

ELEVENTH DIVISION

[CA-G.R. SP No. 137419, March 30, 2015]

PRECILLANO C. TACDERAS, JR., * PETITIONER, VS. HON. NICANOR S. PASCUAL, JR., JUDGE DESIGNATE, REGIONAL TRIAL COURT OF LUNA, APAYAO, BRANCH 26, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

LIBREA-LEAGOGO, C.C., J.:

Before this Court is a Petition for *Certiorari*^[1] dated 24 September 2014 under Rule 65 of the Rules of Court, assailing the Resolutions dated 23 June 2014^[2] and 30 July 2014^[3] of the Regional Trial Court, Second Judicial Region, Branch 26, Luna, Apayao in the case entitled "*People of the Philippines v. Precillano Tacderas*," docketed as Criminal Cases Nos. 25-2011, 26-2011 and 27-2011, for the crimes of rape, which denied the petitioner's Demurrer to Evidence and Omnibus Motion, respectively.

Petitioner filed an Urgent Motion for Issuance of Injunctive Reliefs^[4] dated 20 November 2014 and Supplement to Petitioner's Motion for Issuance of Injunctive Reliefs, *etc.*^[5] dated 20 December 2014, which this Court noted in the Resolutions dated 05 December 2014^[6] and 11 February 2015.^[7]

Respondent People of the Philippines filed its Comment^[8] dated 05 February 2015. Petitioner filed his Reply *etc.*^[9] dated 13 February 2015. Thus, the 4th paragraph of the Resolution dated 05 December 2014 is reiterated and the case is submitted for decision.

FACTUAL ANTECEDENTS

The real identities of private complainants and the members of their immediate family are withheld. Private complainant in *Criminal Cases Nos. 25-2011, 26-2011 and 27-2011* is referred to as "AAA", her mother as "BBB", her sister as "CCC" and her aunt as "DDD."^[10]

A Complaint-Affidavit^[11] dated 22 April 2011 was executed by BBB, on behalf of her daughter AAA, against Precillano Tacderas, Jr. ("Tacderas," for brevity), alleging, *inter alia*, that: she is the biological mother of AAA; and the latter is a rape victim of Tacderas, who is her husband and AAA's stepfather.

A Resolution^[12] dated 06 May 2011 was issued by Rufino M. Lampitoc, the Provincial Prosecutor of Luna, Apayao, finding *prima facie* case of three (3) counts of rape in relation to Republic Act No. 7610 against Tacderas. An Information^[13] dated

06 May 2011 for Rape in relation to R.A. No. 7610 docketed as *Criminal Case No. 25-2011*, as well as two Amended Informations dated 31 May 2011 for Rape docketed as *Criminal Cases Nos. 26-2011*^[14] and *27-2011*,^[15] were filed before the Regional Trial Court of Luna, Apayao, the accusatory portions of which read:

Criminal Case No. 25-2011

"That on (sic) or about September, (sic) 2010 in Imelda, Sta. Marcela, Apayao and within the jurisdiction of this Honorable Court, the said accused with lewd design and with (sic) force and intimidation, did then and there, willfully, unlawfully and feloniously did (sic) lie, and succeeded (sic) in having sexual intercourse with his own step-daughter AAA, a minor of 14 years old(,) against her will.

CONTRARY TO LAW."^[16]

Criminal Case No. 26-2011

"That on (sic) or about January, (sic) 2011 in Imelda, Sta. Marcela, Apayao and within the jurisdiction of this Honorable Court, the said accused with lewd design and with (sic) force and intimidation, did then and there, willfully, unlawfully and feloniously did (sic) lie, and succeeded (sic) in having sexual intercourse with his own step-daughter AAA, a minor of 14 years old(,) against her will.

CONTRARY TO LAW."^[17]

Criminal Case No. 27-2011

"That on (sic) or about March, (sic) 2011 in Imelda, Sta. Marcela, Apayao and within the jurisdiction of this Honorable Court, the said accused with lewd design and with (sic) force and intimidation, did then and there, willfully, unlawfully and feloniously did (sic) lie, and succeeded (sic) in having sexual intercourse with his own step-daughter AAA, a minor of 14 years old(,) against her will.

CONTRARY TO LAW."^[18]

When arraigned, accused Tacderas pleaded not guilty to the offenses charged against him.^[19] Accused Tacderas filed a Motion for Admission to Bail^[20] dated 01 August 2011. The trial court issued a Pre-trial Order^[21] dated 06 December 2011.

Trial ensued. The prosecution presented the following witnesses: Dr. Ferdinand Nicolas ("Dr. Nicolas," for brevity),^[22] AAA,^[23] BBB,^[24] and DDD.^[25] In its Order^[26] dated 13 June 2013, the trial court allowed him to post bail of Php300,000.00 in each case or a total of Php900,000.00, provided the same is in the form of cash. Accused filed a Motion for Reconsideration^[27] dated 22 July 2013, which the trial court denied in its Joint Order^[28] dated 12 August 2013.

The prosecution filed its Formal Offer of Evidence^[29] dated 16 December 2013, to

which the accused filed his Comment on/Opposition^[30] dated 10 January 2014. In the Order^[31] dated 14 January 2014, Exhibits "A" to "E" were admitted by the trial court.

