

## EIGHTH DIVISION

[ CA-G.R. CR.-H.C. NO. 04489, November 28, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FLORENCIO MILLA Y BAGAMASBAD, ACCUSED-APPELLANT.**

### DECISION

**GARCIA-FERNANDEZ, J.:**

This is an appeal from the decision of the Regional Trial Court of Dasmaringas, Cavite<sup>[\*]</sup> Branch 90 (RTC) on March 3, 2010<sup>[1]</sup>, finding accused-appellant Florencio Milla y Bagamasbad guilty beyond reasonable doubt of three (3) counts of rape as defined under Article 266-A, par. 1(a) of the Revised Penal Code in relation to Republic Act No. 7610, otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" (RA 7610), and sentencing him to suffer the penalty of *reclusion perpetua* for each case, i.e., Criminal Case No. 5635-09; Criminal Case No. 5636-09; and Criminal Case No. 5637-09. The RTC ordered accused-appellant to pay the victim moral damages in the amount of Php50,000.00, civil indemnity *ex-delicto* in the amount of Php50,000.00, and exemplary damages in the amount of Php25,000.00.

The factual antecedents are as follows:

Accused-appellant was charged in three (3) separate informations for the crime of rape under Article 266-A, par.1(a), of the Revised Penal Code in relation to RA 7610, which read:

Criminal Case No. 5635-09<sup>[2]</sup>

That on or about the 13<sup>th</sup> day of September 2007, in the Municipality of Dasmaringas, Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA<sup>[3]</sup>, a fifteen (15) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there, willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

Criminal Case No. 5636-09<sup>[4]</sup>

That on or about the 6<sup>th</sup> day of November 2007, in the Municipality of

Dasmaringas, Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA<sup>[5]</sup>, a sixteen (16) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there, willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

#### Criminal Case No. 5637-09<sup>[6]</sup>

That sometime during the year of 1999, in the Municipality of Dasmaringas, Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA<sup>[7]</sup>, an eight (8) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there, willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading, and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

Assisted by a counsel *de officio*, accused-appellant was arraigned on March 4, 2009 and he entered a plea of not guilty to all the charges.<sup>[8]</sup>

#### Evidence for the Prosecution

AAA identified accused-appellant in court as her stepfather<sup>[9]</sup>. She testified that accused-appellant started to molest her when she was ten (10) years old inside their house at night while her mother was selling porridge. While AAA was sleeping on the mat with her younger sister, accused-appellant would wake her up and told her to remain quiet while he removed her shorts and underwear. Accused-appellant would insert and withdraw his penis inside her vagina several times. Thereafter, accused-appellant would give back her underwear and shorts and told her to not tell her mother about that had transpired or else he would kill them. AAA stated that accused-appellant would repeat the process two to three nights per week until she reached third year high school. AAA told this incident to her boyfriend, who then told her mother, BBB<sup>[10]</sup>. BBB brought AAA and her sister to Manila. AAA submitted herself to medical examination.<sup>[11]</sup> She executed a sworn affidavit narrating the events that transpired, which she identified in open court.<sup>[12]</sup>

Dr. Merle P. Tan conducted AAA's physical examination and prepared Medico-Legal Report No. 2007-4966<sup>[13]</sup>. During her testimony, Dr. Tan stated that she found that AAA's hymen was possibly penetrated by a blunt object, which was possibly a sex organ<sup>[14]</sup>. During cross – examination, Dr. Tan testified that a hymen can heal as early as three to five days depending on how it was injured.<sup>[15]</sup>

#### Evidence for the Defense

For his part, accused-appellant denied AAA's accusations against him. Accused-appellant testified that AAA filed charges against him because AAA and her boyfriend are angry with him because he was strict and did not allow AAA to enter into a relationship<sup>[16]</sup>.

On March 3, 2010, the RTC rendered a decision<sup>[17]</sup> finding the accused-appellant guilty beyond reasonable doubt of three (3) counts of rape as defined and penalized under Article 266-A, par.1(a), of the Revised Penal Code in relation to RA 7610, to wit:

"The evidence for the prosecution warrants the conviction of the accused for rape as charged in the three (3) criminal informations. The accused simply advanced denial and *alibi* that deserves no consideration; and the Court do not subscribe to the theory of the accused that the filing of this rape charge was motivated by the victim's hate for him due to his manner to disciplining the victim, but such excuse cannot save the day for the accused, as it remained unsubstantiated. His alibi cannot stand against the positive identification and categorical testimony of the rape victim, hence, weak.

The award for moral damages in the amount of Php50,000.00 is warranted as moral damages are automatically awarded to rape victims without need of pleading or proof. The award of civil indemnity *ex-delicto* of Php50,000.00 is also warranted in the light of the ruling that civil indemnity, which is distinct from moral damages is mandatory upon the finding of the fact of rape. Exemplary damages of Php25,000.00 is likewise warranted, consistent with prevailing jurisprudence on the matter."

In this appeal, accused-appellant contends that the RTC gravely erred in finding him guilty beyond reasonable doubt of rape. Accused-appellant claims that AAA's testimony is not credible because AAA slept with her mother and sister in a single mat. Accused-appellant also alleges that Dr. Tan's testimony cannot be given weight considering that the presence of a "deep notch in AAA's hymen" cannot be conclusively attributed to the alleged rape committed by him, especially that AAA cohabited with her boyfriend when she was sixteen (16) years old.

The appeal fails.

After careful review of the records, this Court finds no reason to doubt AAA's credibility. This Court accords great weight and respect to the findings of the trial that her testimony<sup>[18]</sup> is consistent, candid, and straightforward, as follows:

APJ\* : Now, while he was staying with you, do you remember whether there was an unusual incident that happened inside your house between you and the accused in this case?

A : Opo.

Q : What was that?  
A : Noong ginalaw niya po ako, Sir.  
Court: Ilang taon ka ng una kang ginalaw ng taong yan?  
A : Ten (10) years old, Ma'am.  
APJ : And where did he molest you?  
A : Sa bahay po.  
Q : Aside from you and the accused, were there other persons inside the house?  
A : Ang mama ko po.  
Q : Where was your mother at that time?  
A : Nagtitinda po ng lugaw tuwing gabi.  
Q : And what time was that when the accused first molested you?  
A : Tuwing matutulog po.  
Q : During night time?  
A : Opo.  
Court: Anong buwan at araw ng unang panghahalay sayo?  
A : Grade five (5) po ako.  
Court: So that was the first rape when she was in grade 5.  
APJ : How did he start to rape you?  
A : Tuwing natutulog po kami.  
Q : The first time, how did he start molesting you?  
A : Tinatakot niya po ako.  
Q : What were you doing at that time?  
A : Sumusunod lang po ako.  
Court: Ano ang hinihigaan niyo, kama o banig?  
A : Banig po.  
APJ : You said we, who was your companion?  
A : Kapatid ko po.  
Q : A younger sibling?  
A : Opo.  
Q : And when you were about to sleep, what happened if there was any?  
A : Tulog na po ako tapos gigisingin niya po ako.  
Q : Gigisingin ka?  
A : Opo.  
Q : What did he tell you when he was trying to wake you up?  
A : Wag daw po ako maingay. Wag daw po ako magsusumbong sa mama ko.  
Q : And then, what did you do next?  
A : Natakot po ako.  
Court: Sumiping ba sayo?  
A : Opo.  
Q : Pagkatapos tumabi sayo, ano ang ginawa niya?  
A : Hinubad niya po ang short ko at panty ko.  
APJ : You were totally nude?  
A : Opo.  
Court: Hinubuan ka lang ba or hinubaran ka?  
A : Hinubaran po.  
Q : Tinanggal pati pang taas mo?  
A : Hindi po.  
Q : Yon lang?  
A : Tinanggal po yong short at panty ko.  
Court: Proceed.  
APJ : After he took off your short and panty, what happened