

## FIRST DIVISION

[ G.R. No. 20200, March 13, 2013 ]

**MIKE ALVIN PIELAGO Y ROS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**REYES, J.:**

The petitioner, Mike Alvin Pielago y Ros (Pielago) assails the Decision<sup>[1]</sup> dated February 1, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33475 which affirmed the Judgment<sup>[2]</sup> dated May 31, 2010 of the Regional Trial Court (RTC) of Ligao City, Branch 14, finding Pielago guilty beyond reasonable doubt of the crime of rape by sexual assault.

Pielago was charged in an Information,<sup>[3]</sup> the accusatory portion of which reads:

“That on or about July 1, 2006 at around 3:30 in the afternoon at Barangay Allang[,] City of Ligao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and actuated by lust, did then and there willfully and unlawfully and feloniously commit an act of lasciviousness upon the

person of [AAA]<sup>[4]</sup>, a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of [AAA], which acts debase, degrade and demean the intrinsic worth and dignity of said minor as human being to her damage and prejudice.”

CONTRARY TO LAW.<sup>[5]</sup>

Prior to the issuance of a warrant of arrest, Pielago voluntarily surrendered to the police authorities and posted a property bail.

During arraignment, Pielago pleaded not guilty to the charge against him.

At the trial, the prosecution presented the testimonies of AAA; her mother, BBB; Ligao City Health Officer Dr. Lea F. Remonte; Melie P. Gonzales, a resident of *Barangay* Allang; and PO2 Ma. Rowena S. Aldea. The defense, on the other hand, presented the testimonies of the accused; Nestor and Celeste Pielago, his parents; Myrna Ros De La Torre, his aunt; and some of the residents of *Barangay* Allang where the accused and the victim reside.

## Evidence for the Prosecution

On July 1, 2006, between 2:00 p.m. to 2:30 p.m., AAA and her two (2)-year old brother, CCC, were playing with Pielago whom they call as *Kuya Alvin* at the porch of Boyet Ros' (Boyet) house. After playing, the three (3) went inside Boyet's house to watch television. After a while, Pielago turned off the television and brought AAA and CCC to a bedroom. While CCC played with a toy carabao at a corner, Pielago made AAA lie down on bed. Pielago then took off AAA's short pants and inserted his right hand's forefinger inside her vagina and exclaimed "*masiram*" (which means "delicious") as he brutally licked it and spewed saliva in it. AAA felt pain and blood came out of her vagina which frightened her. Unsatisfied, Pielago made AAA lie on her chest on the same bed then fingered her anus. After a few minutes, AAA and CCC were called for lunch by their mother, BBB. Pielago immediately replaced AAA's shorts then sent her and CCC out of the bedroom. BBB noticed the bloodstains at the back portion of AAA's shorts. When BBB asked AAA what happened, AAA did not answer immediately until she said "***Kuya Alvin tugsok buyay saka lubot ko buda dila pa.***" (which means "*Kuya Alvin inserted something in my vagina and my anus and he licked me*). Incensed by what AAA told her, BBB went to a certain *Manay* Eden who accompanied her to the house of Boyet where she found Pielago still lying on bed. BBB continually hit Pielago as she asked him what he did to AAA. Pielago, however, denied the accusations and maintained that he was asleep when the incident happened. At 6:00 p.m. of the same day, AAA and BBB lodged a complaint at the Police Station where AAA was physically examined by a medico-legal officer which issued a report showing a superficial laceration found at the 7 o'clock position of AAA's anus and the presence of erythema in the perihymenal area and fossa navicularis caused by the insertion into the victim's genitals of a foreign object, possibly a small finger or any blunt object.<sup>[6]</sup>

## Evidence for the Defense

Pielago denied the charge against him and testified that on July 1, 2006, he ate lunch with Mary Grace Capinpin, Benedict Bordeos (Benedict) and Jerome Monasterial in the house of his uncle, Lito Ros. Thereafter, he and Benedict rested in a nipa hut which was 3 to 4 meters away from said house. While resting, Pielago heard BBB calling her two (2) children, AAA and CCC, who both ignored her while they were at the basketball court. Being close to the two (2) children, Pielago convinced them to go home and even assisted them in taking their lunch. He felt sleepy so he proceeded to the house of his uncle and slept on the sofa located in the living room. However, AAA and CCC came in and noisily played in the living room where he was so he transferred to the bedroom. He was sound asleep until he felt somebody boxing his back. While BBB was continually boxing Pielago, she kept on asking what he did to her child, AAA. Awakened and shocked, Pielago retorted: "***What is it?***" He denied her accusation because he said he was fast asleep. At that time, he saw AAA and CCC chatting at the corridor of his uncle's house. After BBB left, Pielago just went back to sleep. Pielago added that there is an existing land dispute between his grandparents and BBB's family which could have impelled the latter to file the instant charge against him even if he has nothing to do with it. The defense also insisted that the bloodstain found on AAA's shorts may have resulted from BBB's spanking; or that it could be the menstrual blood of a teenager living in the house of Pielago's uncle who owns the short pants which AAA took and wore during the incident.<sup>[7]</sup> This was not far fetched because Pielago stated that after he

woke up, he noticed that the clothes on top of the bed were already scattered.<sup>[8]</sup>

