

SECOND DIVISION

[G.R. No. 208009, July 11, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDILBERTO PUSING Y TAMOR, ACCUSED-APPELLANT.**

R E S O L U T I O N

LEONEN, J.:

When a female minor alleges rape, "she says in effect all that is necessary to mean that she has been raped."^[1]

This resolves an appeal of a conviction for two (2) counts of qualified rape and one (1) count of child abuse of a minor.^[2] AAA, a minor, is accused-appellant Edilberto Tamor Pusing's (Pusing) foster daughter.^[3] She, her mother (Pusing's former live-in partner), and Pusing resided in his house.^[4] After AAA's mother's death, Pusing took AAA in his custody.^[5] Soon, Pusing had AAA's aunt, CCC, as his common-law spouse.^[6] CCC is the sister of AAA's mother.^[7] They all lived together.^[8]

On or about April 5, 2004, while they were at home,^[9] Pusing allegedly went on top of AAA, put his penis in her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and inserted his penis into her genital.^[10]

The next day, AAA's cousin, BBB (CCC's son from a previous marriage), came to attend the wake of his brother (CCC's other son).^[11] There, BBB was prodded by Pusing's neighbor^[12] to take AAA in his custody because Pusing allegedly did something to her.^[13] Alarmed, BBB took AAA to his house in Manila, where she revealed the rape to BBB and his wife.^[14]

BBB assisted AAA in filing a complaint before the police.^[15] He was referred to the Philippine National Police Crime Laboratory for AAA's medical examination.^[16] AAA was examined on April 7, 2004.^[17]

In four (4) separate Informations, Pusing was charged with the rape and abuse of AAA, a 12-year-old^[18] minor with the cognitive ability of a nine-year-old.^[19] The charging portions in the Informations are as follows:

(a) Criminal Case No. 127823-H charges rape through carnal knowledge of an offended party under 12 years of age or is demented, under Article 266-A(l)(d),^[20] in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10)^[21] of the Revised Penal Code:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, *taking advantage of his moral authority and influence being the common law husband of the offended party's aunt who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with one (AAA), a 12 year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, the offended party being a special child with a mental capacity of a 9 year old person, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).*^[22] (Emphasis supplied)

(b) Criminal Case No. 127824-H charges rape through sexual assault by inserting the offender's penis into the offended party's mouth, under Article 266-A(2),^[23] and the offended party being under 12 years old or demented, under Article 266-A(I)(d), in relation to the special qualifying circumstance that the offender knew of the offended party's intellectual disability at the time of the commission of the crime, pursuant to Article 266-B(10) and (12)^[24] of the Revised Penal Code:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, *taking advantage of his moral authority and influence being the common law husband of the offended party's aunt who acts as the offended party's guardian, and by means of force, threat and intimidation, did, then and there willfully, unlawfully and feloniously commit an act of sexual assault by means of inserting his penis into the mouth of one (AAA), a 12 year-old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime, the offended party being a special child with a mental capacity of a 9 year old person, aggravated by the circumstances of abuse of superior strength, dwelling and the act having been committed with insult or in disregard of the respect due the offended party on account of her minority, to the damage and prejudice of said victim (AAA).*^[25] (Emphasis supplied)

(c) Criminal Case No. 127825-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b)^[26] of Republic Act No. 7610:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-

named accused, actuated by lust, did, then and there willfully, unlawfully and knowing [ly] commit lascivious act [sic] upon the person of one (AAA), a 12 year old minor with the mental age of a 9 year old child, by causing (AAA) *to masturbate the penis of the accused*, against the will and consent of (AAA), thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).^[27] (Emphasis supplied)

(d) Criminal Case No. 127826-H charges committing lascivious conduct on a victim under 12 years old, pursuant to Section 5(b) of Republic Act No. 7610:

That, on or about the 5th day of April, 2004, in the Municipality of (PPP), Philippines and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, did, then and there willfully, unlawfully and knowing[ly] commit lascivious act [sic] upon the person of one (AAA), a 12 year old minor with the mental age of a 9 year old child, by *mashing the breast[s]* and *licking the vagina* of the latter against her will and consent, thus constituting child abuse which is an act that is prejudicial to the normal development of said (AAA).^[28] (Emphasis supplied)

Five (5) witnesses were presented for the prosecution: AAA,^[29] her cousin BBB,^[30] PCI Joseph Palermo, M.D.,^[31] Dr. Elma Tolentino,^[32] and Police Officer III Dennis B. Salopaguio.^[33]

AAA testified that on the day of the incident, she and Pusing were home when he consummated the act.^[34] AAA detailed what happened:^[35] Pusing went on top of AAA, inserted his penis into her mouth, mashed her breasts, kissed her on the lips, licked her vagina, and penetrated her.^[36]

