

THIRD DIVISION

[G.R. No. 214349, April 20, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO MENDOZA, ACCUSED-APPELLANT.

DECISION

PEREZ, J.:

On appeal is the June 27, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01048-MIN which affirmed with modification the April 16, 2012 Judgment^[2] of the Regional Trial Court (RTC) of Davao City, Branch 12, finding appellant Leo Mendoza guilty beyond reasonable doubt of the crime of rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code.^[3]

The Antecedents

The appellant was charged in an Information^[4] dated May 31, 2005, whose accusatory portion reads as follows:

"That on or about December 3, 2004, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, accused LEO MENDOZA, who is the grandfather of complainant-victim [AAA],^[5] a nine (9) year old minor, by means of force and intimidation and taking advantage of his moral ascendancy over the herein victim, [AAA], did then and there wilfully, unlawfully and feloniously have carnal knowledge of her, against her will.

CONTRARY TO LAW."

On arraignment, the appellant pleaded not guilty. During the pre-trial conference, the prosecution and the defense stipulated, among others, that: (1) AAA was the granddaughter of the appellant; (2) AAA was nine (9) years old at the time of the alleged incident of rape; (3) AAA was at appellant's house on the day of the incident; and (4) AAA's step-grandmother, YYY, confronted the appellant on December 7, 2004 about the vaginal pain of AAA.

Thereafter, trial on the merits ensued with the prosecution presenting the following witnesses: the victim herself, AAA; her mother, XXX; her step-grandmother, YYY; and the examining physician, Dr. Vita P. Ogatis (Dr. Ogatis).

AAA testified that she was nine years old and that the incident happened at around 1:00 p.m. of December 3, 2004 at the appellant's house. During that time, YYY was at the public market^[6] and only AAA and the appellant were left at the house.^[7] AAA recounted that while inside the bedroom, the appellant quickly undressed her and mounted her. Using his hand to open AAA's vagina, the appellant inserted his

penis into her private part. The forced sexual intercourse caused AAA to cry out in pain but was ordered by the appellant to keep her mouth shut.^[8] AAA was also warned by the appellant not to tell anyone about the incident.^[9] In spite of the warning, AAA related her misfortune to YYY after the latter noticed that she was sick.^[10] When YYY confronted the appellant, he denied having done anything to AAA and even mauled her for lying.^[11] On cross-examination, AAA stated that when she was made to hold the appellant's penis, it was soft^[12] and that it touched the side of her vagina.^[13]

YYY began her testimony by stating, in open court, that she was the live-in partner of the appellant and that XXX, who was residing someplace else, is the daughter of the appellant from his first wife. XXX has a daughter, AAA, who was then living with YYY and the appellant in the latter's house. AAA is, therefore, the granddaughter of the appellant.

YYY narrated that in the morning of December 6, 2004, she saw AAA going back and forth to the comfort room. This prompted her to ask AAA what had happened to her and if she was suffering from stomach ache. AAA disclosed that her vagina was painful and that the appellant had sexual intercourse with her.^[14] In the evening of that same day, AAA developed a fever. As AAA still had fever on the following day, December 7, 2004, YYY had her panty removed. Upon closer inspection, YYY observed that AAA's vagina was swollen. YYY confirmed that when she confronted the appellant about AAA's claim of molestation, he got angry, accused AAA of lying and physically hurt the child-victim. Due to her own poor state of health and kidney trouble, it was only in February 2005 that YYY reported the rape incident to the police and had AAA medically examined.^[15]

Dr. Ogatis, who was then a resident physician of the Department of Obstetrics and Gynecology at the Davao Medical Center, conducted an anogenital examination on AAA on February 16, 2005. She issued the corresponding medical certificate^[16] bearing the following conclusions:

Anogenital Exam

Genitalia Crescentic hymen.

(+) Partial healed laceration at 7 o'clock position of the hymen.

Erythematous vulva.

Erythematous perihymenal area.

(+) Foul smelling, greenish vaginal discharge.

Anus Good sphincteric tone

Impression

1. Disclosure of Sexual Abuse.

2. Medical Evaluation Revealed: Genital Findings Definitive for Penetrating Injury.

NOTE: Pending laboratory Result.

When called to testify in court for the prosecution, Dr. Ogatis thoroughly explained the contents of the above-stated medical report. According to her, the examination done on AAA was extensive and accurate as she can already see the whole hymenal area and the external genitalia. Dr. Ogatis noted that AAA's entire vulva as well as her perihymenal area, the outer portion of the hymen, were both reddish. She mentioned that the redness of a person's genitalia may be due to a number of factors including trauma. Dr. Ogatis further testified that the presence of partially healed laceration at 7 o'clock position of AAA's hymen was caused by a penetrating injury or penetration. Dr. Ogatis opined that the injury sustained by AAA was consistent with her disclosure of sexual abuse by the appellant. However, she conceded that the foul smelling, greenish vaginal discharge could be attributable to the presence of infection or poor perineal hygiene on the part of the patient.

During her testimony, XXX confirmed that she is the mother of AAA. According to her, AAA's date of birth is May 12, 1996^[17] as shown by the Certificate of Live Birth^[18] marked during pre-trial and referred to during trial.

