

## SECOND DIVISION

[ G.R. No. 199100, July 18, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROSENDO AMARO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For consideration is the appeal by appellant Rosendo Amaro from the Decision<sup>[1]</sup> dated 30 March 2011 of the Court of Appeals in CA-G.R. CR-HC No. 02801, affirming the 26 February 2007 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 50, which found him guilty beyond reasonable doubt of the crime of forcible abduction with rape.

On 26 May 1998, appellant was charged with the crime of forcible abduction with rape committed as follows:

That on or about the 26<sup>th</sup> day of March, 1998 at more or less 5:00 in the afternoon in front of Boots & Maya located at Malvar Street, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of deceit at the beginning and of force and intimidation later and with lewd designs, did then and there willfully, unlawfully and feloniously abduct one [AAA],<sup>[3]</sup> a seven (7) year old girl, by forcing her and took her to his house at Bgy. Tagburos, Puerto Princesa City and without any justifiable reason, accused detained and deprived her of her liberty for a period of twenty eight (28) [sic] days; that while she is being detained accused ROSENDO AMARO had carnal knowledge of said AAA all committed against her will.

<sup>[4]</sup>

Appellant pleaded not guilty. Trial then proceeded.

AAA, who was then only 7 years old, testified that she was walking on her way home from school when she passed by Boots & Maya store. She met a man, whom she later identified in court as the appellant, who asked her to buy cigarettes. After buying the cigarettes and handing it to appellant, the latter gave her bread and banana cue. After eating them, she suddenly became dizzy and passed out. AAA was brought to the house of appellant. When she regained consciousness, she saw appellant naked. Appellant then undressed her, kissed her on the lips and neck, and inserted his penis into her vagina, causing her to feel pain. AAA cried but appellant covered her mouth with his hand. AAA was detained for six (6) days and was raped five (5) times by appellant. AAA clarified that appellant's penis touched the outer portion of her vagina.

During the cross-examination, AAA admitted that she voluntarily went with appellant because the latter promised to bring her home.<sup>[5]</sup>

On the last day of her detention, AAA and appellant went out of the house. On their way to San Jose, a certain Aunt Ruthie saw AAA walking and immediately picked her up and brought her to the police station. Appellant noticed AAA being taken away but he did nothing.<sup>[6]</sup>

The prosecution also presented AAA's mother, BBB, to corroborate her daughter's testimony. BBB narrated that on 26 March 1998, she was in the house when AAA came home at around noon time to eat. Thereafter, AAA told BBB that she had to go back to school. At around 5:00 p.m. when AAA had not come home, BBB went to the school to look for her. When the teacher told BBB that that school children had already been sent home, she proceeded to the police station to report her missing daughter. After six (6) days, AAA was found by BBB's former employer who brought her to the police. Upon receiving a call from the police, BBB immediately went to the police station and saw her daughter. BBB observed that AAA was still in shock and could not walk properly so she was brought to the doctor on the following day. She only learned that her daughter was raped after the medical examination.

Appellant testified on his behalf. He denied abducting and raping AAA but admitted that he brought the latter to his house when AAA approached him asking for bread first, before begging him to take her with him because she was always being scolded by her parents. Upon reaching his house, appellant entrusted AAA to the care of Florante Magay's sister. Appellant then went back to town to attend to his work as a mason. He only decided to go back home when he heard his name on the radio in connection with the disappearance of a girl. He picked up the child in Barangay Tagburos and brought her to her house in Buncag. AAA walked alone towards her house.<sup>[7]</sup>

On 26 February 2007, the trial court rendered judgment in this wise:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused ROSENDO AMARO GUILTY beyond reasonable doubt of the crime of Forcible Abduction with Rape, as defined and penalized under Article 342 and Article 266-B of the Revised Penal Code as amended by RA 8353 in relation to Article 48 thereof. The accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the costs. He is likewise ordered to pay the complainant-victim [AAA] the amount of FIFTY THOUSAND (P50,000.00) PESOS as civil indemnity and FIFTY THOUSAND (P50,000.00) PESOS as moral damages.<sup>[8]</sup>

The trial court found AAA's testimony as credible and straightforward and supported by medical findings.

From the aforesaid decision, appellant appealed to the Court of Appeals.

On 30 March 2011, the Court of Appeals promulgated a Decision affirming the ruling of the RTC.

Both parties opted not to file their Supplemental Briefs and instead adopted their Briefs filed before the appellate court.<sup>[9]</sup>

In this appeal, appellant contends that the prosecution's evidence is insufficient to sustain his conviction. According to appellant, he did not rape AAA because the latter was not in his custody at the time said incident allegedly happened. Appellant adds that he entrusted AAA to the custody of Florante Magay's sister because he was working. Appellant also insists that AAA voluntarily went with him to his house.

Thus, the resolution of this case hinges on whether or not the prosecution was able to establish from the testimony of the complainant the guilt of the accused for the crime of forcible abduction with rape beyond reasonable doubt.

The elements of the crime of forcible abduction, as defined in Article 342 of the Revised Penal Code, are: (1) that the person abducted is any woman, regardless of her age, civil status, or reputation; (2) that she is taken against her will; and (3) that the abduction is with lewd designs. On the other hand, rape under Article 266-A is committed by having carnal knowledge of a woman by: (1) force or intimidation, or (2) when the woman is deprived of reason or is unconscious, or (3) when she is under twelve years of age.

The prosecution was able to prove all these elements in this case. The victim, AAA was a seven (7) year-old girl who was taken against her will by appellant who told her that he knew her mother and that he would bring her home.<sup>[10]</sup> At her tender age, AAA could have easily been deceived by appellant. The employment of deception suffices to constitute the forcible taking, especially since the victim is an unsuspecting young girl. It is the taking advantage of their innocence that makes them easy culprits of deceiving minds.<sup>[11]</sup> The presence of lewd designs in forcible abduction is established by the actual rape of the victim.<sup>[12]</sup>

During the direct examination, AAA recounted the rape incident and positively identified appellant as the perpetrator, thus:

Q: When Rosendo undressed himself what happened next?

x x x x

A: He undressed me.

PROSECUTOR SENA:

(to witness)

Q: And after you were undressed by Rosendo what happened next?

A: He kissed me.

Q: Where were you kissed by Rosendo?

A: In lips, Sir.

Q: Only your lips was kissed by Rosendo?

A: On my neck.

Q: Aside by being kissed by Rosendo, what else did he do to you?

A: He inserted his penis to my vagina.

Q: What do you mean by "totoy?"

(No answer)