

## FIRST DIVISION

[ G.R. No. 184762, February 25, 2015 ]

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, VS. DOMINGO GALLANO y JARANILLA, Accused-Appellant.**

### DECISION

**BERSAMIN, J.:**

To convict an accused charged with qualified rape instead of rape in its simple form not only condemns him to a more serious offense but also exposes him to an even greater liability. As such, the State is mandated to sufficiently allege in the information and to competently prove during trial the qualifying circumstances of minority and relationship with the same certainty as the crime itself.

#### The Case

This appeal assails the decision promulgated on December 14, 2007,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed with modification the judgment<sup>[2]</sup> rendered on March 22, 2004 by the Regional Trial Court (RTC), Branch 69, in Silay City, Negros Occidental finding appellant Domingo Gallano y Jaranilla guilty of the crime of rape, qualified by minority and relationship, and sentencing him to the supreme penalty of death therefor.

#### Antecedents

Gallano was arraigned and tried under the following information, *viz*:

That on or about 2 January 2003, in Silay City, Philippines and within the jurisdiction of this Honorable Court, the herein accused, with lewd design, and with force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his niece, AAA,<sup>[3]</sup> a 12-year-old minor, against the latter's will.

The aggravating circumstance of minority and relationship is present, the victim being 12 years old, and the accused being the victim's relative by affinity within the third civil degree.

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

The facts presented by the Prosecution were summed up thusly:

Private complainant, AAA, and her brother lived with their maternal aunt, BBB, BBB's husband, herein appellant, their children and BBB's brother in Barangay Guimbala-on, Silay City (TSN, October 6, 2003, pp. 3-4).

On January 2, 2003, BBB went to the hospital to take care of her father and stayed there for days. AAA was home and was about to make her brother go to sleep. She went inside the bedroom to a mat when appellant took her aside, undressed her and laid her down on the bed. Standing over her, appellant pointed his penis at her and warned her not to tell her mother, otherwise, he would kill her. When appellant's penis touched AAA's vagina, she felt pain and instinctively kicked him away. Feeling distraught, AAA ran outside and cried (TSN, October 20, 2003, pp. 5-7).

On January 8, 2003, BBB's brother went to the hospital, he told BBB that he saw AAA and appellant inside the room, standing and facing each other. This prompted BBB to ask AAA about the incident. At first, AAA hesitated and refused to talk but later admitted that she was raped. BBB brought AAA to the city health officer for examination on January 9, 2003 (TSN, October 6, 2003, pp. 4-5).<sup>[5]</sup>

The City Health Officer who examined AAA found hymenal lacerations on AAA's private part.<sup>[6]</sup>

Gallano denied the charge, and asserted alibi, insisting that on the day the rape was committed he had been working in the sugarcane field, having left home for that purpose at 5:00 a.m. and returning only at 5:00 p.m.; that he had brought his lunch then because he would take an hour to walk from the sugarcane field to his house; and that he had learned of the charge of rape against him only after his arrest and detention.<sup>[7]</sup>

### **Decision of the RTC**

In its judgment, the RTC convicted Gallano of rape, qualified by minority and relationship, disposing:

WHEREFORE, PREMISES CONSIDERED, this Court finds accused DOMINGO GALLANO Y JARANILLA, Guilty (sic.) of the crime of Rape, defined in Article 266-A in relation to Article 266-B, paragraph 5, subparagraph 1, of Republic Act No. 8353, as his guilt had been established by the prosecution beyond any reasonable doubt.

Accordingly, this Court sentences accused, DOMINGO GALLANO y JARANILLA, to suffer the Supreme Penalty of Death (sic.)

Accused, Domingo Gallano y Jaranilla, is, further, ordered by this Court to pay minor, [AAA], the sum of FIFTY THOUSAND PESOS (P50,000.00) as Moral Damages, and the sum of FIFTY THOUSAND PESOS (P50,000.00), all in Philippine Currency, as Exemplary Damages.

Accused, Domingo Gallano y Jaranilla, is ordered remitted to the National Penitentiary, Muntinlupa City, Rizal.

NO COSTS.

SO ORDERED.<sup>[8]</sup>

The RTC found AAA's testimony as credible, observing as follows:

Though a child, [AAA], demonstrated to this Court her capacity of observation, recollection and communication. She showed that she can perceive and perceiving, can make known her perception to this Court as she clearly and capably related the details of her sad and horrible experience at the hands of the accused. She withstood a thorough and exhaustive cross-examination, x x x It was a positive and credible account she presented before this Court. There was not a motive ascribed and/or, in the very least, suggested by the defense that might have raised doubt on her credibility and the credibility of the statements she made before this Court.<sup>[9]</sup>

Anent Gallano's alibi, the RTC stated:

The sugarcane field where accused, Domingo Gallano y Jaranilla, claimed he was at the time of the occurrence of the incident subject of the present criminal action was, likewise, located at Hda. Bias, Barangay Guimbala-on, a submitted distance of only four (4) kilometers away from the house where the submitted offense was committed easily accessible to the accused even by foot. Accused's statement was not corroborated nor substantiated by other evidence, oral or otherwise. Under the given circumstances, the physical impossibility of his presence at the scene of the crime, had not been established sufficiently and convincingly. The burden of proof in setting in evidence the factual circumstance/circumstances of the defense of alibi lies on the one who claims said defense, the accused in the present criminal action, which failed to do miserably.<sup>[10]</sup>

In characterizing the offense as qualified rape, the RTC ruled that AAA was definitely below 18 years old on January 2, 2003; and that such fact was not contested by Gallano.<sup>[11]</sup> As to the fact that AAA was Gallano's relative by affinity within the third civil degree, the RTC declared that such relationship had been sufficiently established.<sup>[12]</sup>

### **Judgment of the CA**

On appeal, Gallano challenged his conviction, contending that the RTC committed the following errors, to wit:

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE

II.

