

## SECOND DIVISION

[ G.R. No. 196435, January 29, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL CRISOSTOMO Y MALLIAR,<sup>[1]</sup> ACCUSED-APPELLANT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

"[T]he trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case."<sup>[2]</sup>

On appeal is the October 22, 2010 Decision<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03832 which affirmed with modification the July 3, 2008 Decision<sup>[4]</sup> of the Regional Trial Court (RTC) of Antipolo City, Branch 73 finding appellant Joel Crisostomo y Malliar guilty beyond reasonable doubt of two counts of rape by sexual assault and one count of statutory rape.

In three separate Informations,<sup>[5]</sup> appellant was charged with rape committed as follows:

Criminal Case No. 99-16235 (Rape by Sexual Assault).

That, on or about the 8<sup>th</sup> day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there commit an act of sexual assault by using a lighted cigarette as an instrument or object and [inserting] the same into the genital orifice of "AAA,"<sup>[6]</sup> a minor who is six (6) years of age, thereby causing the labia majora of the vagina of said minor to suffer a third degree burn, against her will and consent.

Contrary to law.

Criminal Case No. 99-16236 (Rape by Sexual Assault).

That, on or about the 8<sup>th</sup> day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there commit an act of sexual assault by using a lighted cigarette as an instrument or object and [inserting] the same into the anal orifice of "AAA", a minor who is six (6) years of age, thereby causing the perianal region of the said anal orifice of said minor to suffer a third degree burn, against her will and consent.

Contrary to law.

Criminal Case No. 99-16237 (Statutory Rape).

That, on or about the 8<sup>th</sup> day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge [of] "AAA", a minor who is six (6) years of age; that on the same occasion that the Accused raped said minor, the accused did, then and there burn her buttocks by the use of a lighted cigarette, against her will and consent.

Contrary to law.

When arraigned on January 9, 2001, appellant pleaded not guilty.<sup>[7]</sup> Pre-trial conference was terminated upon agreement of the parties. Trial on the merits ensued.

***Factual Antecedents***

The facts as summarized by the RTC, are as follows:

The victim in these cases[,] "AAA[,] testified that at noon time of April 8, 1999, she was x x x playing x x x with her playmates whereupon she wandered by the house of accused which x x x was just below their house. "AAA" clarified during her cross-examination that there was a vulcanizing shop owned by her father located in their house x x x and where accused was employed. While "AAA" was at the house of accused, she claimed that her genitals and buttocks were burned with a lighted cigarette by the said accused. "AAA" testified further that her clothes were taken off by the same accused who also took his clothes off after which he allegedly placed himself on top of her, inserted his penis and proceeded to have illicit carnal knowledge [of] the then six (6) year old girl. (TSN May 29, 2001, pp. 5-9; TSN Aug. 7, 2001, pp. 10-12.)

"BBB," father of "AAA," presented in court his daughter's birth certificate (Exhibit "B") which stated that she was born on April 4, 1993 (TSN Sept. 25, 2001, p. 4). On the other hand, Dr. Emmanuel Reyes the Medico-Legal Officer who examined "AAA" identified his Medico-Legal Report (Exhibit "M") and testified that the victim indeed had two (2) third degree burns in the perianal region. Dr. Reyes testified that it was possible that the said burns were caused by a lighted cigarette stick being forced on the victim's skin. Moreover, Dr. Reyes confirmed that there was a loss of virginity on the part of the victim and that the same could have been done 24 hours from the time of his examination which was also on April 8, 1999. (TSN Nov. 7, 2001 pp. 11-17)

"CCC" [aunt of "AAA"] testified that x x x she x x x assisted the mother of

"AAA" in bringing the victim to the Pasig General Hospital and thereafter to Camp Crame where a doctor also examined "AAA" and confirmed that the latter was indeed a victim of rape. "CCC" testified that they then proceeded to the Women's [D]esk to file the instant complaint against the accused. (TSN August 5, 2003 pp. 4-8)

On the other hand, [a]ccused denied the allegation of rape against him. Accused presented his brother-in-law Rogelio Oletin who testified that he was tending the store located at the house of accused when the latter supposedly arrived from work at 10:00 [a.m.] of April 8, 1999 and slept until 5:00 [p.m.] of the same day. According to Rogelio that is the usual routine of accused as the latter worked in the night shift schedule as vulcanizer in the vulcanizing shop owned by the victim's father. (TSN February 3, 2006 pp. 6-8)

When accused testified on November 17, 2006, he essentially confirmed the testimony of his brother-in-law that it was impossible for him to have raped "AAA" on the date and time stated in the information as his night shift work schedule just would not permit such an incident to occur. Accused added that he knew of no reason why the family of the private complainant would pin the crime against him. (TSN Nov. 17, 2006 pp. 9-11 & 14)

