

## SECOND DIVISION

[ G.R. No. 228887, August 02, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
DOMINADOR UDTOHAN Y JOSE, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

On appeal is the May 30, 2016 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06944, which affirmed the June 26, 2014 Decision<sup>[2]</sup> of the Regional Trial Court, Branch 69, Taguig City (RTC) in Criminal Case Nos. 146314-15, finding accused-appellant Dominador Udtohan y Jose (*accused-appellant*) guilty beyond reasonable doubt of the crimes of Statutory Rape under Article 266-A (1) (d) of the Revised Penal Code (RPC) and Violation of Section 5 (b) of Republic Act (R.A.) No. 7610.

In two (2) Informations,<sup>[3]</sup> dated September 13, 2011, accused-appellant was charged as follows:

#### CRIMINAL CASE NO. 146314

That, in the month of April 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with said victim against her will and consent, to her damages and prejudice.

CONTRARY TO LAW.

#### CRIMINAL CASE NO. 146315

That, on or about the 11<sup>th</sup> day of September 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the paternal uncle of AAA, a minor, 11 years old, by means of violence and intimidation and with lewd designs and with intent to gratify his sexual desire, did, then and there wilfully, unlawfully and feloniously commit lascivious conduct with said victim, against her will and consent, by then and there inserting his finger inside her vagina, which are acts prejudicial to the normal growth and development as a child.

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

On October 18, 2011, accused-appellant was arraigned and he pleaded "not guilty." Thereafter, trial ensued.

### *Evidence of the Prosecution*

The testimonies of the prosecution's witnesses tended to establish that AAA, who was then eleven (11) years old, together with her mother, BBB, and two (2) siblings, stayed for free in the house of her paternal uncle, accused-appellant herein, located at Block 5, XXX Street, Sitio XXX, Western XXX, XXX. Because AAA's father, DDD, was in jail for murder, accused-appellant helped BBB in taking care of her children.

Sometime in April 2011, AAA went with accused-appellant, whom she called CCC, to the YYY Camp, Sitio XXX, to buy some bananas. Accused-appellant would buy bananas everyday and AAA helped him in selling banana cue as she was still on vacation from school.

While on their way to the YYY Camp, accused-appellant suddenly dragged AAA towards the grassy portion of a vacant lot. Then and there, he had carnal knowledge with AAA by inserting his penis inside her vagina. After satisfying his lust, accused-appellant pushed AAA out of the road and proceeded to buy some bananas. He threatened AAA that should she tell anyone about the incident, he would eject her family from his house and he would not feed them. Subsequently, accused-appellant would sexually abuse AAA almost every day at the same place.

Later, on September 11, 2011, at around 10:00 o'clock in the evening, at the house of accused-appellant, he molested AAA by caressing and touching her vagina. AAA did not tell anyone about accused-appellant's bestial acts against her because she was afraid that the latter would evict them and kill her.

On the following day, when AAA was at school, she revealed her ordeal to her teacher who was then suspicious of her odd behavior. On that same day, accused-appellant's live-in-partner disclosed to BBB that she saw him insert his finger into AAA's vagina. BBB immediately went to AAA's school to verify the information. Thereat, BBB sought the help of AAA's teacher and they went to the *barangay* to lodge a complaint. The *barangay* referred them to the police station.

Thereafter, they proceeded to the PNP Crime Laboratory in Camp Crame wherein PCI Shane Lore Detaballi (*PCI Detaballi*) conducted a genital examination and found the presence of deep-healed lacerations at the 3, 6 and 9 o'clock positions in AAA's hymen, showing blunt penetrating trauma. AAA then gave her sworn statement before the Women and Children Protection Desk to confirm the veracity of her allegations.

### *Evidence of the Defense*

On the other hand, the defense presented accused-appellant as its sole witness. He vehemently denied the accusations against him. Instead, he claimed that the charges were fabricated by BBB, AAA's mother, because she was mad and angry at DDD, her husband and brother of accused-appellant. He also added that BBB was coaching her children to testify against him and that she threatened to physically harm them should they refuse to follow her.

