

## FIRST DIVISION

[ G.R. No. 206972, December 02, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
PAMUEL A. MAGNO, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**PEREZ, J.:**

For review is the Decision<sup>[1]</sup> promulgated by the Court of Appeals (CA), affirming the Regional Trial Court's (RTC) Decision<sup>[2]</sup> in Criminal Case No. 2000-02-160 finding accused-appellant Pamuel A. Magno guilty of rape.

Accused-appellant was charged with the crime of kidnapping with rape in an Information which reads:

That on or about the 20<sup>th</sup> day of February, 2000, in the City of Tacloban, [Leyte,] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a private individual did, then and there, willfully, unlawfully and feloniously kidnap, detain and deprive the minor [AAA],<sup>[3]</sup> a 5-month old baby girl, by surreptitiously taking said minor with him without the consent and against the will of BBB (mother), bringing said minor to unknown places and whereabouts and did, then and there willfully, unlawfully and feloniously have carnal knowledge with said [AAA] a 5-month old baby girl, against her will.<sup>[4]</sup>

The arguments of the prosecution at the trial was that on 20 February 2000, BBB left her 5-month old baby, AAA to the care of her eldest daughter CCC while she went to her mother's house to boil water. When BBB came back, AAA has gone missing. A neighbor informed them that he saw an ice cream vendor carrying a baby around the time when AAA went missing.

The incident was reported to the police. Meanwhile, a cargo truck driver narrated that while on his way home, he saw a man abusing a baby on a bench in Plaza Libertad, Tacloban City. He noticed that the baby's private parts were bloodied. He beckoned four bystanders but when they returned to the plaza, the man had already fled and left the baby lying on the bench.

The police proceeded to Plaza Libertad and found AAA thereat. Police Officer 2 Raul De Lima (PO2 Delima) informed BBB of a possible sighting of AAA in the plaza. He then accompanied BBB to the plaza. BBB confirmed that the baby lying on the bench is AAA. She then brought AAA to the hospital.

Acting on a tip, the police proceeded to *Barangay* 37 in Seawall Area to apprehend accused-appellant. The cargo truck driver positively identified accused-appellant as the assailant.

For his part, accused-appellant claimed that he was sleeping inside the house when the police came, manhandled and arrested him. He denied raping AAA and claimed that he only came to know the charges against him during arraignment.

On 3 September 2002, the trial court rendered a Decision finding appellant guilty of the crime charged, thus:

**WHEREFORE, PREMISES CONSIDERED,** applying Article 267 and Article 266-A and 266-B of the Revised Penal Code as amended, and further amended by R.A. No. 8353, otherwise known as the Anti-Rape law of 1997, the [c]ourt found accused PAMUEL MAGNO, **GUILTY** for the Crime of KIDNAPPING WITH RAPE beyond reasonable doubt and sentenced to suffer the maximum penalty of DEATH and to indemnify AAA the sum of **FIFTY THOUSAND [PESOS] (P50,000.00)**, pay moral damages in the amount of **FIFTY THOUSAND PESOS (P50,000.00)** and pay the cost.<sup>[5]</sup>

In convicting accused-appellant, the trial court relied heavily on the testimony of the cargo truck driver who positively identified accused-appellant as the perpetrator of the crime.

On appeal, the appellate court rendered the assailed decision affirming with modification accused-appellant's conviction, to wit:

**WHEREFORE,** the appeal is **DENIED**. The Decision of the Regional Trial Court (RTC), Eight Judicial Region, Branch 7, Tacloban City, in Criminal Case No. 2000-02-160 is hereby **AFFIRMED with MODIFICATION**. Accused Pamuel A. Magno is found guilty beyond reasonable doubt of the special complex crime of kidnapping with rape and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the offended party AAA, the amounts of P75,000.00 as civil indemnity *ex delicto*, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.<sup>[6]</sup>

In a Resolution<sup>[7]</sup> dated 29 July 2013, the Court required the parties to simultaneously file their respective supplemental briefs. Both parties however manifested that they are adopting their briefs filed before the CA.<sup>[8]</sup>

In his Brief,<sup>[9]</sup> accused-appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He asserts that there was no proof that he intended to restrain the victim of her liberty, which is an element of kidnapping. Moreover, accused-appellant insists that the eyewitness did not see him inserting his penis on the victim's vagina hence carnal knowledge, as an element of rape, was not established. At most, accused-appellant concedes, that he may be held liable for rape under the second paragraph of Article 266-A in relation to Article 266-B.

The issue devolves on whether accused-appellant has been proven guilty beyond reasonable doubt of rape.

The evidence of the prosecution overwhelmingly establishes accused-appellant's guilt beyond reasonable doubt of the special complex crime of kidnapping with rape.