BBB testified that he and his wife found out about what Pusing did after BBB rescued the victim.^[37] BBB confirmed that AAA has been intellectually challenged even before the incident.^[38] He added that Pusing was aware of this.^[39] According to BBB, AAA was only 14 years old at the time he discovered the abuse.^[40]

Dr. Elma Tolentino testified that based on AAA's October 18, 2006 dental examination, AAA was about 14 years old at the time of rape.^[41]

On April 16, 2004, Dr. Joseph Palermo issued a Medico-Legal Report finding that AAA had a deep healed laceration, with "clear evidence of blunt force trauma or penetrating trauma."^[42] The Sexual Crime Protocol also concluded that AAA, being 12 years old but still in Grade 2, is mentally deficient.^[43]

Two (2) witnesses testified for the defense: Pusing and CCC.^[44]

Pusing testified that when AAA lived with him, he treated her as his adopted

daughter; he" could not have committed rape against her.^[45] He did not know that she was suffering from any intellectual disability.^[46] He claimed that the filing of the case was instigated by BBB, who had ill feelings towards his mother, CCC, and was interested in Pusing's house and lot.^[47] Finally, Pusing alleged that BBB hoped to take over the property, which, by his own admission, was not titled under his name.^[48]

CCC testified that at the time of the alleged incidents, she and Pusing were busy attending to the wake of her deceased son, BBB's sibling.^[49] She claimed that BBB and Pusing were not in good terms, and BBB caused Pusing's arrest because of interest over Pusing's house.^[50] On cross-examination, she admitted that she was not aware how BBB would benefit in filing the case.^[51]

In the Decision dated March 16, 2009, the Regional Trial Court found Pusing guilty beyond reasonable doubt of two (2) counts of rape and one (1) count of child abuse. The dispositive portion reads:

WHEREFORE, finding accused EDILBERTO PUSING y TAMOR @ EDWIN guilty beyond reasonable doubt, the Court hereby sentences him as follows:

IN CRIM. CASE NO. 127823 for QUALIFIED RAPE -the penalty of Reclusion Perpetua without eligibility for parole; and to pay AAA the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127824 for QUALIFIED RAPE (of the second kind) - the indeterminate penalty of Six (6) years and 1 day of Prision Mayor as minimum, to Seventeen (if) years and Ten (10) months of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages;

IN CRIM. CASE NO. 127826 for CHILD ABUSE - the indeterminate penalty of Fourteen (14) years and Eight (8) Months of Reclusion Temporal as minimum to Twenty (20) years of Reclusion Temporal, as maximum and to pay the amount of Php50,000.00 as civil indemnity; Php50,000.00 for moral damages and Php25,000.00 for exemplary damages.

Meanwhile, accused is ACQUITTED of the crime charged in Crim. Case No. 127825-H for insufficiency of evidence.

SO ORDERED.^[53] (Emphasis in the original)

In the Decision^[54] dated August 24, 2012, the Court of Appeals affirmed in toto the

Regional Trial Court Decision:

WHEREFORE, premises considered, the appeal is hereby **DENIED** and the challenged Decision dated 16 March 2009, supra, is hereby **AFFIRMED** in toto. (

SO ORDERED.^[55] (Emphasis in the original)

Pusing filed his Notice of Appeal.^[56] The Office of the Solicitor General^[57] and Pusing^[58] filed their respective Manifestations before this Court, noting that they would no longer file supplemental briefs and, instead, adopt their respective Appellant's and Appellee's Briefs.

For resolution is whether accused-appellant Edilberto Tamor Pusing is guilty beyond reasonable doubt of two (2) counts of qualified rape and one (1) count of child abuse.

Both the Regional Trial Court and the Court of Appeals correctly found accused-appellant guilty beyond reasonable doubt of:

- (a) qualified rape through carnal knowledge under Article 266-A(1)(d) in relation to Article 266-B(6)(10) of the Revised Penal Code;
- (b) qualified rape through sexual assault under Article 266-A(2), in relation to Article 266-A(1)(d) and Article 266-B(6)(10) and (12) of the Revised Penal Code; and
- (c) sexual violence against a minor through the lascivious conduct of massaging her breasts and licking her vagina under the second and third phrases of Section 5(b) of Republic Act No. 7610, in relation to Article 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610.

Both the Regional Trial Court and the Court of Appeals likewise correctly dismissed the charge of sexual violence against a minor by causing the child to masturbate accused-appellant's penis, as this was never proven in trial.^[59]

For the first charge (rape through carnal knowledge), under the Revised Penal Code, as amended, the first type of rape is committed as follows:

Article 266-A. Rape: *When And How Committed*. -Rape is committed:

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

....

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. (Emphasis supplied)

In *People v. Quintos*,^[60] we have defined "'twelve (12) years of age' under Article