

## THIRD DIVISION

[ G.R. No. 212929, July 29, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ENRIQUE GALVEZ, ACCUSED-APPELLANT.**

### DECISION

**VILLARAMA, JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated January 14, 2014 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03210 convicting accused-appellant Enrique Galvez of four counts of qualified rape.

Informations<sup>[2]</sup> for four counts of rape under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act (R.A.) No. 7659, and four counts of sexual abuse under Section 5 (b), Article III, R.A. No. 7610 were filed against the accused-appellant. Except for the dates of the commission of the crimes, all the Informations for the rape charges were worded similarly as in the Information for Criminal Case No. 228-95<sup>[3]</sup>:

That on or about the 14<sup>th</sup> day of May, 1995 at Sitio [XXX], Brgy. [YYY], in the municipality of Subic, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being the uncle of minor [AAA<sup>[4]</sup>], by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of said [AAA], a girl of 13 years old, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.

The Court restates the facts as summarized by the CA.<sup>[5]</sup>

At the time of the incidents complained of, private complainant AAA, the niece of accused-appellant Galvez, was thirteen (13) years old.

On several occasions during the summer vacation of 1995, complainant AAA stayed at the house of her father's brother, accused-appellant Galvez, at Sitio [XXX], Barangay [YYY], Subic, Zambales, to keep company accused-appellant's wife.

On several days, such as on May 14, 15, 16 and 18, 1995, when accused-appellant's wife was not in the house, accused-appellant Galvez removed AAA's clothes and underwear, went on top of AAA, forced

himself on AAA, and had sexual intercourse with her. Private complainant could not do anything.

Afterwards, AAA was able to leave accused-appellant's house and go to her house. There, AAA told her father what had happened to her. AAA's father brought her to the Subic Police Station, where she gave a Sworn Statement [about the alleged incidents of rape]. Afterwards, AAA's father brought her to the San Marcelino District Hospital, where AAA was examined by Dra. Echaluse.

The Medico-legal Certificate issued by Dra. Echaluse revealed the following:

"DIAGNOSIS/ FINDINGS:

- **Old Hymenal tears on the 3:00, 6:00, 9:00 o'clock position.**
- (-) Negative smear for spermatozoa.
- Cervix- Pink, firm with whitish discharge.
- No hematoma, echymosis, abrasion.
- No menarche." (*Emphasis supplied*)

On the other hand, the defense presented the lone testimony of accused-appellant Galvez, in order to establish the following:

Upon his brother's request, accused-appellant Galvez allowed his thirteen (13) year old niece, private complainant AAA, to stay in his house. According to accused-appellant, no unusual incidents occurred from May 14 to 16 and May 18, 1995 while AAA was at his house. Accused-appellant Galvez denied AAA's accusation that he had sexual intercourse with her. According to accused-appellant, it was his brother, the father of AAA, who molested AAA. Accused-appellant Galvez added that, on May 18, 1995, he went to his brother's house. There, accused-appellant Galvez saw AAA's mother, who was mute, standing at the door of her house. Private complainant AAA's mother, using her two (2) index fingers, demonstrated the acts of embracing and kissing. Accused-appellant Galvez then confronted his brother about the gestures made by AAA's mother. However, accused-appellant's brother ran away. Accused-appellant Galvez ran after his brother and told him, "Baboy[,] pati anak mo inaasawa mo".

Afterwards, when accused-appellant Galvez was unable to catch his brother, accused-appellant went back and told the incident to accused-appellant's mother-in-law.

Accused-appellant Galvez only came to know of the charges of Rape and violation of Sec. 5 (b), Art. III, R.A. 7610 against him when he was arrested by the barangay officials.

Subsequently, four (4) sets of Information for the crime of Rape under the Revised Penal Code, and another four (4) sets of Information for violation of Sec. 5 (b), Art. III, R.A. No. 7610, otherwise known as "Special Protection of Children Against

Abuse, Exploitation and Discrimination Act" were filed against accused-appellant Galvez.

Accused-appellant pleaded "NOT GUILTY" to all charges.

On May 2, 2007, the Regional Trial Court (RTC), Branch 74, Olongapo City, rendered its Decision<sup>[6]</sup> and convicted accused-appellant of four counts of sexual abuse under R.A. No. 7610 and four counts of rape under the Revised Penal Code:

**WHEREFORE**, in the light of the foregoing, accused is hereby found **GUILTY** for four (4) counts of sexual abuse under RA 7610 and sentenced to suffer the penalty of *reclusion temporal medium to reclusion perpetua* for each act; and four (4) counts of rape under the Revised Penal Code and sentenced to suffer the penalty of *reclusion perpetua* for each act.

