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[G. R. No. 144340-42, April 17, 2002]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODELIO AQUINO Y RODA, ACCUSED-APPELLANT.

DECISION

PER CURIAM:

Before this Court for automatic review[1] is the Joint Decision[2] of Branch 163 of the Regional Trial Court of Pasig City, in Criminal Cases Nos. 116859-H, 116860-H and 116861 promulgated on July 13, 2000. In Criminal Case No. 116859-H, the lower court sentenced appellant Rodelio Aquino y Roda to suffer the death penalty.

The prosecutor charged appellant with two (2) counts of Rape under Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, committed against appellant's nieces, 5-year old Charlaine Bautista and 4-year old Charmela Bautista. The prosecutor also charged appellant with one (1) count of Acts of Lasciviousness under Article 336 of the Revised Penal Code, as amended by R.A. No. 7610, committed against appellant's other niece, 6-year old Charmaine Bautista. The Informations read as follows:

Criminal Case No. 116859-H

> "Sometime in October, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being the uncle of the 5-year old Charlaine Bautista, with lewd designs, did then and there willfully, unlawfully and feloniously have sexual intercourse with said Charlaine Bautista, by then and there touching her vagina and inserting his penis into her vagina, against the latter's will and consent.
>
> Contrary to law."

Criminal Case No. 116860-H

> "On or about or prior to October 12, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being the uncle of the 4-year old Charmela Bautista, with lewd designs, did then and there willfully, unlawfully and feloniously commit[ted] sexual assault upon the person of said Charmela Bautista, by then and there touching her vagina and inserting one of fingers (sic) into her vagina, against the latter's will and consent.
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> Contrary to law."

Criminal Case No. 116861

> "On or about or prior to October 12 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being the uncle of the 6-year old Charmaine Bautista, with lewd designs, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of said Charmaine Bautista, by then and there touching her vagina, against the latter's will and consent.
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> Contrary to law."

On December 7, 1999, the appellant, assisted by counsel, entered a plea of not guilty to each of the Informations. After pre-trial, a joint trial on the merits ensued.

Winnie Bautista is a 28-year old, single mother, residing at No. 58-C Lower Bicutan, Taguig, Metro Manila. She has three young daughters: Charmaine who is (6) years old, Charlaine, five (5) years old, and Charmela, four (4) years old. Winnie is estranged from her husband. The children use the surname Bautista, Winnie's maiden name, instead of Congollo, their father's surname, although their birth certificates bear the surname of their father. Winnie testified that appellant Rodelio Aquino is her brother. She explained during trial that Aquino is their biological father's surname while Bautista is their stepfather's surname, which she as been using since she was a child.[3]

Appellant's house is situated about one meter away from the complainants' house. [4] The children would often go to their uncle's house and spend time with him while their mother was at work. This explains why the children developed a certain fondness for their uncle and called him "daddy" since he had no children of his own. [5]

Cherry Lauria, a friend of Winnie, stayed with the latter's family for a few days and was tasked to look after the children while their mother was at work. It was during Cherry's stay that she learned of the children's unfortunate experience with "daddy". [6]

On October 12, 1999, at around 6 p.m., while waiting for the show time of a television soap opera, Cherry told the children to take their dinner first before watching television. Charmela, the youngest of the three, did not want to eat and instead told Cherry that she wanted to go to "daddy". Charlaine suddenly blurted out to Charmela not to go to appellant's house because he might do to her what he did to Charlaine - rape her. Shocked by what she heard from Charlaine, Cherry turned off the TV and asked the children one by one what happened.[7]

It turned out that appellant had been abusing his nieces.

Sometime in October of 1999, Charlaine, then about 5 years old, made one of her usual visits to appellant's house. No other person was then present at the house except appellant and Charlaine. Appellant handed to Charlaine a bottle of baby oil and asked her to put some on his penis, a request which she innocently and obediently followed. Appellant then applied some oil on the vagina of Charlaine and thereafter inserted his oily penis into Charlaine's vagina.[8]

Charmaine and Charmela likewise related to Cherry that appellant had fondled their genitals when they went to his house.[9]

The children begged Cherry not to tell their mother and grandmother about the incident because appellant had threatened to kill them.[10]

The following day, Cherry reported the children's plight to their mother.

Winnie reported the matter to the Taguig Police Station as well as to the Department of Social Welfare and Development.[11] The Taguig Police then requested PNP Crime Laboratory Service at Camp Crame, Quezon City, to conduct a Physical examination on Charlaine, Charmaine, and Charmela to determine if they were victims of sexual abuse.[12]

On October 14, 1999, Dr. Emmanuel Reyes of the PNP Crime Laboratory examined the children. He found the presence of a healing laceration at a 5 o'clock position on Charlaine's hymen. While he found both Charmaine and Charmela in a virgin state physically, he noted that their fourchettes[13] were congested. Dr. Reyes said that the most likely explanation for this condition was that their genitals had been manipulated.[14]

Appellant asserted the defense of alibi in denying the charges against him. On October 12, 1999, the day of the alleged incident, accused claimed that he was buying silver at the garbage dumpsite of Uniden, located at Lower Bicutan, Taguig, Metro Manila. Accused stressed that he usually stays at the dumpsite from 6 a.m. until the afternoon. The accused surmised that his refusal to loan P5,000.00 to his sister Winnie might have provoked the latter into falsely accusing him.[15]