Accused filed an Omnibus Motion with Demurrer to Evidence^[32] dated 10 February 2014 alleging, *inter alia*, that: the totality of the prosecution's evidence leads to the conclusion that it is very weak, warranting the dismissal of the cases; there are so many conflicts in the prosecution's evidence, that an honest and neutral mind cannot rest easy; the instances are not in conformity with common experience and observation of mankind; the totality of the instances leads to the conclusion that the prosecution's evidence cannot be believed; private complainant gave conflicting or inconsistent statements, all under oath, which are not in conformity with human experience; she cannot relate with exactitude the precise dates of the alleged dastardly acts; she gave an insensible, impertinent and fabricated answer to the inquiry of the trial court; the alleged threats claimed by private complainant were never mentioned and were simply illusory, or smart concoctions; she lived normally, not threatened, after the alleged sexual assaults upon her; there was a lot of time after September 2010, but she did not report the terrible offense against her; she did not report the alleged rape incidents to her mother, their retired policeman neighbor, to her uncle who is also their neighbor, nor to her teacher and classmates; instead, the incidents were reported to her aunt DDD when the latter came to Imelda, Sta. Marcela for a vacation in April 2011, long after the incidents had happened; private complainant's washing of her vagina immediately after the sexual assault upon her does not coincide with logic and human experience; she and accused were together when they took their dinner on that fateful day; her allegations of the purported harrowing experience are unreliable and bereft of truth; even after the alleged sexual assaults, private complainant maintained her residence in the same house with the accused; that accused did not escape after the alleged incidents yields the impression that her allegations were mere fabrications; the initial and urgent instinct of a would-be rape victim is to free herself from her assailant; while the accused was removing his short and brief, private complainant could have easily extricated herself; if indeed the accused closed her mouth, she could have utilized her two hands to free herself; private complainant's mouth was not closed all along, hence, she could have shouted for help and struggled to repel the assault; she claimed that when she washed her vagina, she noticed "white cells", however, the doctor who examined her, Dr. Nicolas, had negative findings on the surroundings of her vagina; the filing of the complaint was impelled by her compulsion to join her aunt in Antipolo City because of the difficulties in Sta. Marcela, Apayao; and she preferred to reveal the alleged assault only to her auntie so the latter can get her away from the accused.

The trial court issued the first assailed Resolution^[33] dated 23 June 2014, the decretal portion of which reads:

"In view of the foregoing, the Demurrer to Evidence filed by the accused is DENIED.

x x x x

SO RESOLVED.^[34]

Accused filed an Omnibus Motion (motion for reconsideration)^[35] dated 11 July 2014. The trial court issued the second assailed Resolution^[36] dated 30 July 2014, denying the same for lack of merit.

Hence, this Petition.

RULING

Petitioner assigns a lone error, viz:

THE HONORABLE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S DEMURRER TO EVIDENCE FOR LACK OF MERIT.

^[37]

Petitioner contends, in the main, that: he is innocent considering that the prosecution has utterly failed to establish his guilt beyond reasonable doubt; AAA's testimony is not credible, convincing and consistent with human nature and in the normal course of things; there were so many crucial facts/instances that she does not know; there were also so many crucial facts/instances that she cannot remember; she gave conflicting/inconsistent statements, all under oath, of fabricated factual antecedents; the Provincial Prosecutor's Resolution dated 06 May 2011 and the amended Informations do not reflect the exact dates of the alleged incidents; she declared in her sworn statement that the alleged rape incidents happened in September 2010, January 2011 and March 2011 but she only reported the same to her aunt DDD in April 2011; the belated reporting of the alleged dastardly acts elicits disbelief; the alleged threats claimed by her were simply illusory, or smart concoctions, as she has not provided details thereof; she lived normally, not threatened, after the alleged sexual assaults; the most immediate and natural reaction of a victim is to report the same, if not to the authorities, then at least to her mother; however, she failed to report the alleged rape incidents to her mother, who stayed with them in Imelda, Sta. Marcela, or to their retired policeman neighbor, to her uncle who is also their neighbor, or to her teachers or classmates; she reported the incident to an aunt instead of to an uncle, who was their neighbor and her nearest relative; her actuations immediately after the alleged assault upon her reveal the falsity of her allegations; her washing of her vagina immediately after the sexual assault upon her does not coincide with logic and human experience; on that fateful day, she was with her stepfather when they took their dinner; even after the sexual assaults upon her, she maintained her residence in the same house; while petitioner was removing his short and brief, she could have easily extricated herself; if indeed the accused closed her mouth, then, her two hands being free, she should have utilized the same to free herself, but she did not; it is quite difficult to accept that AAA, a virgin, could be easily defiled without serious resistance; she could have shouted for help or struggled to repel the assault but no serious effort, not even a feeble attempt, was made; it becomes difficult to believe that the alleged incidents were committed only on those peculiar periods and not serially, considering that she and petitioner were residing all along in the same house; the doctor who examined her found no hematoma, laceration or injury on her sexual organ, thereby negating the use of force; the filing of the complaint was impelled by her obsession to join her aunt in Antipolo City, as the latter could get her away from petitioner; and she admitted that life in Antipolo City was better than in Sta. Marcela, Apayao, not to mention that her aunt supports her studies.