

## THIRD DIVISION

**[ G.R. No. 207816, February 24, 2016 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL  
YAMON TUANDO, ACCUSED-APPELLANT.**

### DECISION

**PEREZ, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Court of Appeals dated 27 September 2012 in CA-G.R. CR-HC No. 04720, which affirmed with modifications the Decision<sup>[2]</sup> dated 26 August 2010 of the Regional Trial Court (RTC), Branch 69, Pasig City (stationed in Taguig City) in Criminal Case No. 134740-H, finding accused Raul Yamon Tuando (Tuando) guilty of qualified rape under Article 266-A(I) (c) in relation to Article 266-B (1) of the Revised Penal Code.<sup>[3]</sup>

On 9 January 2007, an Information was filed against Tuando against which he pleaded not guilty.

That on or about January 2006 in Taguig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, actuated by lust, and abusing his authority over AAA, daughter of his common law wife, did, then and there willfully, unlawfully and feloniously succeeded in having sexual intercourse with said AAA, who was then thirteen (13) years old at the time of the commission of the offense, against her will and consent and to her damage and prejudice.

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

The factual antecedents are the following:

The victim AAA, in her testimony and sworn statement, narrated that she was 13 years old and a resident of Taguig City. She recalled that during the month of January 2006, upon coming home from school at noon-time, Tuando offered her softdrinks, which she accepted and drank. After consuming it, she felt dizzy. It was at this moment that Tuando pulled her inside the bedroom and put her on the bed. Tuando then removed her school uniform and undergarments, kissed her and laid himself on top of AAA. She tried to resist his advances but he boxed her hand and threatened to kill her whole family. Thereafter, he kissed the victim's breasts and inserted his penis inside the victim's private organ despite pleas to stop. After satisfying his lust, Tuando again threatened the victim not to tell her mother about what happened. Then he left her. Since then, Tuando continued raping her upon arriving from school with threats to kill her family.<sup>[5]</sup>

Months later, AAA's mother BBB noticed that AAA was not having her monthly menstrual period. Upon the advice of her employer, BBB brought AAA to a local

health center but she was told to bring her child to the Child Protection Unit of Philippine General Hospital (PGH) for medical examination.<sup>[6]</sup> There, she was medically examined by Dr. Irene Baluyot (Dr. Baluyot) of PGH. On 11 July 2006, Dr. Baluyot confirmed through her Final Medico-Legal Report that AAA was 20 to 22 weeks pregnant.<sup>[7]</sup> It was at this moment that AAA revealed to BBB that Tuando raped her.<sup>[8]</sup> BBB brought AAA to her employer's house and let her stay there until she gave birth on 3 September 2006.<sup>[9]</sup>

On 7 October 2006, AAA was again raped by Tuando when she went back to their house to visit her brothers. She decided to spend the night inside the house upon learning that Tuando was not around during that time. However, late in the evening, she was awakened when she felt that Tuando was on top of her and started kissing her. Tuando covered her mouth and raped her again, this time with a knife poked at her.<sup>[10]</sup>

The next day, AAA told BBB that she was raped again by Tuando. Prompted by the abuse on her daughter, BBB filed a complaint before the *barangay* officials, who in turn, invited Tuando to their office for questioning. Thereafter, AAA and BBB proceeded to the National Bureau of Investigation (NBI) Office to report the rape and executed their respective sworn statements about the crime.<sup>[11]</sup> The *barangay* officials transferred Tuando to the NBI for investigation.<sup>[12]</sup>

Tuando denied raping AAA. He testified that sometime in the year 2005, he and AAA had a relationship like a husband and wife but only started to be sexually intimate in January 2006. Their relationship was kept secret because during that time, he and BBB were still in a common-law relationship. On June 2006, BBB came to know of his relationship with AAA when she noticed that the latter was getting very close to him. Turning her anger on her daughter, she scolded and brought AAA to her (BBB) employer's house.<sup>[13]</sup>

Tuando told the court that he knew that it was AAA's brother CCC who filed the case against him out of revenge when he scolded him.<sup>[14]</sup>

At the end of his testimony, Tuando insisted that he never forced AAA to submit to sexual intercourse; that it was consensual and that it was committed out of love. Finally, he found nothing wrong in his relationship with AAA despite her minority and the fact that she is the daughter of his common-law spouse.<sup>[15]</sup>

On 26 August 2010, after the trial, the RTC found that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. It found credible AAA's narration that she was raped by the accused sometime in January 2006. It emphasized that the victim testified in a straightforward, candid and natural manner in her recollection of her harrowing ordeal in the hands of the accused.

On the other hand, the trial court rejected the sweetheart defense advanced by the accused as the reason for his sexual congress of AAA. It anchored its denial on the fact that the accused failed to present any affirmative evidence to substantiate his claim such as mementos, love letters, notes or any picture proving that he and the victim were indeed sweethearts.