The trial court, relying on the credibility of the prosecution witnesses and the personal testimonies of the victims themselves, found appellant guilty beyond reasonable doubt of the charges against him. It held, "The three kids, despite their tender age, said in a direct, clear, straightforward and spontaneous manner that they were violated by the accused."[16] The trial court found appellant guilty of qualified rape and imposed upon him the penalty of death in Criminal Case No. 116859-H. The trial court also found appellant guilty of acts of lasciviousness in Criminal Cases Nos. 116860-H and 116861. The dispositive portion[17] of the trial court's decision reads:

> "WHEREFORE:
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> 1. In Criminal Case No. 116859-H, this Court finds accused Rodelio Aquino y Roda GUILTY beyond reasonable doubt of Rape qualified by minority of the victim and her relationship with the accused, defined under Article 266-I-A and penalized under Art. 266-B of the Revised Penal Code and hereby imposes upon him the penalty of DEATH. Accused is further ordered to indemnify Charlaine Bautista for P50,000.00 as indemnity.
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> 2. In Criminal Case No. 116860-H, the Court likewise finds accused, Rodelio Aquino y Roda, GUILTY beyond reasonable doubt of the

offense of Acts of Lasciviousness only defined under Article 365[18] of the Revised Penal Code but is penalized under Sec. 5 (h), Article III of R.A. No. 7610, as amended. Accused is hereby sentenced, there being no mitigating or aggravating circumstances, to an indeterminate penalty ranging from 14 years, 8 months and 1 day of reclusion temporal as minimum, to 16 years, also of reclusion temporal, as maximum.

3. In Criminal Case No. 116861, this Court finds accused Rodelio Aquino y Roda also GUILTY beyond reasonable doubt of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code and Sec. 5 (b), Article III of R.A. No. 7610, as amended. Accused is hereby sentenced, there being no mitigating nor aggravating circumstances, to an indeterminate penalty ranging from 14 years, 8 months and 1 day of reclusion temporal, as minimum, to 16 years, also of reclusion temporal, as maximum.

   With costs against the accused in all these cases.

   SO ORDERED."

Hence, this automatic review.

Appellant made the following assignment of errors:

"I.

THE COURT A QUO ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONIES OF THE COMPLAINING WITNESSES DESPITE THE CLEAR INCONSISTENCIES IN THEIR NARRATION OF THE ALLEGED INCIDENT AND THE EVIDENCE PRESENTED.

II.

THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY FOR THE COMMISSION OF THE ALLEGED OFFENSES WHEN THE EVIDENCE ADDUCED TENDS TO PROVE OTHERWISE."[19]

At the outset, we find that we cannot, for lack of jurisdiction, entertain the appeals in Criminal Cases Nos. 116860-H and 116861 where the trial court sentenced appellant to *reclusion temporal* in each of these cases. Appellant merely relied on the automatic appeal of Criminal Case No. 116859 wherein the death penalty was imposed. However, this Court has held that an automatic review of the death penalty imposed by the trial court includes an appeal of the less serious crimes (not punished by death) only if the lesser crimes are committed on the same occasion or arise out of the same occurrence as that which gives rise to the more serious offense.[20] Section 17 (1) of R.A. 296, as amended (The Judiciary Act of 1948), provides that-

"SECTION 17. The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts as

herein provided, in--

(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories or whether they have been tried jointly or separately."

What we have here is a consolidation of three cases brought against the appellant by his nieces. The two counts of acts of lasciviousness were not committed on the same occasion and did not arise out of the same occurrence as that which gave rise to the crime of rape. Thus, this Court has no jurisdiction to review the decision of the trial court on the two counts of acts of lasciviousness jointly with the automatic review of crime of qualified rape for which the death penalty was imposed.[21] Clearly, for Section 17 (1) of R.A. No. 296 to apply, the lesser offenses must be committed on the same occasion or must arise out of the same occurrence as that the graver offense which merited the death penalty. The Informations for three cases merely state that these offenses were committed on or about October 1999 in Taguig where the appellant and complainants' houses were located. Nothing in the record even remotely suggests that appellant abused all three children on the same occasion. In fact, Charlaine even tried to warn Charmela about her unfortunate experience not knowing that their uncle had already molested her sisters on separate occasions. Thus, the three offenses were committed during the same period in October but on different dates. For this reason, appellant should have filed separate notices of appeal for the two counts of acts of lasciviousness.

In *People vs. Alay-ay*,[22] this Court held that the appeal from a judgment rendered by the Regional Trial Court in its original jurisdiction imposing a penalty other than ***reclusion perpetua*** **or death** must be taken to the Court of Appeals by filing of a notice of appeal with the trial court and by serving a copy thereof on the adverse party. Since appellant did not appeal the decision of the Regional Trial Court in Criminal Cases Nos. 116860-H and 116861 to the Court of Appeals, the decision became final and executory after the lapse of the 15-day period for perfecting an appeal. With this result, we now limit our review to Criminal Case No. 116859-H for qualified rape where the trial court imposed the death penalty.

Appellant faults the trial court for giving credence to the testimony of Charlaine despite the fact that her testimony was allegedly replete with inconsistencies.

Appellant argues that Charlaine's testimony was a mere product of an orchestrated coaching initiated by her mother and the prosecutor. To stress his point, appellant directs us to Charlaine's testimony during cross-examination where she said that appellant did not really insert his penis into her vagina but merely asked her to apply baby oil on it. When asked whether the prosecutor instructed her to say that there was penetration, Charlaine answered positively. Thus, appellant concludes that Charlaine was not really raped.

We do not agree.