When his turn at the trial came, the appellant testified in his own defense.

Although the appellant acknowledged that AAA was his granddaughter being the child of his daughter, XXX,^[19] he denied the accusation against him. The appellant testified that at the time of the alleged rape on December 3, 2004, he and his two sons were playing the guitar at the balcony of his house while AAA was in the living room. He claimed that the rape charge was a mere fabrication and coincided with the fact that his live-in partner, YYY, wanted to separate from him. The appellant insisted that he could have not raped his granddaughter because he loves her. He also argued that his erectile dysfunction raised doubts as to his culpability.

On the basis of the appellant's claim that he was suffering from an erectile dysfunction, the trial court ordered that he be subjected to a medical examination that could have assessed the state of his virility.

Dr. Herbert Calubay (Dr. Calubay), a urologist at Davao Medical Center, conducted a fertility examination on the appellant. His examination revealed that the probability of the appellant having erectile dysfunction was low^[20] and that in fact, the appellant had no potency problems and was still capable of erection.^[21]

The RTC's Ruling

After trial, the RTC convicted the appellant. The dispositive portion of its judgment states:

WHEREFORE, Premises Considered, **JUDGMENT** is hereby rendered finding Accused guilty beyond reasonable doubt of the crime of rape in Criminal Case No. 57,297-05 as defined and penalized in Article 266-A and 266-B of the Revised Penal Code and the said Accused is hereby sentenced to suffer the penalty of **Reclusion Perpetua** and to pay [AAA] the sum of Seventy Five Thousand (P75,000.00) Pesos in the above-mentioned criminal case as civil indemnity and Fifty Thousand (P50,000.00) Pesos for the above-mentioned case as moral damage.

Under Article 29 of the Revised Penal Code, the Accused who is detained is hereby entitled to the full credit of his preventive imprisonment, if agreed voluntarily in writing to abide by the rules and regulations imposed upon convicted prisoners.

If he did not agree, he shall be entitled to 4/5 of his preventive imprisonment.

SO ORDERED.^[22]

The RTC gave full credence to the testimony of AAA who narrated her painful experience in a clear, convincing and unwavering manner. The trial court reasoned out that AAA would not allow herself to be subjected to a medical examination of her private parts or exposed herself to the humiliation of a rape trial wherein she was accusing her own grandfather of sexual abuse unless she was telling the truth. On the other hand, the RTC rejected appellant's defense of denial. The trial court reiterated the well-settled rule that denial is an inherently weak defense that cannot prevail over the positive testimony of the prosecution witness that the appellant committed the crime. Moreover, the trial court held that the appellant failed to substantiate his claim that he was incapable of erection and that the same was belied by his own testimony that he had sexual contact with YYY at certain intervals.

The CA's Ruling

On appeal, the appellant raised as issue the lack of the element of carnal knowledge to constitute the crime of rape since his alleged "soft or limp penis touched only the *outer* side of the *outer* tip of the female organ,"^[23] as stated by AAA during her cross-examination. He argued that absent any showing of the slightest penetration of the female organ, there can be no consummated rape.

Finding that the element of carnal knowledge was duly established by the prosecution, the CA affirmed with modification the RTC's judgment of conviction in a Decision^[24] the dispositive portion of which reads:

WHEREFORE, the appeal is **DENIED**. The 16 April 2012 Decision of the Regional Trial Court, Branch 12, Davao City, in Criminal Case No. 57,297-05, is **AFFIRMED** with **MODIFICATION** that accused-appellant Eco Mendoza is ordered to pay AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

The Issue

In the resolution of November 17, 2014, the Court required the parties to submit their respective supplemental briefs within thirty (30) days from notice. However, both parties manifested that they will no longer file the required briefs as they had already exhaustively and extensively discussed all the matters and issues of this case in the briefs earlier submitted with the CA. Hence, in this appeal, the Court will rule on the lone assignment of error made by the appellant in his brief before the CA, to wit:

THE COURT A QUO ERRED WHEN IT CONVICTED APPELLANT DESPITE FAILURE OF THE PROSECUTION TO PROVE CARNAL KNOWLEDGE BEYOND REASONABLE DOUBT.^[25]

The Court's Ruling

The appeal is without merit.

Under Article 266-A paragraph I of the Revised Penal Code, rape is committed 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.

If committed by a grandfather against his granddaughter under eighteen (18) years of age, the rape is qualified pursuant to Article 266-B of the same Code, to wit:

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- 1) When the victim is under eighteen (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;

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Based on the foregoing provisions, the elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) [done] by force and without consent; (4) the victim is under eighteen (18) years of age at the time of the rape; and (5) 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.^[26]

The presence of the qualifying circumstances of minority and the relationship of AAA to appellant, which were both alleged in the information, were indisputable. The records reveal that from the very beginning, the appellant recognized that AAA is his grandchild and was still a minor at the time the alleged rape transpired. In the course of trial, the prosecution and defense witnesses were in agreement with respect to AAA's minority and that blood relationship exists particularly the ascendancy of appellant over AAA. AAA's minority was further established by the presentation of her Certificate of Live Birth showing that she was just eight-and-a-half [8 1/2] years old when the rape was committed.