### *The RTC Ruling*

In a Decision, dated June 26, 2014, the RTC found accused-appellant guilty beyond reasonable doubt of statutory rape under Article 266-A (1) (d) of the RPC and violation of Section 5 (b) of R.A. No. 7610. It found that AAA was born on October 7, 1999, as shown by in her birth certificate, and that she was eleven (11) years old when the two separate sexual abuses occurred. The trial court held that the testimony of AAA was clear, candid, straightforward, and convincing regarding the sexual abuses she suffered at the hands of her uncle. The RTC also ruled that the medico-legal certificate corroborated the testimony of AAA. The RTC disposed the case in this wise:

WHEREFORE, finding Dominador Udtohan y Jose guilty beyond reasonable doubt of Statutory Rape and violation of Sec. 5(b) R.A. 7610, this court hereby sentences him as follows:

In Crim. Case No. 146314 to suffer the penalty of Reclusion Perpetua and to pay AAA Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php30,000.00 as exemplary damages; and

In Crim. Case No. 146315 to suffer the penalty of 12 years and 1 day of Reclusion Temporal in its minimum period, as minimum, to 15 years and 6 months of Reclusion Temporal in its medium period, as maximum; and to pay AAA Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php30,000.00 as exemplary damages.

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

Aggrieved, accused-appellant elevated an appeal to the CA. He argued that the testimony of AAA was not credible because there were diverging statements regarding the number of incidents of rape he allegedly committed.

### *The CA Ruling*

In its assailed Decision, dated May 30, 2016, the CA denied the appeal. It held that the testimony of AAA regarding the two sexual abuses was clear and convincing. The CA underscored that AAA was able to describe each incident of rape and sexual abuse committed by her uncle, accused-appellant. Also, it did not give weight to the self-serving denial of accused-appellant and his claim that AAA's mother, who was mad at his brother, initiated the charges. The CA added that accused-appellant miserably failed to establish the ill-will or motive of AAA or her mother. The *fallo* reads:

**WHEREFORE**, the appeal is **DENIED**. The Decision dated June 26, 2014 of the Regional Trial Court of XXX City, Branch 69, is hereby **AFFIRMED** with the **MODIFICATION** in that, interest at the legal rate of six percent (6%) per annum, shall be imposed on the total monetary awards in the appealed decision until the same are fully paid.

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

Hence, this appeal.

## ISSUES

### I

#### THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

### II

#### THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.<sup>[7]</sup>

In a Resolution,<sup>[8]</sup> dated February 27, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in Lieu of Supplemental Brief,<sup>[9]</sup> dated April 5, 2017, accused-appellant manifested that he was adopting his appellant's brief filed before the CA as his supplemental brief. In its Manifestation in Lieu of Supplemental Brief,<sup>[10]</sup> dated April 12, 2017, the Office of the Solicitor General (OSG) stated that it was no longer filing a supplemental brief, there being no significant transaction, occurrence or event that happened since the filing of the appellee's brief.

#### The Court's Ruling

The appeal lacks merit.

Section 5 (b) of R.A. No. 7610 provides:

(b) Those who commit the act of sexual intercourse of 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;*** [Emphasis supplied]

As stated above, when the victim of rape or acts of lasciviousness is below twelve (12) years old, the offender shall be prosecuted under the RPC, provided that the penalty for lascivious conduct shall be *reclusion temporal* in its medium period.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.<sup>[11]</sup> Moreover, under Article 266-B of the RPC, there is qualified rape when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the

third civil degree, or the common-law spouse of the parent of the victim.<sup>[12]</sup>

On the other hand, acts of lasciviousness under the RPC has the following elements: that the offender commits any act of lasciviousness or lewdness; that it is done by using force or intimidation, or when the offended party is deprived of reason or otherwise unconscious; or when the offended party is under 12 years of age; and that the offended party is another person of either sex.<sup>[13]</sup>

After a judicious scrutiny of the records, the Court finds that accused-appellant is guilty of qualified rape and acts of lasciviousness under the RPC in relation to Section 5 (b) of R.A. No. 7610.

The testimony of AAA showed that she was able to establish with clear and candid detail her age at the time of the incident, the identity of accused-appellant, her relationship with him, and the specific bestial acts committed by him, to wit:

Q: Who are you complaining against?

A: Tito CCC, Sir.

Q: Do you see Tito CCC in the premises?

A: None, Sir.

Q: If you will go out, will you be able to identify him?

A: Yes, Sir.

Q: Please go out?

A: Witness pointed to a male man wearing yellow t-shirt when asked for his name, he answered CCC.

Q: AAA, why are you suing Tito CCC?

A: Kasi po ni-rape po niya ako.

Q: You said you were rape (sic), how many times?

A: Two po.

Q: AAA, when was the first time?

A: April 2011, Sir.

Q: About what time?

A: 3:00 P.M.

Q: Where did this happen?

A: At the YYY Camp, Sir.

Q: What were you doing at YYY Camp, Sitio XXX at that time?

A: We were about to buy bananas, Sir.

Q: You said "kami" who was with you?

A: Tito CCC, sir.

Q: So what happened while you were going out to buy bananas?

A: He pulled me in the grassy portion, Sir.