

FIRST DIVISION

[G.R. No. 207774, June 30, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS ALHAMBRA Y MASING, ACCUSED-APPELLANT.**

R E S O L U T I O N

REYES, J.:

The Court resolves in this Resolution the appeal from the Decision^[1] dated November 28, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04949. The CA affirmed the Decision^[2] dated February 2, 2011 of the Regional Trial Court (RTC) of Cavite City, Branch 17, in Criminal Cases Nos. 219-05, 220-05 and 347-04, finding Carlos Alhambra y Masing (Alhambra) guilty beyond reasonable doubt of: (1) rape, as defined in Article 266-A of the Revised Penal Code (RPC), as amended; and (2) sexual abuse under Section 5(b), Article III of Republic Act (R.A.) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

Antecedent Facts

In Criminal Case No. 220-05, Alhambra was charged for the crime of rape, in an Information, which reads:

That on or about October 6, 2004, in the City of Cavite, Republic of the Philippines and within the jurisdiction of the Honorable Court, the above-named accused, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA],^[3] a minor, 17 years old, against her will and without her consent.

CONTRARY TO LAW.^[4]

The Information^[5] in Criminal Case No. 219-05, which likewise charged Alhambra with the crime of rape, is similarly worded except as to the date of the commission of the crime, which is during the summer of 1999, and the age of AAA, who was then only 12 years old.

In Criminal Case No. 347-04, Alhambra was charged with the crime of acts of lasciviousness under Section 10(a), Article VI of R.A. No. 7610, in a Complaint, which reads:

That on or about October 21, 2004, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation and being the father of the undersigned complainant, [AAA], a minor 17 years old, did, then and there, wilfully, unlawfully and feloniously kiss her lips, neck, breast, private parts and lay on top of the said complainant against the will and without the consent of the latter.

CONTRARY TO LAW.^[6]

Upon arraignment, Alhambra entered a plea of not guilty to the charges against him. After pre-trial conference, a joint trial on the merits ensued.

AAA is the daughter of accused-appellant Alhambra. AAA testified that, on October 6, 2004, while she was changing her clothes inside her room, Alhambra suddenly entered her room, pushed her, removed her undergarments, and kissed her on the neck, breasts, and vagina. At that time, AAA's mother was not around as she was then working. AAA tried to resist her father's advances, but the latter overpowered her. AAA did not dare make any noise as she was afraid that her father would harm her siblings, who at that time were just in the living room. Alhambra then inserted his penis into AAA's vagina, while kissing her on the breast and undressing her. AAA alleged that something sticky came out of his father's penis and spilled on her mouth. Thereafter, Alhambra put on his clothes and left AAA crying. Initially, AAA did not divulge to anyone what her father did to her.

In the afternoon of October 21, 2004, AAA, still in her undergarments with a towel wrapped around her body, after having taken a bath, entered her bedroom to put on clothes. To her surprise, her father immediately followed her to her bedroom. Alhambra then removed the towel covering AAA's body and her bra. He then started to kiss AAA on the neck. AAA cried and tried to push her father away; she pleaded her father to stop, but her father ignored her plea. Thereupon, her father removed her underwear, pushed her onto the bed, and kissed her on other parts of her body. Her father's lascivious design was interrupted when AAA's siblings suddenly returned to their house. Alhambra then instructed AAA to get dressed, and immediately went out of the room.

AAA then got dressed and asked permission from her father to visit a nearby friend. As she got out of their house, AAA chanced upon Senior Police Officer 2 Jesus Ubaldo (SPO2 Ubaldo) who, together with SPO1 Roland Costales (SPO1 Costales) and two civilian agents, was in the area to conduct a buy-bust operation. AAA then reported to them that her father was molesting her. Thereupon, SPO2 Ubaldo and SPO1 Costales went to AAA's house and, after having informed him of his constitutional rights, arrested Alhambra. They then went to the place of work of AAA's mother to inform her of Alhambra's arrest.

Consequently, AAA told her mother what her father had done to her. AAA told her that her father raped her when she was 12 years old; that it happened again on October 6, 2004. That on October 21, 2004, her father sexually abused her. AAA's mother then asked her why she did not immediately divulge her ordeal. AAA replied that she was afraid that her father would harm her and her siblings.

Upon medical examination, AAA's hymen showed deep healed lacerations, which evinces the conclusion that "an erect penis, a finger, or a blunt instrument" had caused the lacerations, "although it cannot be determined how many times the vagina was penetrated."

For his part, Alhambra denied the allegations against him, claiming that AAA only fabricated the allegations against him since he wanted her to be separated from her boyfriend. He denied having molested AAA in the summer of 1999; he claimed that he was then working at a poultry store and, after work, he was home all of the time with his wife and children. He likewise denied having raped AAA on October 6, 2004, claiming that he was then at home taking care of AAA's siblings. That AAA arrived at their house on said date at around 10:00 a.m. and immediately left an hour later.

Alhambra also denied having sexually abused AAA on October 21, 2004. He claimed that he was then resting in their house as he was sick. That he was surprised when police officers arrested him for having molested AAA.