Convinced that Tuando raped AAA, the court found the accused guilty:

WHEREFORE, finding accused Ramon Yamon Tuando guilty beyond reasonable doubt of Qualified Rape, the court hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole. He is also ordered to pay AAA the amount of [P]75,000.00 for civil indemnity; [P]75,000.00 for moral damages; and [P]25,000.00 for exemplary damages to deter others similarly minded, with perverse tendencies and aberrant sexual behavior from preying upon the children victims.<sup>[16]</sup>

Upon appeal, the Court of Appeals affirmed with modifications the ruling of the trial court, the dispositive portion reads:

WHEREFORE, premises considered, the assailed decision is AFFIRMED subject however to the following MODIFICATIONS:

- a) The grant of exemplary damages is increased to [P]30,000.00.
- b) Appellant is further ordered to support the offspring born as consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.<sup>[17]</sup>

The appellate court found no error on the conviction of the accused. It placed more weight on the findings of fact of the trial judge who was in the best position to competently rule on the veracity of AAA's testimony. On the other hand, it gave scant consideration to the argument of the accused that AAA's continued performance of her regular household duties was contrary to the conduct of a rape victim. It further ruled that Tuando's threats to AAA's life and her family, coupled with the status of the accused as a common-law spouse of AAA's mother, was sufficient intimidation to put AAA to abject submission.

Hence, this present appeal.

Before this Court, Tuando raises the following assignment of errors: (1) The appellate court gravely erred in convicting the accused-appellant under a different criminal information thereby violating his right to be informed of the nature and cause of accusation against him; (2) The appellate court gravely erred when it convicted the accused-appellant when his guilt has not been proven beyond reasonable doubt; (3) The appellate court gravely erred in giving credence to the private complainant's testimony despite being contrary to common human experience.

We dismiss the appeal for lack of merit.

On the first issue of denial of due process, Tuando contends that his right to be informed of the nature and cause of accusation against him was violated when the appellate court affirmed his conviction despite the fact that the crime of which he was convicted by the trial court was different from the one he pleaded to and was

charged with. To support his argument, he cited the case of *People v. Valdesancho*<sup>[18]</sup> where the Court acquitted the accused due to the denial of his right to due process as he was charged with rape committed on 15 August 1994 and 16 August 1994, but was convicted for crimes of rape committed on 15 and 16 August 1993.

We disagree with the accused. His reliance on *Valdesancho* is misplaced.

In *Valdesancho*, the accused was charged with two sets of information for rape committed against AAA on 15 August 1994 and 16 August 1994, respectively. During the presentation of evidence, the prosecution submitted evidence proving that the victim was raped on the said dates. In his defense, the accused interposed alibi and proved that he was in another town when the incidents happened. He was also able to prove that on the said dates, the victim was no longer living with them and was already residing in another town. However, upon promulgation of the decision, the trial court convicted the accused for raping the victim on 15 and 16 August 1993. It reasoned that due to the tender age of the victim and educational attainment, she could not possibly remember the dates when she was raped by the accused. On appeal, this Court acquitted the accused and held that his right to due process was violated since he was not able to present evidence to prove where he was on 15 and 16 August 1993. He was not given any opportunity to defend himself of the crimes of rape allegedly committed on the earlier dates.

The circumstances in *Valdesancho* are different from that of the present case.

In this case, the accused was charged with rape committed sometime in January 2006 against AAA. He was able to present evidence proving where he was on January 2006 when the crime was committed. In fact, he was able to present evidence based on sweetheart defense in that he and AAA were lovers and that they had a consensual sexual intercourse on the said date. During trial, he testified that he and AAA were in a secret relationship as husband and wife and he was surprised when he was charged with rape.

As embodied in Section 14 (1), Article III of the 1987 Constitution, no person shall be held to answer for a criminal offense without due process of law. Further, paragraph 2 of the same section, it provides that in all criminal prosecutions, the accused has a right to be informed of the nature and cause of the accusation against him. It is further provided under Sections 8 and 9 of Rule 110 of the Revised Rules of Court that a complaint or information to be filed in court must contain a designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it and the acts or omissions complained of as constituting the offense.

In *Patula v. People*,<sup>[19]</sup> the Court emphasized the importance of the proper manner of alleging the nature and cause of the accusation in the information:

x x x An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation. Indeed, the accused cannot be convicted of a

crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.<sup>[20]</sup>

The appellant cannot rely on the foregoing cases. He was sufficiently informed of the crime he was accused of. This is clear from the defense that he mounted, i.e., that the victim is his sweetheart and that they treated each other as spouses. In short, Tuando was not denied of his constitutional right and was given every opportunity to answer the accusation against him.

Now, the merits.

Tuando assails that the prosecution failed to present sufficient evidence to convict him of qualified rape. He finds fault in the decision of the trial court and Court of Appeals in its reliance mainly on the testimony of AAA and on the alleged weakness of the defense evidence.

We disagree.

Under Article 266 (A) (1) of the Revised Penal Code,<sup>[21]</sup> rape is committed through the following acts:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

"b) When the offended party is deprived of reason or otherwise unconscious;

"c) By means of fraudulent machination or grave abuse of authority; and

"d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The rape is qualified under paragraph 1, Article 266-B of the same code if the victim is under 18 years of age and the offender is the common-law spouse of the parent of the victim.<sup>[22]</sup>

In this case, We find that the prosecution was able to prove that Tuando had sexual intercourse with AAA, the then 13 year old daughter of his common-law wife, against her will. The prosecution was able to present the evidence to support conviction for qualified rape: that (1) the accused had carnal knowledge of the victim under 18 years of age at the time of rape; (2) said act was accomplished (a) through the use of force, when he boxed her hand while inserting his penis into AAA's private organ, (b) through the threat of killing AAA's family and (c) through intimidation being the common-law spouse of the victim's mother.

The concurrence of both the minority of the victim, as proven by her birth certificate,<sup>[23]</sup> and her relationship with her offender, qualified the rape raising the penalty to death. In *People v. Floro Barcelá*<sup>[24]</sup> it is essential, as in this case, that