

## SECOND DIVISION

[ G.R. No. 220718, June 21, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NICOLAS TUBILLO Y ABELLA, ACCUSED-APPELLANT.**

### DECISION

#### **MENDOZA, J.:**

On appeal is the December 11, 2014 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05740, which affirmed the July 4, 2012 Decision,<sup>[2]</sup> of the Regional Trial Court, Branch 225, Quezon City (RTC) in Criminal Case No. Q-06-139031, finding accused-appellant Nicolas Tubillo y Abella (*Tubillo*) guilty of the crime of simple rape.

On February 20, 2006, an Information<sup>[3]</sup> was filed before the RTC charging Tubillo with rape, in relation to Republic Act (R.A.) No. 7610, which reads:

That on or about the 1<sup>st</sup> day of February 2006, in Quezon City, Philippines, the said accused, by means of force, violence and intimidation and at knife point, commit an act of sexual assault upon one HGE, a minor, 13 years of age, by then and there while complainant was sound asleep alone inside the room, forcibly opened the door then accused motivated by sexual desire, undressed her, pulled down her underwear and mounted on top of her, and thereafter have carnal knowledge with said complainant, all against her will and without consent, which act debases, degrades and demeans the intrinsic worth and dignity of said HGE, as a human being, to the damage and prejudice of the said offended party.

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

On April 5, 2006, Tubillo was arraigned and he pleaded "not guilty." At the pre-trial stage, the parties stipulated on the identity of Tubillo, the age of HGE, and the police investigation.

During the trial, the prosecution presented HGE and Dr. Paul Ortiz (*Dr. Ortiz*) as its witnesses.

#### *Version of the Prosecution*

At the time of the incident, HGE was only thirteen (13) years old and was living with AAA, the person who adopted her, at 249 St. Peter Street, Barangay Holy Spirit, Quezon City.

On February 1, 2006, at around 10:00 o'clock in the evening, HGE was sleeping at

home alone, while AAA was working as a beautician at a salon. Suddenly, she was awakened when Tubillo, her neighbor, entered their house by breaking the padlock of the door.

Upon entry, Tubillo went directly to HGE and then he removed her clothes and his own. He then forcibly inserted his penis in her vagina by pushing his body towards her. HGE felt pain, but she did not resist as Tubillo was poking a knife at her neck. The incident lasted for about thirty (30) seconds.

On February 8, 2006, HGE revealed her ordeal at the hands of Tubillo to her aunt, leading to the filing of the subject complaint.

Dr. Ortiz testified that he was the medico-legal officer who examined HGE. He found that she had a shallow healed laceration at 7:00 o'clock position in the hymen; that the periurethral and vaginal smears were negative for spermatozoa; and, that the findings were suggestive of the use of a blunt force or penetrating trauma to the hymen which could have been an erect penis.

#### *Version of the Defense*

The defense presented Tubillo as its sole witness. He denied the accusations against him and claimed that the complaint was filed simply because HGE's aunt was angry at him when he tried to collect some money from her.

#### *The RTC Ruling*

In its July 4, 2012 Decision, the RTC found Tubillo guilty beyond reasonable doubt of the crime of simple rape, defined under Article 266-A of the Revised Penal Code (RPC), and sentenced him to suffer the penalty of *reclusion perpetua* and to pay P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, plus interest at the rate of six percent (6%) *per annum* reckoned from the finality of the decision.

The RTC found that Tubillo sexually violated HGE on the date and time claimed by the latter. It appreciated HGE's consistent testimony and the medical report presented to establish the carnal knowledge committed against her will. The RTC disregarded Tubillo's bare defense of denial because it was unsubstantiated.

Aggrieved, Tubillo elevated an appeal before the CA, arguing that HGE's testimony was marred with inconsistencies, because she claimed prior rape incidents which were not proven.

#### *The CA Ruling*

In its assailed December 11, 2014 Decision, the CA affirmed Tubillo's conviction with modifications. It was of the view that HGE candidly testified about the sexual violation committed by Tubillo against her and that the inconsistencies in her testimony were trivial.

The CA, however, opined that as HGE was more than twelve (12) years old, Tubillo could be charged with either rape under the RPC or child abuse under R.A. No. 7610. The appellate court concluded that considering that Tubillo was charged with

rape in relation to R.A. No. 7610, he should be penalized under Section 5(b), Article III of R.A. No. 7610 instead. Thus, the CA modified the penalty imposed upon Tubillo by reducing it to fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

Hence, this appeal.

### ISSUE

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,<sup>[5]</sup> dated December 9, 2015, the Court required the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation and Motion,<sup>[6]</sup> dated February 16, 2016, the Office of the Solicitor General (OSG) stated that it was no longer filing any supplemental brief as it was adopting its Brief for the Appellee previously filed on November 5, 2013 before the CA.

In their Manifestation in lieu of Supplemental Brief,<sup>[7]</sup> dated March 2, 2016, the Public Attorney's Office manifested that they would not any more file a supplemental brief, considering that Tubillo had exhaustively discussed the assigned error in the Appellant's Brief before the CA.

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

The appeal lacks merit.

#### *Rape through force or intimidation was committed*

Under Article 266-A (1) of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.<sup>[8]</sup>

In this case, the CA and the RTC fully appreciated the testimony of HGE that, on February 1, 2006, Tubillo forcibly entered the house where she was sleeping alone; that he took off her clothes and his; that he forcibly inserted his penis in her vagina; and that she could not resist because he poked a knife at her neck. The sexual violation suffered by HGE in Tubillo's hands was corroborated by the medical findings of Dr. Ortiz.

On the other hand, Tubillo merely invoked the defense of denial. In addition, he claimed that the complaint was filed because HGE's aunt was angry at him. Mere denial, however, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.<sup>[9]</sup>

As to the argument of Tubillo that HGE's testimony was incredible due to her