

THIRD DIVISION

[G.R. No. 231925, November 19, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CCC,
ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

For consideration of this Court is the appeal of the Decjsion^[1] dated February 14, 2017 of the Court of Appeals (CA) dismissing appellant CCC's appeal and affirming with modification, the Judgment^[2] dated October 8, 2014 of the Regional Trial Court (RTC), Branch 43, Gingoog City in Criminal Case No. 2013-5130 convicting the same appellant of the crime of qualified rape.

The facts follow.

AAA,^[3] the victim, and her twin sister were born on July 6, 1997 to their parents, appellant and BBB. The twins were raised by VVV, a foster mother, until they were 11 years old. AAA and her twin sister were sent home to their biological parents in 2009 because they allegedly stole something from their foster mother.

On November 27, 2011, AAA was asleep when appellant carried her downstairs to his bed. Appellant held AAA's hands and kissed her on the lips, neck and down to her abdomen. Thereafter, appellant undressed-himself and took off AAA's dress. Appellant placed himself on top of AAA, proceeded to kiss her and then inserted his penis inside her vagina.

According to AAA, appellant repeated the deed several times on different dates. The last incident happened on December 30, 2012. On the evening of that date, appellant brought AAA along the seashore of a nearby village using his boat. While on the seashore, appellant made AAA lie down on the sand, and with her back on the sand, he brought himself down and kissed her. Appellant inserted his penis in AAA's vagina, while he was on top of her. AAA tried to fight back, but appellant delivered a fist blow on her abdomen. When appellant finished satisfying his lust, he pulled out his penis, wiped it off and told AAA to get up. Appellant then instructed AAA to go back to the boat.

Unable to bear the burden, AAA confided to her twin sister. Her twin sister sought help from their foster mother. Appellant was eventually arrested and held in custody.

Hence, an Information was filed against appellant which reads as follows:

That on or about and since December 30, 2012, on several occasions, at more or less 8:00 o'clock in the evening, along the seashore of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-

named accused, did then and there, willfully, unlawfully and feloniously force and intimidate AAA, 15 years old, minor, and then forcibly committed sexual intercourse by forcibly inserting his penis to the vagina of the said minor for several occasions, against her will. With the qualifying/aggravating circumstance of (sic) that the victim is under eighteen (18) years of age and the offender/accused is the father of the victim.

Contrary to and in violation of Article 266-A, paragraph 1, of the Revised Penal Code, in relation to R.A. 7610.^[4]

During his arraignment on February 5, 2013, appellant, with the aid of a counsel, entered a plea of "not guilty."

Appellant denied the charge against him and claimed that on December 30, 2012 at 7 o'clock in the evening, he was at sea. According to him, when he left their house, his wife and the rest of his children were around.

The RTC found appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua*. The dispositive portion of the Judgment dated October 8, 2014 reads follows:

Wherefore, premises considered, the Court finds accused [CCC] is GUILTY beyond reasonable doubt [of] the crime of Rape and sentences him to an imprisonment of RECLUSION PERPETUA. He is directed to pay AAA the following sums: Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php30,000.00 as exemplary damages in each count.

It is further ordered that his preventive detention at BJMP-Gingoog City is fully credited in the service of his sentence. He shall serve sentence at [the] Davao Penal Farm at Dujali, Davao Del Norte.

SO ORDERED.^[5]

The CA affirmed the Decision of the RTC with modification that appellant is guilty beyond reasonable doubt of two (2) counts of Qualified Rape under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, in relation to R.A. No. 7610 and ordered appellant to pay AAA the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 as exemplary damages, thus:

WHEREFORE, foregoing premises considered, this ordinary appeal is DENIED for lack of merit. The 08 October 2014 Judgment rendered by the Regional Trial Court, Branch 43, Gingoog City, Misamis Oriental, in Criminal Case No. 2013-5130 is AFFIRMED with MODIFICATION. Appellant [CCC] is found GUILTY beyond reasonable doubt of two (2) Counts of Qualified Rape under Article 266-A(1) of the Revised Penal Code, as amended by R.A. No. 8353, in relation to R.A. No. 7160 (sic).

