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[G.R. Nos. 135522-23, October 02, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMORSOLO TORRES Y GANIBO, ACCUSED-APPELLANT.

D E C I S I O N

PER CURIAM:

Before this Court on automatic review is the joint judgment of conviction rendered by the Regional Trial Court of Santa Cruz, Laguna, Branch 28, dated August 14, 1998, finding accused-appellant Amorsolo Torres guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness, and sentencing him to suffer the penalty of death for the rape and the penalty of imprisonment of six months of *arresto mayor* as minimum to six years of *prision correccional* as maximum for the acts of lasciviousness.[1]

The Information for Rape alleged:

> "That on or about September 1, 1997 at Brgy. Ibabang Atingay, Municipality of Magdalena, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the herein complainant, with lewd design and with intent to satisfy his lust and by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his daughter, GLORILYN TORRES y BUSTILLO, a fourteen-year old girl, against her will and consent, to her damage and prejudice."[2]

The Information for violation of RA 7610 (Child Abuse) reads as follows:

> "That on or about July 26, 1997 at Bgy. Ibabang Atingay, Magdalena, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously commit lascivious acts with his own daughter, GLORILYN B. TORRES, by touching her private parts, against her will."[3]

Upon separate arraignments, accused-appellant pleaded not guilty to both charges, after which both cases were tried jointly.

The evidence for the prosecution is summarized as follows:

Complainant Glorilyn Torres, then 14 years old at the time of the incidents, lived with her father, herein accused-appellant, and her brothers and sisters, at Bgy.

Ibabang Atingay, Magdalena, Laguna. Her mother Gloria Torres, who has been separated from accused-appellant since 1994, was living and working in Marikina.

At around 2:00 a.m. of July 26, 1997, complainant was sleeping in their house when she was suddenly awakened by her father who was mashing and sucking her breasts. She asked him to stop but he slapped her and told her to keep quiet because her brothers and sisters might awake. Complainant cried and pleaded with her father to stop. Accused-appellant touched her vagina and told her *"Pasensya ka na, kasalanan ito ng nanay mo, dahil wala siya."* Complainant tried to fight back but accused-appellant, who was holding both her arms, continued to suck her breasts and at the same time was asking for forgiveness. Afterwards, accused-appellant told her to go back to sleep and left. Complainant did not report the incident to anyone because the accused-appellant threatened to maul and leave them.

On September 1, 1997, at around 2:00 a.m., complainant was again awakened by accused-appellant lying beside her. Her sister Morilyn was also inside the room. At first, accused-appellant was mashing and sucking her breasts. Then he ordered her to take off her panty and when she refused, he forcibly took it off. She tried to struggle with the accused-appellant but then he held both her arms, placed his knees between her thighs and succeeded in satisfying his lust on her. Complainant felt excruciating pain in her vagina. After a while, accused-appellant stopped and said he did not want to continue anymore because she might get pregnant. He put on her panty and left. The following morning, complainant saw a spot of blood on her panty. As in the previous incident, accused threatened to leave complainant and her brothers and sisters, and that he will maul and kill her mother, brothers and sisters if she told anybody about what happened. After this incident, complainant never talked to accused-appellant.

It was only on October 5, 1997 when complainant was able to report the two incidents to their barangay chairwoman, Aurora Cube. It appears that on said date, Mercy Torres, a sister-in-law of accused-appellant, saw Roberto Montemor, a suitor of the complainant, holding complainant by the shoulder, inside the house of accused-appellant. According to complainant, Roberto was apologizing to her for asking her to elope with him. Mercy Torres reported the matter to Aurora Cube who went to the house of accused-appellant to confront complainant. When Aurora told complainant that accused-appellant might scold her, complainant got frightened and held on to the arm of Aurora. In between tears, complainant narrated to Aurora how accused-appellant molested and raped her. The barangay chairwoman gave complainant P200.00 and asked a granddaughter to accompany complainant to see the latter's mother in Marikina.

Thereafter, Aurora Cube proceeded to the police station in Magdalena to report the complaint for rape. She was given permission by the police to invite accused-appellant for questioning. In the evening of October 5, 1997, Aurora ordered her *barangay tanods* to invite accused-appellant to the barangay hall on the pretext that he is scheduled to be on patrol duty. When accused-appellant arrived, Aurora asked him what he did to his daughter, but accused-appellant denied having done anything to complainant. That night he was detained at the barangay hall.

The following day, October 6, 1997, complainant and her mother arrived at the barangay hall. Complainant's mother, Gloria Torres, tearfully confronted accused-appellant and asked if what complainant said was true. Accused-appellant was

adamant in denying the charges against him and said that he could not do that against his own daughter. Thereafter accused-appellant was turned over to the Magdalena Police Station where he was detained. Complainant and her mother executed their respective affidavit-complaints.[4]

The Medico-legal report[5] issued by the examining physician Dra. Maria Cleofe Pita, Municipal Health Officer of Magdalena, Laguna, shows that complainant suffered a healed laceration at 7 o'clock position with retraction of the edges. Dra. Pita testified that based on the lacerations, there could have been penetration more than once, and that the insertion of an object could have caused the retraction of the edges and laxity of the muscles.

Accused-appellant's defense hinges mainly on alibi and denial. As to the charge of acts of lasciviousness committed against complainant in the early morning of July 26, 1997, accused-appellant testified that the night before, i.e. on July 25, 1997, he slept in the mountain where he worked as a power saw operator and came home only at 4:00 in the afternoon of July 26, 1997. Then he left the house at around 5:00 p.m. to attend a wedding at Bgy. Burlungan, Magdalena, Laguna and was able to go home early the following day. With respect to the complaint for rape, accused-appellant testified that on September 1, 1997, he arrived home from work at around 6:00 p.m., and after eating supper, he went to sleep. Complainant, together with her brothers and sisters, was watching television at a neighbor's house and he did not know what time they came home. Accused-appellant testified that the complaint for rape was filed against him because he did not allow complainant to live with her grandmother and study in Manila.