The RTC Ruling

On February 2, 2011, the RTC rendered a Decision,^[7] the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Finding accused Carlos Alhambra guilty beyond reasonable doubt in Crim. Case No. 220-05 of the crime of Rape, defined and penalized under paragraph (1), Article 266-A in relation to sub-paragraph (1) of Article 266-B of the Revised Penal Code, as amended by RA 8353, and hereby sentences him to suffer the penalty of *reclusion perpetua*, without eligibility for parole pursuant to R.A. 9346; further, he shall indemnify private complainant, [AAA], in the amount of [P]75,000.00 as civil indemnity, [P]75,000.00 as moral damages, and [P]25,000.00 as exemplary damages.

2. Finding accused Carlos Alhambra guilty beyond reasonable doubt in Crim. Case No. 347-04 of the crime of sexual abuse, defined and penalized under Sec. 5 (b), R.A. 7610 and hereby sentences him to suffer the indeterminate penalty of thirteen (13) years, nine (9) months, and eleven (11) days of *reclusion temporal*, as minimum, to sixteen ^[16] years, five (5) months, and ten (10) days of *reclusion temporal*, as maximum and to pay a fine of [P]15,000.00 and to indemnify private complainant [AAA] in the amount of [P]20,000.00 as civil indemnity, [P]15,000.00 as moral damages, and [P]15,000.00 as exemplary damages.

3. Acquitting accused Carlos Alhambra in Crim. Case No. 219-05 considering that his guilt was not proven beyond reasonable doubt.

SO ORDERED.^[8]

The RTC acquitted Alhambra of the charge in Criminal Case No. 219-05 since the evidence presented by the prosecution therein was insufficient to establish that he indeed raped her daughter, AAA, during the summer of 1999. The RTC pointed out that “[a]n examination of the statement of [AAA] before the police and her testimony in court shows that there was just a passing mention of the incident complained of.”^[9]

In convicting Alhambra of the crime of rape in Criminal Case No. 220-05 and of sexual abuse under Section 5(b), Article III of R.A. No. 7610 in Criminal Case No. 347-04, the RTC gave more credence to the testimony of AAA, finding the same to be simple, direct and spontaneous. It appears that the RTC convicted Alhambra of sexual abuse under Section 5(b), Article III of R.A. No. 7610 in Criminal Case No. 347-04 notwithstanding that the designation of the crime in the Information therein was for acts of lasciviousness under Section 10(a), Article VI of R.A. No. 7610, considering that the allegations therein makes out a case for sexual abuse under Section 5(b).

Unperturbed, Alhambra appealed the RTC Decision dated February 2, 2011 to the CA.^[10] In his appeal, Alhambra pointed out that the RTC erred in finding him guilty for the crime of rape in Criminal Case No. 220-05 since AAA is not a credible witness. He pointed out that his acquittal for the charge of rape in Criminal Case No. 219-05 seriously casts doubt on the allegations of AAA. Moreover, he claimed that AAA’s delay in reporting the charge of rape in Criminal Case No. 219-05, which supposedly happened during the summer of 1999, calls into question the credibility of AAA as a witness. Further, Alhambra alleged that AAA’s testimony is riddled with inconsistencies and, thus, should not have been given credence by the RTC.

As regards Criminal Case No. 347-04, Alhambra alleged that he cannot be convicted for the crime of sexual abuse under Section 5(b), Article III of R.A. No. 7610 since AAA is neither a child exploited in prostitution nor a child subjected to other sexual abuse. He claimed that a child may only be considered as subjected to other sexual abuse if “he or she indulges in lascivious conduct under the coercion or influence of any adult.”^[11] Considering that it was only Alhambra who sexually abused AAA, assuming that the allegations against him are true, Alhambra claims that he cannot be convicted under Section 5(b), Article III of R.A. No. 7610.

The CA Ruling

On November 28, 2012, the CA rendered the herein assailed Decision^[12] which affirmed the RTC Decision dated February 2, 2011.

The CA ruled that Alhambra’s acquittal in Criminal Case No. 219-05 does not negate his criminal liability for the charge in Criminal Case No. 220-05. It pointed out that the RTC merely acquitted Alhambra of the charge in Criminal Case No. 219-05 since it found AAA’s testimony therein incomplete, and not because it found AAA’s testimony incredible. Further, the CA opined that the failure of AAA to immediately report the charge of rape in Criminal Case No. 219-05 does not tarnish her credibility as a witness; that the threats made by Alhambra actually prevented AAA from reporting the incident. As regards Alhambra’s conviction for sexual abuse in Criminal Case No. 347-04, the CA held that Alhambra’s claim that AAA is neither a

child exploited in prostitution nor a child subjected to other sexual abuse is untenable.

Hence, this appeal.

Both Alhambra and the Office of the Solicitor General manifested that they would no longer file with the Court supplemental briefs, and adopted instead their respective briefs with the CA.^[13]

Issue

Essentially, the issue for the Court's resolution is whether the CA erred in affirming the RTC Decision dated February 2, 2011, which found Alhambra guilty beyond reasonable doubt of the crimes of rape and of sexual abuse under Section 5(b), Article III of R.A. No. 7610.

The Court's Ruling

The appeal is dismissed for lack of merit.

Criminal Case No. 220-05

The crime of rape is defined under Article 266-A of the RPC, which states that:

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:
 - a. **Through force, threat, or intimidation;**
 - b. When the offended party is deprived of reason or otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority; and
 - 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.
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. (Emphasis ours)

"The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented."^[14]

Under Article 266-B of the RPC, the felony of rape is qualified when the victim is under 18 years of age and the offender is, *inter alia*, a parent.