Accordingly, appellant [CCC] is SENTENCED to suffer the penalty of *reclusion perpetua* for each case, in lieu of the abolition of death penalty under Article 266-B of the Revised Penal Code as amended by R.A. No.

8353, in relation to R.A. No. 7160 (sic). Moreover, Appellant [CCC] is hereby ORDERED to pay AAA the amount of Seventy Thousand Pesos (sic) (P75,000) as civil indemnity; Seventy Thousand Pesos (sic) (P75,000) as moral damages; and Seventy Thousand Pesos (sic) (P75,000) as exemplary damages for each case.

All damages awarded shall earn interest at the rate of 6% per annum from date of finality of judgment until fully paid.

SO ORDERED.^[6]

Hence, the present appeal.

According to appellant, the prosecution was not able to establish the elements of the crime of rape.

The appeal lacks merit.

Under paragraph 1(a), Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.^[7] Thus, all the elements are present. Furthermore, the Certificate of Live Birth^[8] of AAA proves that she was 15 years old when she was raped by appellant and that the latter is indeed her biological father, making the said crime committed by appellant that of qualified rape.

In testifying before the trial court, AAA was able to narrate in detail the crime committed, thus:

Q: Do you remember when was that when you were raped by yours (sic) father?

A: November 27, 2011.

x x x x

Q: That was the first rape incident with your father?

A: That was the first time that I (sic) molested by my father.

Q: And then you were raped on November 27, 2011 what time was this?

A: Eight o'clock in the evening.

Q: Where did this happen?

A: In our house.

Q: How did it happen?

A: At that time I was asleep and he carried me.

Q: Where did he carry you?

A: Towards his bed downstairs.

Q: What happened there?

A: He held my hand.

Q: What happened after that?

A: He kissed me.

Q: What part of your body was kissed?

A: Lips, neck, down to my stomach.

Q: And then what happened?

A: He undressed himself.

Q: And then what happened?

A: He undressed me.

Q: What did you do when he undressed you?

A: I just followed him because he will kill me if I would not follow his order.

Q: What happened after that?

A: He rode (sic) on top of me.

Q: What did he do to you after he rode (sic) on top of you?

A: He kissed me. He inserted his penis into my vagina.

Q: Was this the first time?

A: Yes, ma'am.

Q: Was that the (sic) first experience with a man?

A: Yes, ma'am.

Q: What did you feel?

A: Pain.

Q: You said that there were several times that he molested you, could you remember what happened on December 30, 2012?

A: That was the last time he raped me.

Q: What time was (sic) this that was (sic) happened?

A: I could not remember.

Q: Was it in the evening?

A: Night time.

Q: Where did it happen?

A: XXX

Q: Why were you at XXX?

A: He brought me to fish.

Q: Is this XXX located in YYY?

A: Yes, ma'am.

Q: How was that he was able to bring you to XXX, how is (sic) this happen?

A: He would go on fishing and the place where the [boat] will be (sic) dock.

Q: Did you not object?

A: No, because he would threat (sic) to kill me because he is bringing a knife.

Q: Did you actually arrive at XXX?

A: Yes, ma'am.

Q: When you said XXX, you mean the seashore?

A: Yes, ma'am.

Q: Who was there aside from you and [CCC]?

A: The two of us.

Q: What happened when you arrived in (sic) the seashore?

A: He molested me.

Q: How did he do this?

A: He would make a push-and-pull movement.

Q: When you arrived there, could you tell us the details how did it happen?

A: He made me lie on the sand.

Q: And then what happened after that?

A: He rode on top of me.

Q: And then?

A: He kissed me. He inserted his penis into my vagina.

Q: Every time that your father does this, what was your reaction?

A: I cried.

Q: Did you not tell him to stop?

A: No, ma'am, because he tell (sic) me to shot (sic) up.

Q: How did he tell you to shot (sic) up?

A: He told me to shot (sic) up because he would kill me if I will not heed his order.

Q: Was there a time that he physically hit you when you protested?

A: Yes, Ma'am.

Q: How did he hurt you?

A: He would box my stomach.