The trial court rendered judgment on August 14, 1998, the dispositive portion of which reads:

"W H E R E F O R E:

Under Criminal Case No. SC-6691, this Court finds the accused AMORSOLO TORRES y GANIBO GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL OF CONSUMMATED RAPE defined and punished under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, otherwise known as the Death Penalty Law and hereby sentences him to suffer the SUPREME PENALTY OF DEATH and to pay the private offended party GLORILYN TORRES the following sums:

P50,000.00	- as civil indemnity;
50,000.00	- as moral damages and
50,000.00	- as exemplary damages.

Under Criminal Case No. SC-6692, this Court finds the accused AMORSOLO TORRES Y GANIBO GUILTY BEYOND REASONABLE DOUBT AS PRINCIPAL OF ACTS OF LASCIVIOUSNESS defined and penalized under Article 336 of the Revised Penal Code and hereby sentences him to suffer the penalty of IMPRISONMENT OF SIX (6) MONTHS of Arresto Mayor as Minimum to SIX (6) YEARS of Prision Correccional as Maximum and to pay the private offended party Glorilyn Torres the following amounts:

P5,000.00 - as civil indemnity;
5,000.00 - as moral damages and
5,000.00 - as exemplary damages.

The accused is further ordered to pay the costs of both the instant suits."

The joint decision is before us by virtue of the automatic appeal of the death penalty imposed in the rape case. It will be noted however that no separate appeal was filed by accused-appellant from the decision finding him guilty of acts of lasciviousness. There is thus a need to address the issue of whether or not the automatic review of accused-appellant's conviction for rape, for which the death penalty was imposed, includes the appeal of his conviction for the less serious crime of acts of lasciviousness, but not so punished.

The Judiciary Act of 1948 under Section 17, paragraph 1 thereof, provides that:

> "Sec. 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 whether they have been tried jointly or separately x x x."

In the case of **People vs. Panganiban,**[6] the Court held that an automatic review of the death penalty imposed by the trial court is deemed to include an appeal of the less serious crime, although not so punished by death, where the less serious crime arose out of the same occurrence or was committed by the accused on the same occasion as that which gave rise to the more serious offense. However, the case at bar is different as the acts of lasciviousness committed by herein accused-appellant happened on July 26, 1997 whereas the rape was committed on September 1, 1997.

What is applicable is the doctrine enunciated in the recent case of **People vs. Florencio Francisco y Alejo,**[7] where we ruled that the automatic review of the death penalty in the rape case did not include the conviction for acts of lasciviousness which should have been the subject of a separate appeal filed before the Court of Appeals, considering that the acts of lasciviousness case did not arise out of the same occurrence or committed by the accused on the same occasion as that of the more serious crime of rape. Thus:

> "In the instant case, however, it cannot be said that the acts of lasciviousness case "arose out of the same occurrence or committed by the accused on the same occasion" as that of the more serious crime of

> rape. The two (2) cases involved distinct offenses committed at an interval of two (2) months in point of time. The evidence reveals that the first crime was committed sometime in April 1997 while the second was perpetrated on 27 June 1997. In both cases, accused-appellant was animated by a separate criminal intent, although incidentally, both crimes were directed against the same victim. Moreover, the evidence presented by the prosecution in the rape case was not the same evidence they offered to prove the acts of lasciviousness case.
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> Inescapably, the penalty of reclusion temporal meted out to accused-appellant in Crim. Case No. Q-97-73696 (now G.R. No. 135202) for acts of lasciviousness is within the exclusive appellate jurisdiction of the Court of Appeals. Upon the other hand, Crim. Case No. Q-97-73695 (now G.R. No. 135201) for rape, the penalty imposed therein being death, perforce falls within the jurisdiction of this Court on automatic review."

In dismissing the appeal from the conviction for acts of lasciviousness for lack of jurisdiction and wrong forum, the Court in **People vs. Francisco** ratiocinated as follows:

> "While we are not unmindful of the practical advantages of a single consolidated review of these two (2) criminal cases, we cannot array any legal justification therefor without infringing upon the jurisdictional boundaries so clearly delineated by our statutes. Hence, we have no other recourse but to recognize this as a case of split appellate jurisdiction. We cannot infuse new meaning into the provisions of our statutes apportioning appellate jurisdictions between this Court and the Court of Appeals because their mandates and terms are specific and unmistakable. Nor can we widen the scope of our appellate jurisdiction on the basis of the fact that the trial court heard two (2) distinct and separate cases simultaneously. Such procedure adopted by the trial court cannot and did not result in the merger of the two (2) offenses. In fact, a cursory reading of the assailed decision of the court a quo reveals with pristine clarity that each was separately determined by the trial judge, as each should be separately reviewed on appeal. Appellate competence is circumscribed by statute, and not flux and ferment to be settled by the exigencies of trial proceedings.
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> In fine, it is obvious that accused-appellant's conviction for acts of lasciviousness should have been appealed to the Court of Appeals, instead of elevating the case to this Court which has no jurisdiction over it. Consequently, being with the wrong forum, the appeal in Crim. Case No. Q-97-73696 for acts of lasciviousness erroneously brought to us is dismissed and the decision therein of the court a quo stands. x x x"

We therefore dismiss the appeal in Criminal Case No. SC-6692 for acts of lasciviousness for having been filed in the wrong forum. We shall now proceed to review the conviction in the rape case, where accused-appellant avers that the court a quo gravely erred in convicting him despite insufficiency of the prosecution's evidence to prove his guilt beyond reasonable doubt.