In an effort to explain the burn marks on the delicate parts of "AAA's" body, the defense presented a supposed playmate of "AAA" in the person of Mary Pabuyan. According to Mary, she was then 7 years old when she and two other playmates together with "AAA" and Joel ["Liit"] the son of accused were burning worms near a santol tree in their neighborhood on a Good Friday in the year 1999. This Joel ["Liit"] supposedly lighted a straw which inadvertently burned the anal portion of "AAA's" body. Mary's exact words were to the effect that "napatakan ang puwit ni "AAA"."<sup>[8]</sup>

### ***Ruling of the Regional Trial Court***

On July 3, 2008, the RTC rendered its Decision finding appellant guilty of three counts of rape, viz:

WHEREFORE, premises considered, accused Joel Crisostomo y Malliar is found GUILTY of all offenses stated in the three (3) Criminal Informations and is hereby sentenced to the following:

a) In Criminal Information # 99-16235 and Criminal Information # 99-16236, accused is to suffer the Indeterminate Penalty of imprisonment of ten (10) years and one (1) day of Prision Mayor as minimum to seventeen (17) years, four (4) months and one (1) day of Reclusion Temporal as maximum and is ordered to pay the victim "AAA" civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00 for each of the two Criminal Informations.

b) In Criminal Information # 99-16237, accused is to suffer the penalty of Reclusion Perpetua and is ordered to pay the victim civil indemnity of P75,000.00, moral damages of P50,000.00 and exemplary damages of P30,000.00 with cost [of] suit for all Criminal Informations.

SO ORDERED.<sup>[9]</sup>

Aggrieved, appellant filed a Notice of Appeal<sup>[10]</sup> which was given due course by the trial court in its Order<sup>[11]</sup> dated February 2, 2009.

### ***Ruling of the Court of Appeals***

In his Brief filed before the CA, appellant raised the following assignment of error:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY FOR THE CRIME OF RAPE (ARTICLE 266-A PAR. 1 AND ART. 267-B, PAR. 7 IN RELATION TO R.A. NO. 7610) DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[12]</sup>

Appellant claimed that the trial court gravely erred when it lent full credence to the testimonies of the prosecution witnesses. In particular, appellant insisted that the trial court erred in finding "AAA's" testimony credible considering that she was unsure whether a match, rod or a cigarette stick, was used in burning her private parts.<sup>[13]</sup> Appellant argued that "AAA" never showed signs of shock, distress, or anxiety despite her alleged traumatic experience.<sup>[14]</sup> Appellant also alleged that "CCC's" testimony should be disregarded as she was not even present when the rape incidents happened.<sup>[15]</sup> He opined that "CCC" influenced her niece, "AAA," to file the suit against him which bespoke of ill-motive on her part. Appellant concluded that these "inconsistencies and contradictions" are enough to set aside the verdict of conviction imposed upon by the RTC.<sup>[16]</sup>

However, the CA gave short shrift to appellant's arguments. The CA rendered its Decision disposing as follows:

ACCORDINGLY, the instant appeal is DISMISSED. The assailed July 3, 2008 Decision is hereby AFFIRMED with MODIFICATION as to the penalties imposed, and to be read thus:

"1. For Criminal Case Nos. 99-16235 and 99-16236, Joel Crisostomo is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from ten<sup>[17]</sup> (8) years and one (1) day of *Prision Mayor*, as minimum, to seventeen (17) years and four (4) months of *Reclusion Temporal*, as maximum, and ordered to pay AAA Thirty Thousand pesos (P30,000.00) as civil indemnity, Thirty Thousand pesos (P30,000.00) as moral damages, and Fifteen Thousand pesos (P15,000.00) as exemplary damages, all for each count of rape by sexual assault; and

(2) For Criminal Case No. 99-16237, Joel Crisostomo is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility of parole, and ordered to pay AAA Seventy-Five Thousand pesos (P75,000.00) as civil indemnity, Fifty Thousand pesos (P50,000.00) as moral damages, and Thirty Thousand pesos (P30,000.00) as exemplary damages, and all the costs of suit.”

SO ORDERED.<sup>[18]</sup>

Hence, this appeal<sup>[19]</sup> which the CA gave due course in its Resolution<sup>[20]</sup> of January 6, 2011. In a Resolution<sup>[21]</sup> dated June 15, 2011, this Court required the parties to file their respective supplemental briefs. In its Manifestation and Motion,<sup>[22]</sup> the Office of the Solicitor General (OSG) informed this Court that it will no longer file a Supplemental Brief because it had already exhaustively discussed and refuted all the arguments of the appellant in its brief filed before the CA. Appellant likewise filed a Manifestation In Lieu of Supplemental Brief<sup>[23]</sup> praying that the case be deemed submitted for decision based on the pleadings submitted.

### **Our Ruling**

The appeal lacks merit.

The RTC, as affirmed by the CA, correctly found appellant guilty of two counts of rape by sexual assault and one count of rape by sexual intercourse. Article 266-A of the Revised Penal Code (RPC) provides:

*ART. 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:

- a. Through force, threat or intimidation;
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machinations or grave abuse of authority;
- d. **When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above should be present;**

**2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.** (Emphases supplied)

When the offended party is under 12 years of age, the crime committed is “termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, the only