day, her father took off her shorts and panty again, and her father forcibly inserted his sexual organ again. Again, at about 12:00 midnight, her father took off her short pants and panty, laid on top of her, and forcibly inserted his penis. She was about to free herself, but her father held her tightly. She cried and was not able to sleep the whole night due to the pain she was experiencing from her sex organ.

Without waiting for her mother and brothers to arrive, she left their house in the morning of the following day, April 16, 2001, and went to [DDD].

At the hearing on January 20, 2003, Public Prosecutor Marites Macarubbo informed the court that [AAA] died. On May 15, 2003, Ms. Welgieta Banzuelo, a social worker at the Department of Social Welfare and Development, presented to the court the Death Certificate of [AAA]. Upon motion by the defense, the direct testimony of [AAA] was ordered expunged from the records x x x on grounds that [AAA] was not subjected to cross-examination.

x x x x

However, inspite of the death of [AAA] and her direct testimony having been expunged from the records, the prosecution presented other prosecution witnesses, namely: Gelmie [Calug], [EEE], Lovella Opada and Vicente Tiengo, and in an effort to salvage the cause for the state, the prosecution adduced evidence of *res gestae* through the testimonies of its witnesses, Gelmie Calug and [EEE].

[EEE], an aunt of [AAA], being the sister of the mother of the latter, testified that at noontime on April 16, 2001, [AAA] arrived at her house. She noticed that [AAA] was sad and crying. Upon her inquiry, [AAA] told her that she was raped by her father on April 8, and three (3) times hours ago on April 15, 2001. During the few days of [AAA]'s stay at her house, she often saw [AAA] crying. A few days after, [AAA] went to the house of Pedro de los Santos to work as a house helper. Her employer, Pedro de los Santos, helped her in instituting these rape cases, and [EEE] and de los Santos accompanied [AAA] to report the incident to the police.

Gelmie Calug testified that on April 18, 2001, [AAA] reported for work for the first time as a househelper in the house of Pedro de los Santos. He noticed that [AAA] was sad and lonely, and often saw her crying. She confided to him her problems, and revealed to him that she was raped by her own father on April 8 and 15 of that year 2001. He noticed that [AAA] had told their employer, Pedro de los Santos, of what had befallen to (*sic*) her. After eight (8) months, she left the de los Santos household, and he did not know anymore of her whereabouts and only to hear (*sic*) from the radio broadcast that [AAA] was dead.<sup>[12]</sup>

#### *Ruling of the RTC*

In the RTC Decision, XXX was found guilty only for the three (3) counts of Rape committed on April 15, 2001 and acquitted from the charges in Criminal Case Nos. F-02-01-A and F-02-03-A for Rape and Attempted Rape, respectively:

**WHEREFORE**, premises considered, this Court finds accused [XXX], **GUILTY** beyond reasonable doubt of three (3) counts of Rape and is thereby sentenced to suffer **in each the penalty of *reclusion perpetua*, and ordered to pay the heirs of the victim in each case, the amount of FIFTY THOUSAND PESOS (P50,000.00) as civil indemnity and the amount of FIFTY THOUSAND PESOS (P50,000.00) as moral damages, and to pay costs.**

For failure on the part of the prosecution to prove the guilt of accused beyond reasonable doubt, he is thereby declared **ACQUITTED from the charges in Criminal Case Nos. F-02-01-A and F-02-03-A.**

The accused is hereby credited in full for the period he had undergone preventive imprisonment provided he agrees in writing to abide with the rules prescribed for convicted prisoners.

SO ORDERED.<sup>[13]</sup> (Emphasis in the original)

The RTC, despite the lack of AAA's testimony due to her intervening death, mainly relied on the separate testimonies of Gelmie Calug (Calug) and EEE in finding XXX guilty beyond reasonable doubt. The RTC found that the utterances made by AAA to

them, while not made immediately or simultaneous to the rape incidents, could still be considered part of the *res gestae* as they were "so connected with it as to make the act or declaration and the main fact inseparable, or be generated by an excited feeling which extends, without break or let down, from the moment of the event they illustrate."<sup>[14]</sup> The RTC also found that such statements were made under such circumstances as to preclude a deliberate design or an opportunity to devise anything contrary to the actual events that transpired.<sup>[15]</sup>

Notably, the RTC did not appreciate the special qualifying circumstance of filiation as the same was not proved during trial through competent evidence.<sup>[16]</sup> The baptismal records presented by the prosecution were not considered by the RTC as they were not public records and therefore insufficient to establish such filial relationship.<sup>[17]</sup>

Anent XXX's defense, the RTC did not give any weight thereto for being a simple denial of the accusations.<sup>[18]</sup> Moreover, XXX's ancillary defense of alibi was likewise rejected for being laden with confusion and uncertainty from XXX himself as lone witness for the defense.<sup>[19]</sup>

Unsatisfied, XXX elevated the case to the CA via Notice of Appeal<sup>[20]</sup> dated February 28, 2005. Briefs were then filed by XXX and plaintiff-appellee respectively dated April 24, 2008<sup>[21]</sup> and September 17, 2010.<sup>[22]</sup>

In his appeal, XXX mainly argued that the RTC erred in considering the testimonies as *res gestae* and instead claimed that such statements were purely hearsay as they were offered in court only after two (2) years from the date of the alleged incident.<sup>[23]</sup>

#### *Ruling of the CA*

On April 19, 2012, the CA rendered the questioned Decision, affirming the RTC Decision, to wit:

WHEREFORE, premises considered, the appeal is hereby DENIED and the Decision dated February 16, 2005, of the Regional Trial Court, Branch 45, Bais City in Criminal Case Nos. F-2001-171-A, F-02- 02-A, F-2001-170-A, [is] hereby affirmed *in toto*.

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

Hence, the instant appeal.<sup>[25]</sup>

In lieu of supplemental briefs, plaintiff-appellee filed a Manifestation<sup>[26]</sup> dated January 3, 2014 while XXX filed a Manifestation in Lieu of Supplemental Brief<sup>[27]</sup> dated January 7, 2014.

#### *Issue*

Whether XXX's guilt for the three (3) counts of Rape was proven beyond reasonable doubt.

#### *The Court's Ruling*