**SO DECIDED.**<sup>[7]</sup>

The RTC, relying on the testimony of AAA and the Medico-legal certificate issued by Dr. Joan Marie C. Echaluse, found accused-appellant guilty of the crimes charged.<sup>[8]</sup> The RTC gave weight to AAA's testimony which it found to be straightforward, honest, and consistent on all material points. The RTC added that based on AAA's testimony alone the prosecution succeeded in proving all the elements of the crimes.<sup>[9]</sup>

The CA affirmed with modifications the Decision of the RTC. The CA convicted accused-appellant of the crimes of rape only on the ground that the accused may not be subjected to criminal liability twice, for both sexual abuse under Section 5 (b), Article III, R.A. No. 7610 and rape under Article 335 of the Revised Penal Code, for the same act.<sup>[10]</sup> The dispositive portion of the CA Decision reads:

**WHEREFORE**, the Decision of the trial court is **AFFIRMED**, with the following **MODIFICATIONS**:

a.) Accused-appellant is CONVICTED of four (4) counts of Qualified Rape under the Revised Penal Code in Criminal Case Nos. 228-95, 229-95, 230-95, and 231-95;

b.) Accused-appellant is to suffer the penalty of *Reclusion Perpetua*, for each count of Qualified Rape;

c.) Accused-appellant is to pay private complainant AAA the amount of Php 75,000.00 as Moral Damages, for each count of Qualified Rape;

d.) Accused-appellant is to pay private complainant AAA the amount of Php 30,000.00 as Exemplary Damages, for each count of Qualified Rape; and,

e.) Accused-appellant is to pay private complainant AAA the amount of

Php 75,000.00 as Civil Indemnity, for each count of Qualified Rape.

**SO ORDERED.**<sup>[11]</sup>

The CA noted that the testimony of AAA was corroborated by the findings of Dr. Echaluse, who conducted the physical examination of AAA.<sup>[12]</sup> The CA added that accused-appellant was positively identified by AAA as the one who had sexually forced himself on her on four occasions.<sup>[13]</sup> The CA rejected the argument of accused-appellant that the testimony of AAA was unbelievable and rehearsed. The CA noted the RTC's observation that the testimony of AAA was straightforward, honest, and consistent on all material points.<sup>[14]</sup> The CA also stated that it saw no ill-motive on the part of the prosecution witnesses and that the uncorroborated and weak defense of denial asserted by accused-appellant was negative and self-serving evidence undeserving of weight in law.<sup>[15]</sup>

Hence, this appeal.

The issues for our consideration are:

1. Whether or not accused-appellant is guilty of four counts of qualified rape.
2. Whether or not the award of civil indemnity and damages to AAA is proper.

This Court affirms the conviction of accused-appellant with modifications.

***The accused is not guilty of qualified rape but is guilty of simple rape.***

Article 335 of the Revised Penal Code defines the crime of rape and enumerates its elements, to wit:

ART. 335. *When and how rape is committed.* – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

x x x x

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

1. when the victim is under eighteen (18) years of age and the offender

is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

x x x x<sup>[16]</sup>

We now examine whether the elements of simple or qualified rape were proved beyond reasonable doubt in this case.

### **Carnal knowledge**

Carnal knowledge is proven by proof of the entry or introduction of the male organ into the female organ; the touching or entry of the penis into the *labia majora* or the *labia minora* of the *pudendum* of the victim's genitalia constitutes consummated rape.<sup>[17]</sup>

In this case, the RTC and the CA both found that the element of carnal knowledge was sufficiently established by AAA's narration that accused-appellant had sexual intercourse with her, to wit:

#### **[TSN, December 13, 1995]**

x x x x

FISCAL:

Q And you stayed [at the accused's house] on May 14, 1995 and while you were there do you know of any unusual incident that happened between you and [the accused]?

A Yes, sir.

Q Would you please tell this Honorable Court [w]hat was that unusual incident that happened between you and [the accused] on May 14, 1995 while you stayed with him?

A He removed my clothes and then my under wear then he went on top of me.

x x x x

A He had sexual intercourse with me, sir.<sup>[18]</sup>

x x x x

Q The following day on May 15, 1995[,] were you in the house of Idring or the accused Enrique Galvez?

A Yes, sir.

Q Was there any unusual incident that happened between you [and the accused] on May 15, 1995?

A Yes, sir.

Q Could you tell us what was that unusual incident that happened between you and the accused on May 15, 1995[?]

A He did the same thing to me sir, he again undressed me, I was naked.

COURT:

Q And after you were undressed?