### The Decision of the RTC

In its Decision<sup>[9]</sup> dated May 31, 2010, the RTC stated that it is necessary to determine the actual or proper crime against the accused in view of the discrepancy between the crime charged in the Information and the factual allegations contained therein. On its face, the Information charged the crime of acts of lasciviousness against Pielago. However, the factual allegations contained in the Information and the provisions of existing laws pertain to the crime of rape by sexual assault defined and penalized under Section 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.<sup>[10]</sup> The trial court explained that the testimony of AAA merits full credit despite her tender age. Her clear, candid and straightforward testimony categorically narrated how Pielago successfully ravished her innocence when he inserted his finger into her vagina and *anus* that caused her to feel pain in her genital parts. Indeed, AAA's positive identification of Pielago as her molester convinced the trial court to believe her version of what indeed transpired between them.

The RTC brushed aside Pielago's defense of denial for being intrinsically weak. Finding Pielago guilty for the crime of rape by sexual assault, the RTC sentenced him to an indeterminate penalty of *prision mayor*, as minimum, to *reclusion temporal*, as maximum, after considering Pielago's voluntary surrender as a mitigating circumstance, and to pay AAA the amounts of P30,000.00 as civil indemnity, P30,000.00 as moral damages, P25,000.00 as exemplary damages and P10,000.00 as temperate damages.<sup>[11]</sup>

The *fallo* of the RTC Decision reads:

WHEREFORE, the above premises considered, judgment is hereby rendered:

- a. Finding the accused, Mike Alvin Pielago y Ros GUILTY beyond reasonable doubt of the crime of Rape by Sexual Assault, committed against [AAA], defined in paragraph No. 2, Article 266-A, Revised Penal Code, as amended by RA 8353; thereby, after taking into account the qualifying circumstance relating to the victim's age, "*less than seven (7) years of age*" (last paragraph, Art. 266-B, *ibid.*), but crediting accused with the mitigating circumstance of voluntary surrender, hereby sentences said accused to suffer the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, with the accessory penalties provided by law;
- b. As civil liability *ex delicto*, the same accused is ORDERED TO PAY minor complainant, [AAA], through her parents, the following sums:
  - 1) Php.10,000.00 as temperate damages;
  - 2) Php.30,000.00 as civil indemnity for the commission of Rape by sexual assault;

- 3) Php.30,000.00 as moral damages; and
- 4) Php.25,000.00 by way of exemplary damages.

SO ORDERED.<sup>[12]</sup>

### **The Decision of the CA**

On February 1, 2012, the CA rendered a Decision<sup>[13]</sup> affirming *in toto* the RTC's decision. The appellate court explained that despite the fact that the Information charged the crime of acts of lasciviousness, the established factual circumstances therein constitutes the elements of rape penalized under Article 266-A of the Revised Penal Code such as: (1) that the offender inserted his penis into another person's mouth or anal orifice or inserted any instrument or object into the genital or anal orifice of another person; and (2) that the same was done to a child below 12 years of age.<sup>[14]</sup> Citing the case of *Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People*,<sup>[15]</sup> the CA emphasized that it is not the nomenclature of the offense that determines the crime in the Information but the recital of facts of the commission of the offense. The determination by the prosecutor who signs the Information is merely an opinion which is not binding on the court.<sup>[16]</sup> The CA, moreover, agreed with the RTC in brushing aside the bare self-serving denial of Pielago. He also failed to adduce any evidence to support his claim that AAA was coached by her mother on what she should testify in court. Finding support in current jurisprudence,<sup>[17]</sup> the CA aptly stated that an accused may be convicted solely on the testimony of the victim so long as it is credible, convincing and consistent with human nature and the normal course of things.<sup>[18]</sup> Lastly, the CA concurred with the RTC's cognizance of the mitigating circumstance of voluntary surrender there being no warrant of arrest issued against Pielago. Thus, it decreed, in this wise:

**WHEREFORE**, in view of the foregoing, the Decision dated May 31, 2010, of the Regional Trial Court of Ligao City, Branch 14 in Criminal Case No. 5496 is **AFFIRMED** *in toto*.

**SO ORDERED.**<sup>[19]</sup>

Hence, this appeal anchored on the two issues, namely:

#### **I**

**WHETHER THE HONORABLE [CA] ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[; and]**

#### **II**

**WHETHER THE HONORABLE [CA] ERRED IN CONVICTING THE PETITIONER OF THE CRIME OF RAPE BY SEXUAL ASSAULT**