

FIRST DIVISION

[G.R. No. 202838, September 17, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JULITO GERANDROY, ACCUSED-APPELLANT.

D E C I S I O N

PEREZ, J.:

"Childhood should be carefree, playing in the sun: not Living a nightmare in the darkness of the soul. "

-- Dave Pelzer, A Child Called "It"

This is an appeal filed by herein accused Julito Gerandoy (Gerandoy) from the Decision^[1] of the Court of Appeals, modifying the decision or conviction rendered by the Regional Trial Court of Surigao City and finding the accused guilty of two counts of Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 or "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

The Facts

Before the Regional Trial Court of Surigao City, Gerandoy was charged with two counts of the crime of rape under Article 266-A, paragraph 1 in relation to Article 266-B of the Revised Penal Code.

Criminal Case No. 6624

That on or about the 16th day of December, 2001 in the City of Surigao, Philippines and within the jurisdiction of this Honorable Court, the above named-accused, by means of force[,], threats, violence, and intimidation and with the use of deadly weapon and then and there willfully, unlawfully and feloniously have sexual intercourse with AAA,^[2] a 13 year old girl, [his] own daughter without the consent and against the will of the latter, to her damage and prejudice of in such sum as may be allowed by law.

Contrary to law Article 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code, with the qualifying circumstance of relationship, the victim being the daughter of the accused and aggravating circumstance of use of deadly weapon.^[3]

Criminal Case No. 6625

That on or about the 7th day of December, 2001 in the City of Surigao,

Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force[,] threats, violence, and intimidation and then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a 13 year old girl, [his] own daughter without the consent and against the will of the latter, to her damage and prejudice of in such sum as may be allowed by law.

Contrary to law Article 266-A paragraph I in relation to Article 266-B of the Revised Penal Code, with the qualifying circumstance of relationship, the victim being the daughter of the accused.^[4]

When arraigned on 17 February 2004, he pleaded not guilty to the offenses charged.^[5]

Version of the Prosecution

The victim, AAA, then 13-years-old at the time of the commission of rape, narrated that her father, accused Gerandoy, raped her on two (2) occasions on 7 and 16 December 2001. She recalled that the first rape was committed on or about 12:00 a.m. of 7 December 2001 at their house. She narrated that while she was sleeping with her brothers and sisters in one of the two rooms inside their house, she was awakened when Gerandoy entered the room and hugged her. The accused then forced her to lie down despite her resistance. She tried to stand up but the accused held her waist. He then kissed her cheeks and tore her dress with a knife. She kept on resisting the assault of the accused but the latter told her that he would kill them all if she would not consent to his advances. AAA told him that she was her daughter and his acts were sinful. The accused stabbed and boxed her stomach. She lost her consciousness. After she became conscious, she was already undressed and noticed that her vagina was bleeding while the accused was lying beside her. She cried and went away to the farm and reported the incident to the elder sister^[6] of her mother, CCC (Aunt CCC).^[7]

The second incident of rape happened on 16 December 2001 at around 11:00 p.m. AAA recalled that she was sleeping in a room she shared with her brothers and sisters when awakened by Gerandoy. Gerandoy then touched her face and told her that he will rape her again. She pleaded him to stop but her father continued to touch her body. AAA resisted but her father held her arms and forced her to lie down. She kept on resisting but Gerandoy held a knife at her waist and warned that he could easily stab her. He slapped her and warned further that he would kill all members of their family including himself if she would keep on resisting. Gerandoy told her not to resist anymore as her two older sisters have already been molested by him. She was then undressed and Gerandoy mounted her. He touched and sucked her nipple and kissed her lips. After that, AAA went again to her aunt and told her what happened.^[8]

During trial, AAA clarified that she reported the first incident of rape to her aunt one month after it happened. She reported the second incident three months after. She explained that the delay was due to her fear that her father would make real his warning and continuing threats that he would kill them all. When asked why she reported the incidents to her aunt instead of her mother, she answered that she did

tell her mother about what happened but she was told to keep quiet about them because it was embarrassing. She reported the incident to the police on 2003 and was medically examined on 3 September 2003.^[9]

The prosecution likewise presented Dr. Josephine Del Carmen (Dr. Del Carmen), the medico-legal expert who examined AAA on 3 September 2003. In lieu of her testimony in open court, the prosecution and defense stipulated on the genuineness and due execution as well as the authenticity of her findings.

Aside from the testimony of AAA and stipulation of facts relating to the medical examination on the victim, the prosecution likewise offered as evidence the Certificate of Live Birth of the victim to prove that she was a minor when the two incidents of rape were committed and the medical certificate^[10] issued by Dr. Del Carmen.

Version of the Defense

On 30 September 2004, AAA executed an Affidavit of Desistance^[11] that she was no longer pursuing her case against her father. However, the court issued an order on 30 August 2005 ordering the continuance of the case to determine the voluntariness of the execution of the affidavit.^[12]

Aside from the affidavit, the defense presented its first witness BBB, the mother of the victim and wife of the accused. She denied that her daughter AAA was raped on 7 December 2001 as the victim was not in their house when the alleged incident happened. BBB, controverting the earlier statement of AAA, said that she was in their house on 7 December 2001 and was feeding her infant child during that time.^[13]

Likewise, she denied that AAA was raped on 16 December 2001. BBB testified that AAA left their house at around 8:00 p.m. to attend a Christmas party with her friends. AAA did not return and stayed in her Aunt CCC's house. BBB further said that it was unlikely that the accused would be able to rape AAA as he was in the farm on that date and time and arrived home at 7:00 a.m. the day after. Upon learning that AAA did not return home, the accused scolded and beat her with a broom. As a result, AAA went away and since then stayed in her aunt's house. She also identified the affidavit of desistance of AAA. She said that her daughter told her that the charges of rape against Gerandoy were not true.^[14]