GRANTING ARGUENDO THAT ACCUSED-APPELLANT WAS GUILTY OF RAPING [AAA], THE COURT A QUO GRAVELY ERRED IN IMPOSING THE DEATH PENALTY.<sup>[13]</sup>

The CA affirmed Gallano's conviction for rape nonetheless because the State had established all the elements of rape, including the force and intimidation employed by Gallano.<sup>[14]</sup> It opined that there was no reason advanced by Gallano to warrant disturbing the RTC's appreciation of AAA's testimony; and agreed with the RTC that his alibi and denial were worthless. Anent the second error, the CA said that the records were "bereft of any independent evidence which would accurately show AAA's age,"<sup>[15]</sup> pointing out that even AAA had been uncertain about her own age; <sup>[16]</sup> and that contrary to the State's theory, as advanced by the Office of the Solicitor General (OSG), AAA's testimony to prove her age had been insufficient because Gallano's admission of it had not been express and clear.<sup>[17]</sup> Prescinding from these observations, the CA sustained the RTC's finding of AAA's minority because:

Be that as it may, the minority age of the victim was not questioned by the defense. Although this Court held that the age of the victim is not certain, her still being a minor below eighteen (18) years old is not contested. This Court has to rely on the observation as stated in the assailed decision that the Court *a quo* is quite certain that the victim is definitely below 18 years of age on January 2, 2003.<sup>[18]</sup>

The CA modified the penalty because of the intervening passage of Republic Act No. 9346,<sup>[19]</sup> whereby the death penalty was prohibited from being imposed in case of conviction, and instead imposed *reclusion perpetua* on Gallano.<sup>[20]</sup> The CA awarded civil indemnity of P75,000.00, moral damages awarded to P75,000.00, and exemplary damages to P25,000.00.<sup>[21]</sup>

### **Issues**

Hence, this appeal, with Gallano reiterating the alleged errors by the CA, arguing that he should not be convicted of rape upon the sole testimony of AAA that had been tainted with improbabilities and contrariness to human experience. Hence, his guilt had not been established beyond reasonable doubt.<sup>[22]</sup>

### **Ruling**

The conviction of Gallano is affirmed, but the characterization of the crime as

qualified rape is set aside. He could be held guilty only of simple rape.

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime.<sup>[23]</sup> As such, the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing.<sup>[24]</sup> Moreover, the testimony of a young rape victim is given full weight and credence considering that her denunciation against him for rape would necessarily expose herself and her family to shame and perhaps ridicule.<sup>[25]</sup> Indeed, it is more consistent with human experience to hold that a rape victim of tender age will truthfully testify as to all matters necessary to show that she was raped.<sup>[26]</sup>

After reviewing the records, the Court concludes that the trial court was not arbitrary in its appreciation of the proof of rape, and, therefore, the CA correctly ruled that the crime of rape was established beyond reasonable doubt even upon the lone testimony of the victim herself. With the lower courts not being shown by Gallano to have overlooked any matter or circumstance of weight that could alter the result in his favour, their appreciation must be viewed with respect. It is settled that the findings of fact by the trial court are accorded great weight, and are even held to be conclusive and binding unless they were tainted with arbitrariness or oversight.<sup>[27]</sup> This respect is but a recognition that the trial court is better situated to assess the testimonies and evidence laid out before it during the trial.<sup>[28]</sup>

Nonetheless, Gallano was guilty only of simple rape, not of qualified rape. In order that the accused is convicted of qualified rape under Article 266-B (1) of the *Revised Penal Code*, two requisites must be met, namely: (1) the victim must be a less than 18 years old; and (2) the offender must either be related to the victim by consanguinity or by affinity within the third civil degree, or is the common-law spouse of the parent of the victim. These two requisites must be both alleged and proved with absolute certainty.<sup>[29]</sup> Otherwise, the accused could only be held guilty of simple rape. The qualifying circumstances of relationship and minority remain to be relevant in the crime of rape despite the abolition of the death penalty under R.A. No. 9346. The accused's civil liability depends on the mode of rape he committed.<sup>[30]</sup>

Although Gallano's relationship with AAA went uncontroverted because both he and BBB had testified that they were legally married,<sup>[31]</sup> AAA's minority was not thereby competently established.

*People v. Pruna*<sup>[32]</sup> states the controlling guidelines in evaluating evidence presented to prove a rape victim's minority, to wit:

xxx [W]e hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic