



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 181473

Present:

- versus -

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 PEREZ, *and*
 PERLAS-BERNABE, *JJ.*

DONEY GADUYON y TAPISPISAN,
Accused-Appellant.

Promulgated:

NOV 11 2013 *HM Cabalag*

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DECISION

DEL CASTILLO, J.:

This is a case of a father defiling his 12-year old daughter on three separate occasions.

On appeal is the Decision¹ dated July 31, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02511 that affirmed *in toto* the January 18, 2006 Decision² of the Regional Trial Court (RTC), Branch 76, San Mateo, Rizal, in Criminal Case Nos. 6572-74, finding appellant Doney Gaduyon y Tapispisan (appellant) guilty beyond reasonable doubt of qualified rape,³ qualified object rape⁴ and sexual abuse⁵ committed against his own daughter "AAA".⁶

¹ CA rollo, pp. 213-227; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario

² Records, Vol. 1, pp. 315-331; penned by Judge Josephine Zarate Fernandez.

³ Under Art. 266-A, par. 1(a), in relation to Art. 266-B, par. 5(1) of the Revised Penal Code.

⁴ Under Art. 266-A, par. 2, in relation to Art. 266-B, par. 10 and par. 5(1) of the Revised Penal Code.

⁵ Violation of Sec. 5(b), 1st phrase of Republic Act No. 7610 [or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act] in relation to Sec. 31(c) of the same Act and in further relation to Sec. 5, par. j of Republic Act No. 8369 [Family Courts Act of 1997].

⁶ "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against

Factual Antecedents

Three Informations were filed against appellant, the relevant portions of which read as follows:

In Criminal Case No. 6572 for Qualified Rape

That on or about the 22nd day of August 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one “AAA,” a minor, 12 years of age, against her will and without her consent, the said crime having been attended by the qualifying circumstances of relationship and minority, the said accused being the parent of the said victim, a 12[-]year old minor daughter of the accused thereby raising the crime to Qualified Rape which is aggravated by the circumstance of Treachery, Abuse of Superior Strength, Nighttime and Dwelling.

CONTRARY TO LAW.⁷

In Criminal Case No. 6573 for Sexual Abuse

That on or about the 21st day of August 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy being the parent of the victim “AAA”, with lewd design x x x and intent to debase, degrade or demean said victim, did then and there willfully, unlawfully and knowingly commit lascivious conduct on the said “AAA,” a minor, 12 years of age, by then and there touching her breast and rubbing her arms, against her will and without her consent thereby constituting SEXUAL ABUSE which is prejudicial to her normal growth and development with attendant aggravating circumstance of RELATIONSHIP increasing the penalty of the offense to its maximum period.

CONTRARY TO LAW.⁸

In Criminal Case No. 6574 for Qualified Object Rape

That on or about the 9th day of October 2002, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously insert his finger into the genital orifice of “AAA,” a minor, 12 years of age, against her will and without her consent,

Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004.” *People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.

⁷ Records, Vol. I, p. 1.

⁸ Records of Criminal Case No. 6573 (attached at the back of the records, Vol. I), pp. 1-2.

the said crime having been attended by the qualifying circumstances of relationship and minority, the said accused being the parent of the said victim, a 12[-]year old minor daughter of the accused thereby raising the crime to qualified object rape which is aggravated by the circumstance of Treachery, Abuse of Superior Strength, Nighttime and Dwelling.

CONTRARY TO LAW.⁹

Appellant pleaded not guilty to all the charges. Upon termination of the pre-trial conference, trial ensued.

Version of the Prosecution

Appellant is married to the mother of “AAA” with whom he has three daughters. Their eldest child is “AAA,” who at the time material to this case was only 12 years old.

On August 21, 2002, the mother and sisters of “AAA” attended the wake of her auntie in Caloocan City. “AAA” and her father, the appellant, were thus the only ones left in the family residence in San Mateo, Rizal. At around 9:00 p.m. of the said date, “AAA” was lying in her bed in the family room located at the upper portion of their house when appellant fondled her breasts and touched her arms.¹⁰ Appellant threatened “AAA” not to tell her mother about the incident or else something bad might happen to the latter.¹¹

At around 11:00 p.m. of the following day, August 22, 2002, and while her mother and sisters were still in Caloocan City, “AAA” was awakened when appellant lowered her shorts and panty.¹² Appellant spread her legs and inserted his penis into her vagina.¹³ “AAA” felt pain but could do nothing but cry.¹⁴ Appellant pulled out his penis and inserted it again into “AAA’s” vagina. When he was done, appellant put her shorts and panty back on and again threatened “AAA.”¹⁵

After more than a month or on October 9, 2002, at about 10:30 p.m. and while “AAA” was sleeping in a double-deck bed and her sister was in the lower portion thereof, “AAA” was suddenly awakened. She noticed that her short pants had been lowered while appellant was already lying beside her.¹⁶ Appellant then

⁹ Records of Criminal Case No. 6574 (attached at the back of the records, Vol. I), pp. 1-2.

¹⁰ TSN, March 5, 2003, pp. 6-7.

¹¹ Id. at 7.

¹² Id. at 8-9.

¹³ Id. at 9.

¹⁴ Id.

¹⁵ Id. at 10.

¹⁶ Id. at 12.

inserted his index finger into “AAA’s” vagina. “AAA” only cried upon feeling the pain. After his deplorable act, appellant reiterated his previous threat to “AAA.”¹⁷

After a few minutes, “AAA’s” mother entered the room where her daughters were sleeping. She noticed that “AAA” was covered with pillows, except for her head and feet.¹⁸ Upon approaching “AAA,” she saw that her legs were spread apart and her panty was slightly lowered and inserted at the center of her genitals.¹⁹ The mother then suspected that her husband did something bad to “AAA” since only she and her husband were awake at that time. However, she opted to remain silent and just pray.²⁰

When “AAA” went to school the following day, she was asked by her religion teacher if her father did something bad to her.²¹ “AAA” who was teary-eyed did not answer.²² Later, “AAA’s” class adviser called her.²³ They ate in the canteen and thereafter proceeded to the adoration chapel to pray.²⁴ After praying, the teacher asked “AAA” the same question propounded by the religion teacher.²⁵ This time, “AAA” replied that her father did something bad to her twice but did not reveal the details surrounding the same.²⁶ “AAA’s” mother then came and asked her daughter if appellant did something bad to her. “AAA” answered “Yes. It happened twice.”²⁷ Thus, “AAA” and her mother went to the police station and reported the incidents of her defilement.²⁸ A physical examination done upon “AAA” revealed that she was in a non-virgin physical state but that there are no signs of any form of trauma.²⁹ A psychiatric evaluation likewise revealed that “AAA” was suffering from Post-traumatic Stress Disorder with Depressed Mood.³⁰

Version of the Defense

Appellant denied the accusations against him and instead advanced the following version of events.

¹⁷ Id. at 12 and 14.

¹⁸ TSN, September 11, 2003, p. 7.

¹⁹ Id. at 11.

²⁰ Id. at 10-12.

²¹ TSN, March 5, 2003, p. 15; TSN, July 7, 2005, pp. 3-4.

²² TSN, July 7, 2005, pp. 4-5.

²³ TSN, March 5, 2003, p. 16.

²⁴ Id.

²⁵ Id. at 17.

²⁶ Id.

²⁷ Id.; TSN, October 1, 2003, p. 5

²⁸ Id. at 6.

²⁹ Exhibits “N,” Records, Vol. II, p. 377.

³⁰ Records, Vol. I, pp. 121- 124.

From August 21, 2002 until 9:00 a.m. of August 22, 2002, his wife and their two younger daughters attended the wake of his wife's sister in Caloocan City.³¹ While he admitted that only he and "AAA" were left in their house, he denied mashing her breast.³² He claimed that at the time of the alleged incident on August 21, 2002, he was overseeing their computer shop.³³ He also denied raping "AAA" the following day since his wife and his youngest daughter were already home by then and they all slept in their house in the evening of that day.³⁴

Anent what transpired on October 9, 2002, appellant claimed that he closed their computer shop at around 10:00 p.m.³⁵ He then proceeded upstairs and saw his wife feeding their youngest daughter.³⁶ She asked him to take over so she could go to the bathroom downstairs.³⁷ At 10:25 p.m., his wife returned.³⁸ Appellant then heard a noise from the outside. After a while, his *kumpare* called him to report that his brother threw stones at the house of his *kumpare*'s father.³⁹ Appellant immediately went outside.⁴⁰ There was therefore no truth to the claim of "AAA" that he inserted his finger inside her vagina that night.⁴¹

The defense believed that "AAA" was just induced by appellant's wife to make false accusations against him.⁴² This was due to his wife's infidelity which was confirmed when his wife confessed that she went out with another man⁴³ and when their younger daughter saw his wife kissing another man.⁴⁴ Despite this, appellant claimed that he already forgave his wife for the sake of their children.⁴⁵

Appellant's mother corroborated his story. According to her, appellant's family was in their house in the morning of August 22, 2002.⁴⁶ She even talked to the wife of appellant at around 6:00 p.m. and was told that she went home with her youngest daughter so they could rest since they have no place to stay in the wake they attended in Caloocan City.⁴⁷ The next day, "AAA," her mother and sister went back to the wake.⁴⁸

³¹ TSN, April 4, 2005, p. 5.

³² Id. at 6.

³³ Id. at 4.

³⁴ Id. at 11.

³⁵ Id. at 12-13.

³⁶ Id. at 13.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id. at 14.

⁴¹ Id. at 16.

⁴² Id. at 19.

⁴³ TSN, August 31, 2005, p. 5.

⁴⁴ Id.

⁴⁵ Id. at 7.

⁴⁶ TSN, March 3, 2005, p. 4.

⁴⁷ Id. at 4-7.

⁴⁸ Id. at 8.

Appellant's sister-in-law testified that after "AAA," her mother and sister went to the wake on August 23, 2002, she, together with her son, mother-in-law, and appellant followed that evening.⁴⁹ She observed that there seemed to be nothing wrong with "AAA" since she was serving food in the wake and playing with her cousins.⁵⁰

Ruling of the Regional Trial Court

In its January 18, 2006 Decision,⁵¹ the RTC gave more weight to "AAA's" positive testimony as against appellant's bare denials since her testimony was candid, straightforward and free from material contradictions. Her testimony was complemented by the findings of the medico-legal officer who examined "AAA." In fact, "AAA" suffered intense psychological stress and depression as a result of the abuses.

On the other hand, the RTC found that appellant's denials were not substantiated by clear and convincing evidence. It also found unacceptable his attempt to malign the reputation of his wife and daughter in order to exculpate himself. According to the said court, this evasive attitude of appellant cannot prevail over "AAA's" testimony.

Accordingly, the RTC disposed of the criminal cases thus:

WHEREFORE, premises considered judgment is hereby rendered as follows:

- (a) In [C]riminal [C]ase No. 6572, for the rape committed on August 22, 2002, accused Doney Gaduyon y Tapispisan is hereby sentenced to suffer the penalty of DEATH and to pay the victim "AAA," the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000.00 as exemplary damages.
- (b) In [C]riminal [C]ase No. 6573, for the sexual abuse committed on August 21, 2002, accused Doney Gaduyon y Tapispisan is hereby sentenced to an indeterminate penalty of One (1) year and One (1) month of Prision Correccional as minimum to Two (2) years, Eleven (11) months of Prision Correccional in its medium period as maximum.
- (c) In [C]riminal [C]ase No. 6574, for the rape committed on October 9, 2002, accused Doney Gaduyon y Tapispisan is hereby sentenced to suffer the penalty of DEATH and to pay the victim "AAA" the

⁴⁹ TSN, May 19, 2004, pp. 5-6.

⁵⁰ Id.

⁵¹ Supra note 2.

amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000.00 as exemplary damages.

SO ORDERED.⁵²

On September 4, 2006, the RTC, however, partially modified the above judgment⁵³ insofar as the penalty imposed in Criminal Case No. 6574 is concerned, *viz*:

The aforesaid judgment is hereby partially modified x x x to read, as follows:

“WHEREFORE, premises considered, the judgment is hereby rendered, as follows:

(a) x x x

(b) x x x

(c) In Criminal Case No. 6574, for the rape committed on October 9, 2002, accused Doney Gaduyon y Tapispisan **is hereby sentenced to suffer the indeterminate penalty of imprisonment of 6 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal, as maximum and to pay the victim “AAA”, the amount of ₱30,000.00, as civil indemnity, ₱30,000.00, as moral damages and ₱15,000.00, as exemplary damages.**

SO ORDERED.”⁵⁴

Ruling of the Court of Appeals

On appeal, the appellate court sustained appellant’s conviction. Like the RTC, it stressed that appellant’s bare assertions cannot overcome the categorical testimony of the victim. It brushed aside the inconsistencies on the part of “AAA” as pointed out by appellant and concluded, after a careful evaluation of the facts and evidence on record, that appellant’s guilt was proven beyond reasonable doubt.

Hence, the dispositive portion of the CA’s July 31, 2007 Decision:⁵⁵

WHEREFORE, the appealed Decision is AFFIRMED *in toto*.

⁵² Id. at 330-331.

⁵³ See Partial Modification of Judgment, *id.* at 352D-352E.

⁵⁴ *Id.* at 352E. Emphasis in the original.

⁵⁵ *Supra* note 1.

SO ORDERED.⁵⁶

Assignment of Errors

Still insisting on his innocence, appellant prays for the reversal of the CA's appealed Decision and adopts the same assignment of errors he advanced before the said court, *viz*:

THE LOWER COURT ERRED IN NOT ACCORDING TO THE ACCUSED THE PRESUMPTION OF INNOCENCE TO WHICH HE IS ENTITLED IN CRIMINAL CASES AND FOR CONVICTING HIM OF THE OFFENSES CHARGED WITHOUT THE BENEFIT OF PROOF BEYOND REASONABLE DOUBT DESPITE THE EVIDENCE SHOWING THAT –

- A. THE CLAIM OF THE PROSECUTION THAT THE ACCUSED AND HIS DAUGHTER WERE ALONE AT THEIR SAN MATEO RESIDENCE IN THE EVENING OF 22 AUGUST 2002, THE DATE WHEN THE ALLEGED PENILE PENETRATION TOOK PLACE IS A BRAZEN LIE;
- B. “AAA” DID NOT MANIFEST OVERT PHYSICAL SIGNS THAT SHE WAS RAPED;
- C. “AAA” GAVE FOUR CONFLICTING ACCOUNTS ON HOW SHE WAS RAPED;
- D. “AAA” GAVE THREE CONFLICTING ACCOUNTS ON HOW SHE WAS “FINGERED” BY HER FATHER IN THE EVENING OF 9 OCTOBER 2002;
- E. X X X THE MOTHER OF THE ALLEGED VICTIM, CONCOCTED THE 9 OCTOBER 2002 INCIDENT;
- F. THERE IS NO SPONTANEOUS DISCLOSURE. “AAA” WAS PRESSURED TO ACCUSE HER FATHER;
- G. “AAA” IS SUSCEPTIBLE TO PRESSURE AND MANIPULATION;
- H. “AAA” BESTOWED [ON] HER FATHER A WARM SMILE WHEN SHE IDENTIFIED HIM IN COURT, WHICH IS UNEXPECTED IF SHE HAD IN FACT BEEN RAPED AND MOLESTED BY HER OWN FATHER;
- I. THE Demeanor OF “AAA” X X X IN THE COURSE OF THE COURT PROCEEDINGS IS FAR FROM INSPIRING;
- J. “AAA” [GAVE] FOUR CONFLICTING VERSIONS OF WHAT TRANSPIRED AFTER THE ALLEGED RAPE;

⁵⁶ Id. at 227.

- K. “AAA” IS CONSISTENT IN GIVING INCONSISTENT STATEMENTS;
- L. THE STATEMENT OF “AAA” THAT HER FATHER DID BAD THINGS TO HER TWICE CONTRADICTS HER CLAIM THAT SHE WAS SEXUALLY MOLESTED THRICE;
- M. “AAA” GAVE CONFLICTING ACCOUNTS ON HOW SHE FINALLY DISCLOSED HER ORDEAL;
- N. THE WITNESSES FOR THE PROSECUTION GAVE CONFLICTING ACCOUNTS OF HOW “AAA” MADE THE DISCLOSURE;
- O. X X X THE CLASS ADVISER OF “AAA” AND A WITNESS FOR THE PROSECUTION, COULD NOT BE BELIEVED WITH SAFETY;
- P. THE CLAIM THAT THE ACCUSED “FINGERED” HIS DAUGHTER IN THE EVENING OF 9 OCTOBER 2002 IS INCREDIBLE;
- Q. FROM HER TESTIMONY, IT APPEARS THAT “AAA” IS [SUBCONSCIOUSLY] SENDING SUBTLE HINTS TO THE COURT TO RECEIVE HER TESTIMONY WITH CAUTION;
- R. THE PARENTS OF “AAA” ARE NOT GETTING ALONG WELL;
- S. THE CLINICAL FINDING OF THE PSYCHIATRIST IS FAULTY AND INCONCLUSIVE; AND
- T. THE MEDICAL EVIDENCE IS NOT CONCLUSIVE OF RAPE.⁵⁷

In fine, appellant contends that the prosecution failed to establish by proof beyond reasonable doubt that he committed the crimes attributed to him.⁵⁸ He argues that his alibi and denial deserve greater weight in evidence than the testimony of the prosecution witnesses.⁵⁹

Our Ruling

The appeal is unmeritorious.

The crime of rape under Article 266-A of the Revised Penal Code (RPC)

The enactment of Republic Act (RA) No. 8353, otherwise known as the Anti-Rape Law of 1997, reclassified the crime of rape as a crime against

⁵⁷ Id. at 45-47.

⁵⁸ Id. at 56-127.

⁵⁹ Id. at 127-132.

persons.⁶⁰ It also amended Article 335 of the RPC and incorporated therein Article 266-A which reads:

Art. 266-A. *Rape, When and How Committed.* – Rape is committed-

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a. Through force, threat or intimidation;
 - b. When the offended party is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machination or grave abuse of authority;
 - d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Thus, rape can now be committed either through sexual intercourse or through sexual assault. In rape under paragraph 1 or rape through sexual intercourse, carnal knowledge is the crucial element which must be proven beyond reasonable doubt.⁶¹ This is also referred to as “organ rape” or “penile rape”⁶² and must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. There must be evidence to establish beyond reasonable doubt that the perpetrator's penis touched the *labia* of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction of rape by sexual intercourse.⁶³

On the other hand, rape under paragraph 2 of the above-quoted article is commonly known as rape by sexual assault. The perpetrator, under any of the attendant circumstances mentioned in paragraph 1, commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called “instrument or object rape”, also “gender-free rape”, or the narrower “homosexual rape.”⁶⁴

⁶⁰ *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 701-702.

⁶¹ *People v. Brioso*, G.R. No. 182517, March 13, 2009, 581 SCRA 485, 493.

⁶² *People v. Abulon*, supra note 62 at 702.

⁶³ *People v. Brioso*, supra note 63 at 495.

⁶⁴ *People v. Abulon*, supra note 62 at 702.

*The crime of sexual abuse under
Republic Act No. 7610*

On the other hand, RA 7610, otherwise known as the “Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act”, defines and penalizes child prostitution and other sexual abuse. “Sexual abuse includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. Lascivious conduct means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.”⁶⁵

The Information in Criminal Case No. 6573 against appellant was for violation of Section 5(b), Article III of RA 7610, which pertinently provides:

SEC. 5. *Child Prostitution and Other Sexual Abuse.* - Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult**, syndicate or group, **indulge in sexual intercourse or lascivious conduct**, are deemed to be **children exploited in prostitution and other sexual abuse**.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child** exploited in prostitution or **subjected to other sexual abuse**: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x. (Emphasis supplied)

In paragraph (b), the following requisites must concur: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse;

⁶⁵ *People v. Sumingwa*, G.R. No. 183619, October 13, 2009, 603 SCRA 638, 654-655, citing Section 2(g) and (h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases promulgated to implement the provisions of Republic Act No. 7610.

and (3) the child, whether male or female is below eighteen (18) years of age.⁶⁶ This paragraph “punishes sexual intercourse or lascivious conduct not only with a child exploited in prostitution but also with a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.”⁶⁷

Appellant is guilty of the two kinds of rape under Art. 266-A of the RPC and of sexual abuse under RA 7610.

Our examination of the testimony of “AAA” reveals that there was carnal knowledge or sexual intercourse through force, threat and intimidation on August 22, 2002. Appellant also committed rape by sexual assault when he inserted his finger into the genitalia of “AAA” on October 9, 2002. He also subjected “AAA,” a minor at 12 years of age, to sexual abuse by means of lascivious conduct through intimidation or influence, when he mashed her breasts and stroked her arms on August 21, 2002. “AAA” gave detailed accounts of these acts of perversion, viz:

Q: Last August 21, 2002, at around 9:00 o’clock in the evening where were you?

A: I was in our house, sir.

x x x x

Q: At such time, place and date do you recall any unusual incident that happened?

A: There was, sir.

Q: What was that?

A: I saw my daddy fondling my breasts and holding my arms, sir.

Q: And where were you in the house when your father did that to you?

A: I was in the room, sir.

Q: Where in the room?

x x x x

A: [In] the bed, sir.

ATTY. SAN JOAQUIN:

Q: What were you doing in bed?

A: I was lying, sir.

⁶⁶ *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 656-657.

⁶⁷ *Id.* at 657-658.

Q: And you said that your father, while you were [in] bed in the room, touched your breasts, would you please demonstrate to the court how your father touched your breasts?

A: Like this, sir.

ATTY. SAN JOAQUIN:

Witness [cupping] with her two (2) palms her breasts x x x.

x x x x

ATTY. SAN JOAQUIN:

Q: You also said that your father touched your arms, would you please demonstrate to the court how your father touched your arms?

A: Like this, sir.

ATTY. SAN JOAQUIN

Witness demonstrating with her right palm placed on her left shoulder and the left palm placed on her right shoulder and then moving them downwards.

Q: When your father did that to you, what did you do?

A: I was crying, sir.

Q: And did you say anything to your father?

A: None, sir.

Q: Did your father say anything to you?

A: Yes, sir.

Q: What was that?

A: He told me not to tell anything to my mother because in case I would tell something to my mother, something will happen to her, sir.

ATTY. SAN JOAQUIN:

May we manifest, your Honor, that the witness, while saying the words she had just said, had teary eyes and [was] wiping her tears with her handkerchief.

Q: When that was done to you by your father, who were in the house?

A: Only the two (2) of us, sir.

Q: Where was your mother?

A: She was in the wake of my aunt, sir.

Q: Where was your sister "CCC"?

A: Also at the wake, sir.

Q: How about your sister "DDD"?

A: Also at the wake of my aunt, sir.

Q: What time was that again?

A: 9:00 o'clock, sir.

Q: Daytime or nighttime?

A: Evening, sir.

x x x x

Q: "AAA," while you are testifying now, what do you feel?

A: I am afraid (natatakot po), sir.

ATTY. SAN JOAQUIN:

May we manifest that while the witness answers "natatakot po" she is crying and wiping her eyes with her handkerchief.

Q: At about 11 o'clock in the evening after August 22, 2002, where were you?

A: I was in the house, sir.

Q: What house?

A: The house of my grandmother, sir.

Q: Where is that?

A: "YYY," San Mateo, Rizal, sir.

Q: At that time, date and place, do you recall an unusual incident that happened?

A: There was, sir.

Q: What was that?

A: While I was sleeping I was suddenly awakened, sir.

Q: Why were you suddenly awakened from sleep?

A: Because my dad was lowering my shorts, sir.

Q: How did you know that your daddy was lowering your shorts?

A: I saw it, sir.

Q: Was your daddy able to lower your shorts?

A: Yes, sir.

Q: What else did he do after lowering your shorts?

A: He lowered my panty, sir.

Q: Was your daddy able to lower your panty?

A: Yes, sir.

Q: What were you doing when your daddy was lowering your shorts and then panty, what were you doing?

A: I was crying, sir.

Q: After your daddy has lowered your shorts and panty what happened next?

A: He separated my legs (ibinuka niya po ang hita ko), sir.

Q: After your daddy separated your legs, what happened next?

A: He inserted his penis into my vagina, sir.

Q: You said he inserted his penis into your vagina, was he able to insert his penis into your vagina?

A: Yes, sir.

Q: When your daddy inserted his penis into your vagina, what did you feel?

A: It was painful, sir.

x x x x

Q: When the penis of [your] father was already inserted into your vagina, what happened next?

A: He pulled it out and then inserted it again (hinugot niya tapos ay ipinasok niya uli), sir.

Q: How many times did that happen that your daddy pulled out his penis from you and then inserted it, how many times?

A: Two (2) times, sir.

Q: Then afterwards what happened?

A: He pulled it out again then he returned my panty, sir.

Q: What else?

A: He also returned my shorts, sir.

Q: Did you say anything to your daddy when he did that to you?

A: No, sir.

Q: How about your daddy, did he tell you anything?

A: Yes, sir.

Q: What was that?

A: Not to tell anything to my mother because something will happen to her if I tell anything to her, sir.

Q: Who [were] in the house when your father did that to you?

A: Only the two (2) of us, sir.

Q: Where was your mother?

A: She was still in the wake of my aunt, sir.

Q: How about your sister "CCC"?

A: She was also in the wake, sir.

x x x x

Q: What time was that when it happened?

A: At 11:00 o'clock, sir.

Q: Daytime or nighttime?

A: Nighttime, sir.

x x x x

Q: “AAA,” I am asking you this question, at about 10:30 o’clock in the evening of October 9, 2002, where were you?

A: I was in the house, sir.

Q: What house?

A: “YYY,” San Mateo, Rizal, sir.

Q: At such time, date and place, do you recall any unusual incident that happened?

A: There was, sir.

Q: What was that?

A: When I saw my shorts under my feet and my dad was already lying beside me, sir.

Q: How do you know that your daddy was beside you?

A: I saw him, sir.

Q: Where were you at that time, what place in the house?

A: In the room, sir.

Q: Where in the room?

A: x x x my bed, sir.

Q: What are you doing [in] bed?

A: I was sleeping, sir.

Q: Now, you said that you found out that your shorts was no longer being worn by you, what happened next?

A: My daddy inserted his finger in my vagina, sir.

Q: Which finger of your daddy was inserted at that time into your vagina?

A: The index finger, sir.

x x x x

Q: “AAA,” when your father inserted his finger into your vagina, what did you feel?

A: It was painful, sir.

Q: What did you do when your father inserted his finger into your vagina?

A: I just cried, sir.

Q: Did you tell your father anything?

A: None, sir.

- Q: How about your father, did he tell you anything?
A: Yes, there was, sir.
- Q: What was that?
A: Not to tell anything to my mother, sir.
- Q: Now, who were in the house when that happened?
A: My sisters “CCC” and “DDD” and also my mother, sir.
- Q: Where was your mother when your father was inserting his finger into your vagina, where was your mother?
A: I do not know, sir.
- Q: How about your sister “CCC”?
A: At the lower portion of the double-deck, sir.
- Q: What was “CCC” doing there at the lower portion of your double-deck bed?
A: She was sleeping, sir.
- Q: How about “DDD”?
A: She was on the mattress, sir.
- Q: What time was that in the evening?
A: At about 10:30, sir.⁶⁸

We agree with the observation of the lower courts that the testimony of “AAA” is worthy of credence. She positively identified appellant as her abuser. She did not waver on the material points of her testimony and maintained the same even on cross-examination. Indeed, her statements under oath are sufficient evidence to convict appellant for the crimes alleged in the Informations.⁶⁹

Moreover, “AAA’s” testimony is corroborated by the result of her medical examination which showed the presence of a deep healed laceration in her private part.⁷⁰ This finding is consistent with her declaration that appellant inserted his penis and finger into her vagina. “Where a victim’s testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.”⁷¹

Appellant seeks to discredit “AAA’s” testimony by insisting that he could not have raped the latter in the evening of August 22, 2002 since the whole family was in their house that day. This assertion is undeserving of credence due to our constant pronouncement that a bare assertion cannot prevail over the categorical

⁶⁸ TSN, March 5, 2003, pp. 5-15.

⁶⁹ *People v. Nachor*, G.R. No. 177779, December 14, 2010, 638 SCRA 317, 330-331.

⁷⁰ Records, Vol. I, p. 11 and Vol. II, p. 377.

⁷¹ *People v. Alcazar*, G.R. No. 186494, September 15, 2010, 630 SCRA 622, 634.

testimony of a victim.⁷² Even if corroborated by appellant's mother, the same does not deserve any weight since courts usually frown upon the corroborative testimony of an immediate member of the family of an accused and treat it with suspicion. The close filial relationship between the witness and the accused casts a thick cloud of doubt upon the former's testimony.

Even assuming that appellant was not alone with "AAA" on August 22, 2002, the presence of other people is not a deterrent to the commission of rape. This observation is apparent from the rape by sexual assault committed on October 9, 2002 while the entire family was in the residence. As aptly held by the RTC and the CA, rape indeed does not respect time and place.

Appellant impugns the credibility of "AAA" by emphasizing that she gave conflicting accounts on the manner she was raped. He also stresses the contradictions in the testimony of "AAA" and the other prosecution witnesses on the events that transpired after the alleged rape and regarding the disclosure by "AAA" of her ordeal.

We are not persuaded. Our review of the transcript of stenographic notes of the testimonies of the prosecution witnesses reveals that these inconsistencies refer to inconsequential matters "that [do] not bear upon the elements of the crime of rape. The decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the appellant for the crime charged. As the inconsistencies alleged by the appellant had nothing to do with the elements of the crime of rape, they cannot be used as [grounds] for his acquittal."⁷³

With regard to the inconsistencies on the part of "AAA," it bears stressing that "victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, an errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience as humiliating and painful as rape. Furthermore, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation."⁷⁴ Verily, in this case, minor inconsistencies in the testimony of "AAA" are to be expected because (1) she was a minor child during her defloration; (2) she was to testify on a painful and humiliating experience; (3) she was sexually assaulted several times;

⁷² *People v. Cachapero*, G.R. No. 153008, May 20, 2004, 428 SCRA 744, 757.

⁷³ *People v. Escoton*, G.R. No. 183577, February 1, 2010, 611 SCRA 233, 246.

⁷⁴ *Id.*

and, (4) she was examined on details and events that happened almost six months before she testified.⁷⁵

Anent appellant's other assigned errors, we quote the following findings of the CA:

The argument that "AAA" did not manifest overt physical signs of having been raped since she acted and walked normally the following day cannot justify the reversal of appellant's conviction. How a person goes about the day after the happening of a horrid event is not a tell-tale sign of the truth or [falsity] of an allegation. The workings of the human mind placed under a great deal [of] emotional and psychological stress are unpredictable and different people react differently. Furthermore, under the circumstances of this case, overt physical manifestations cannot be expected since "AAA" did not put up any form of resistance. The threat of harm to be inflicted on her mother was sufficient intimidation for her to succumb to her father's lust out of fear. The pattern of instilling fear, utilized by the perpetrator in incestuous rape to intimidate his victim into submission, is evident in virtually all cases. It is through this fear that the perpetrator hopes to create a climate of extreme psychological terror which would, he hopes, numb his victim into silence and force her to submit to repeated acts of rape over a period of time. The relationship of the victim to the perpetrator magnifies this terror, because the perpetrator is a person normally expected to give solace and protection to the victim.

Appellant would also want to impress upon this Court that the accusation of his daughter was concocted by his wife because of their marital problems. This contention is preposterous. It is unnatural for a mother to sacrifice her own daughter, a child of tender years, and subject her to the rigors and humiliation of a public trial for rape if she was not driven by an honest desire to have her daughter's transgressor punished accordingly.

Neither can it be said that there was no spontaneous disclosure by "AAA" of the incident. Appellant threatened "AAA." The humiliation caused by the rape by her own father in addition to the burden of being responsible should her mother be harmed are sufficient to prevent any child from freely disclosing her ordeal. We must be reminded that the crime of rape by itself attaches much humiliation and more so if the loss is caused by her father. Delay and the initial reluctance of a rape victim to make public the assault on her virtue is neither unknown [nor] uncommon. That there was no spontaneous disclosure does not mean that appellant is innocent of the crimes. "AAA" was apparently a terrified young child who was completely at the mercy of her shameless father. Thus, "AAA's" hesitation may be attributed to her age, the moral ascendancy of the accused over her, and his threats against her.

On the other hand, neither should the smile of "AAA" while identifying her father in court be given any malicious significance. While appellant puts much importance to said smile, which could be a way of concealing her nervousness, he ignored the fact that "AAA" cried while testifying on the details of the incidents. In fact, during her testimony, she categorically stated that she

⁷⁵ Id. at 246-247.

was afraid and ashamed. The candid and straightforward narration of how she was abused and the tears that accompanied her story are earmarks of credibility and must be given full faith and credit.

With respect to appellant's contention that the clinical finding of Dr. Joven Ignacio, the psychiatrist, [is] faulty and not conclusive because she appeared to be biased, it is noteworthy that even without said psychiatric test, the finding of the trial court would still be affirmed considering that the sole testimony of the victim is sufficient basis for conviction in rape, which is a crime usually committed in seclusion.

Indeed, We are convinced that "AAA" had no reason to falsely incriminate her own father in view of the fact that the accusation would surely deny her mother the companionship of a husband and the protection of a father [for] her younger sisters. It has been consistently held that the testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused.⁷⁶

On the other hand, what appellant offered for his defense were mere denials which, as aptly observed by the RTC, are unsupported by clear and convincing evidence.

Given the foregoing circumstances, the CA correctly affirmed the Decision of the RTC finding appellant guilty of the crimes charged.

The Proper Penalty

The RTC imposed upon appellant the penalty of death for committing the crime of qualified rape through sexual intercourse in Criminal Case No. 6572. The Information in this case alleged the qualifying circumstances of relationship and minority. Appellant is the father of "AAA" and he admitted this filial bond between them during the pre-trial conference⁷⁷ and trial. "[A]dmission in open court of relationship has been held to be sufficient and, hence, conclusive to prove relationship with the victim."⁷⁸ Also, "AAA's" birth certificate was submitted as proof of her age. This document suffices as competent evidence of her age.⁷⁹

"In view, however, of the passage of R.A. No. 9346, which prohibits the imposition of the penalty of death, the penalty of *reclusion perpetua*, without eligibility for parole, should be imposed."⁸⁰ Appellant is thus sentenced to *reclusion perpetua* without eligibility for parole for the crime of qualified rape committed through sexual intercourse in Criminal Case No. 6572.

⁷⁶ CA rollo, pp. 224-226.

⁷⁷ Records, Vol. 1, p. 26.

⁷⁸ *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 397.

⁷⁹ Id. at 397-398.

⁸⁰ *People v. Nachor*, supra note 71 at 334.

With regard to the crime of sexual abuse under RA 7610, the penalty provided for violation of Section 5, Article III thereof is *reclusion temporal* in its medium period to *reclusion perpetua*. “As the crime was committed by the father of [“AAA,”] the alternative circumstance of relationship should be appreciated. In crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating.”⁸¹ With the presence of this aggravating circumstance and no mitigating circumstance, the penalty in Criminal Case No. 6573 shall be applied in its maximum period – *reclusion perpetua*.⁸²

On the other hand, *prision mayor* is the penalty prescribed for rape by sexual assault under Article 266-B of the RPC. The penalty is increased to *reclusion temporal* if the rape is committed with any of the 10 aggravating/qualifying circumstances mentioned in [said] article.⁸³ Just like in Criminal Case No. 6572, the qualifying circumstances of relationship and minority are sufficiently alleged and proven in this case. The penalty therefore is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the trial court and the CA correctly imposed the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months and (1) day of *reclusion temporal*, as maximum in Criminal Case No. 6574.

The Damages

In line with prevailing jurisprudence, the award of damages to “AAA” in Criminal Case No. 6572 must be increased as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.⁸⁴ She is further awarded civil indemnity of ₱20,000.00, moral damages and a fine at ₱15,000.00 each in Criminal Case No. 6573.⁸⁵ In Criminal Case No. 6574, the awards of civil indemnity and moral damages at ₱30,000.00 each are maintained but the award of exemplary damages is increased to ₱30,000.00.⁸⁶ “AAA” is also entitled to an interest on all the amounts of damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.⁸⁷

⁸¹ *People v. Sumingwa*, supra note 67 at 655.

⁸² Id. at 655-656.

⁸³ Art. 266 B, par. 10 of the RPC.

⁸⁴ *People v. Masagca*, G.R. No. 184922, February 23, 2011, 644 SCRA 278, 286.

⁸⁵ *Garingarao v. People*, G.R. No. 192760, 654 SCRA 243, 255.

⁸⁶ *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431, 452.

⁸⁷ *People v. Flores*, G.R. No. 177355, December 15, 2010, 638 SCRA 631, 643.

WHEREFORE, the July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02511 which affirmed *in toto* the Decision of the Regional Trial Court of San Mateo, Rizal, Branch 76 finding appellant Doney Gaduyon y Tapispisan guilty beyond reasonable doubt of the crimes charged is **AFFIRMED with MODIFICATIONS** in that:

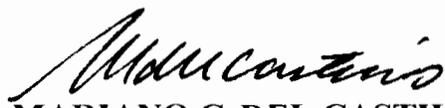
1. In Criminal Case No. 6572, appellant Doney Gaduyon y Tapispisan is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay “AAA” ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages;

2. In Criminal Case No. 6573, appellant Doney Gaduyon y Tapispisan is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay “AAA” ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages and a fine of ₱15,000.00;

3. In Criminal Case No. 6574, appellant Doney Gaduyon y Tapispisan is ordered to pay “AAA” ₱30,000.00 as exemplary damages.

“AAA” is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



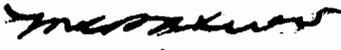
ANTONIO T. CARPIO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO

Chief Justice