On her cross-examination, BBB denied that she was working as a house helper when the alleged incidents of rape happened. She gave conflicting answers on how many children she has and the year when AAA was born.^[15]

On 26 September 2007, AAA was again called to the witness stand to testify on the voluntariness of the affidavit of desistance she executed on 30 September 2004.^[16]

On her cross-examination, she testified that pity for her father prompted her desistance. She expressed her apprehension that nobody would take care of her other siblings if the case against her father would push through. She confirmed that her Aunt CCC convinced her to file a rape case against her father. When asked by

the court to confirm her reason why she was desisting, she again answered that she pitied her father.^[17]

Finally, the defense presented the accused as its last witness. In his direct examination, he denied the charges of rape filed against him as he was not present in their house at the time the alleged incidents happened. He testified that from 15 December 2001, he was in the farm harvesting coconuts for *copra* and only arrived at their house in the evening of 19 December 2001. He learned that his daughter AAA was not there. He was told by BBB that AAA did not return home since 15 December 2001 after attending a party with her boyfriend. He later confronted AAA about this but AAA answered back. Mad about AAA's response, he beat his daughter with a broom. After that, she ran away to her Aunt CCC's house. He mentioned that CCC and her husband held grudges against him as he did not allow them to join in the harvesting of coconuts.^[18]

In his cross-examination, only few questions were asked by the prosecution. Gerandoy confirmed that he was in the farm from 15-19 December 2001 and did not go home to sleep in their house. He also stated that he became angry with AAA about what her daughter did on 15 December 2001.^[19]

Upon resting their case, the defense offered the affidavit or desistance of AAA as documentary evidence.

The Ruling of the Trial Court

The trial court on 13 February 2009 found Gerandoy guilty beyond reasonable doubt for each count of rape and imposed upon him the penalty of *reclusion perpetua* with all the accessory penalties and civil indemnities.^[20] The dispositive portion reads:

WHEREFORE, for Criminal Cases Nos. 6624 and 6625, the Court hereby finds the accused JULITO GERANDUY, **GUILTY** beyond reasonable doubt as *principal* for the two counts of rape committed respectively on December 7, 2001 and December 16, 2001, as may be defined and penalized under Article 266-A and 266-B of the Revised Penal Code in relation to Republic Act No. 9346.

This Court hereby sentences accused JULITO GERANDUY **FOR EACH COUNT OF RAPE** to suffer the penalty of RECLUSION PERPETUA together with all the accessory penalties provided for by law; to indemnify the victim AAA the amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS; another sum of SEVENTY FIVE THOUSAND (P75,000.00) PESOS as moral damages; and to pay the costs.

In the service of his sentence accused shall be credited with the full period of his preventive imprisonment pursuant to Article 29 of the Revised Penal Code as amended by [Republic Act No.] 6127.

Let commitment order [BE ISSUED] for the transfer of the accused from the City Jail BJMP, Silop, Surigao City to the Bureau of Corrections, Muntinlupa, pursuant to Circular 4-92 of the Supreme Court of the

Philippines dated April 20, 1992 regarding the transfer of National Prisoners to the Bureau of Corrections in Muntinlupa City.^[21]

In its ruling, the trial court found credible the first testimony given by AAA being spontaneous and worthy of credibility. It did not give weight to the affidavit of desistance as it was based on pity. Similarly, the court set aside the argument of the accused that it was impossible for the victim to be sexually abused inside a small room. Jurisprudential rulings have been consistent that rape need not be committed in isolated places.

The Ruling of the Court of Appeals

On 29 November 2011, the appellate court modified the ruling of the trial court. The dispositive portion reads:

IN LIGHT OF ALL THE FOREGOING, the Court hereby **MODIFIES** the assailed Decision dated February 13, 2009 of the Regional Trial Court, Branch 29, Surigao City in Criminal Case No[s]. 6624 and 6625. The Accused-Appellant Julito Gerandoy is found **GUILTY** of two counts of Acts of Lasciviousness in relation with Section 5(b) of Republic Act No. 7610 or Child Prostitution and Other Sexual Abuse and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay a fine of P 15,000.00 and to indemnify AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages, and P15,000.00 as exemplary damages for each count, plus legal interest on all damages awarded at the rate of six percent (6%) from the date of finality of this decision until fully paid.

^[22]

It ruled that the two counts of rape have not been sufficiently established by the prosecution with moral certainty but nevertheless still found the accused liable for acts of lasciviousness in relation with Section 5 (b) of Republic Act No. 7610. It found credible the testimony of AAA that the accused hugged, kissed her lips and nipples, caressed her body and touched her breasts. The appellate court dismissed the argument that it is highly unlikely that the victim would be sexually abused in a small room surrounded by her own siblings.

Our Ruling

After a careful review of the evidence, we affirm with modification the ruling of the Court of Appeals.

Primarily, accused relies on arguments initially raised in his Supplemental Brief filed before the Court of Appeals. The accused reiterates denial of the commission of the crime, relying on the affidavit of desistance. The accused assigns as error that the appellate court did not give credit to the affidavit since it truthfully narrated his non-liability, and pointed to revenge as the reason for the filing of the charges. Further, it emphasizes the inconsistencies made by AAA during her testimony thus eroding her credibility. Finally, in his last effort to discredit the victim, the accused asserts that