



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206095

Present:

VELASCO, JR., *J. Chairperson.*
PERALTA,
BERSAMIN,*
ABAD, and
MENDOZA, *JJ.*

- versus -

ROBERTO GARCIA y
PADIERNOS,
Accused-Appellant.

Promulgated:

November 25, 2013

x

DECISION

MENDOZA, J.:

This is an appeal from the August 1, 2012 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04814, which affirmed with modification the March 22, 2010 Decision² of the Regional Trial Court, Branch 68, Binangonan, Rizal (RTC), in Criminal Case No. 05-012, finding accused Roberto Garcia y Padiernos (*Garcia*) guilty beyond reasonable doubt of the crime of Qualified Rape committed against AAA.³

Garcia was charged with Qualified Rape in the Information,⁴ dated November 18, 2004, the accusatory portion of which reads:

* Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen per Special Order No. 1605 dated November 20, 2013.

¹ Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Rodil V. Zalameda, concurring. *Rollo*, p. 2-15.

² Penned by Judge John C. Quirante. Records, pp. 144-146.

³ Per this Court's Resolution, dated September 2006, in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

⁴ Records, pp. 1-2.

That in or about and during the month of May, 2004, in the Municipality of Binangonan, 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 commit sexual assault upon the person of one AAA, a three (3)-year old minor, by then and there inserting his finger into the genital organ of the said AAA, against her will and consent; the crime having been attended by the qualifying circumstance of minority, the victim AAA, three (3) years of age at the time of the commission of the crime; thereby raising the crime of QUALIFIED RAPE which is aggravated by the circumstances of treachery, evident premeditation, and abuse of superior strength, to the damage and prejudice of the victim.

CONTRARY TO LAW.

When arraigned, Garcia entered a plea of “Not Guilty” to the offense charged. During the pre-trial, the parties stipulated as to: 1] the identity of the accused being one Roberto Garcia y Padiernos; and 2] the jurisdiction of the lower court to try the case.⁵ Thereafter, trial on the merits ensued. As synthesized by the CA, the facts of the case are as follows:

AAA xxx testified, viz: she was 3 years old when appellant inserted his index finger into her vagina sometime in 2004; it hurt and she bled; appellant’s finger went inside and it was painful; the two of them were the only people outside; she was wearing panties and a pair of shorts, both of which he took off; he lived in the house beside hers and the incident happened outside her house; he and his wife often called and gave her bread; after the incident, she just stood where she was and later went home; it was only after appellant and his wife left their house that she told her mother about the incident; when she urinated, blood oozed out of her vagina which prompted her mother to bring her to the doctor; and the incident happened only once.

Dr. Joseph Palmero, Medico-Legal Officer of Camp Crame Crime Laboratory Office, testified that he examined AAA on October 7, 2004. He summarized his findings in his Medico Legal Report No. M-4356-04, viz:

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT:	light
MENTAL STATUS:	coherent
BREAST:	undeveloped/light brown
ABDOMEN:	soft and flat

⁵ Order dated March 16, 2006; id. at 47-48.

PHYSICAL INJURIES: NONE

GENITAL:

PUBIC HAIR: ABSENT

LABIA MAJORA: coaptated

LABIA MENORA: light brown/non-hypertrophied

HYMEN: deep healed laceration at 9 o'clock
position

POSTERIOIR FOURCHETTE: sharp

EXTERNAL VAGINAL ORIFICE: n/a

VAGINAL CANAL: n/a

CERVIX: n/a

PERIURETHRAL AND VAGINAL SMEARS: negative

CONCLUSION: **Definite evidence of abuse.**⁶ [Emphasis supplied]

The prosecution also adduced the following documentary evidence: 1] Sworn Statement of AAA; 2] Initial Medico Legal Report executed by Dr. Joseph Palmero (*Dr. Palmero*); 3] Medico Legal Report No. M-4356-04; and 4] AAA's Sexual Crime Protocol.

When it was the turn of the defense to present evidence, Garcia failed to appear despite the directive of the trial court. Thus, by Order, dated March 9, 2010, the RTC granted the motion of the prosecution to forfeit his cash bond and submit the case for decision.⁷

Ruling of the RTC

On March 22, 2010, the RTC rendered its judgment convicting Garcia of simple rape. It held that the accused committed object rape when he inserted his finger into the vagina of AAA by force and intimidation. The dispositive portion of the said decision reads:

WHEREFORE, judgment is rendered finding the accused guilty of Simple Rape under par. (2) Article 266-A of the Revised Penal Code, and he is hereby sentenced to *Reclusion Perpetua*.

SO ORDERED.⁸

⁶ *Rollo*, pp. 3-4.

⁷ *Id.* at 5.

⁸ Records, p. 146.

Garcia appealed the RTC judgment of conviction before the CA.

Ruling of the CA

On August 1, 2012, the CA found Garcia guilty of qualified rape based on the testimony of AAA which the appellate court found credible and sufficient to sustain his conviction. According to the CA, the RTC erred in not appreciating the qualifying circumstance that “the victim is a child below seven (7) years old.” It was of the view that since the minority of AAA was alleged in the Information and proven during trial, through her testimony and Medico Legal Report No. M-4356-04, the imposition of the death penalty was warranted. In view of the passage, however, of Republic Act (R.A.) No. 9346 on June 24, 2006, proscribing the imposition of the capital punishment, the CA held that Garcia should suffer the penalty of *reclusion perpetua* only. It further ordered him to pay AAA civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱30,000.00. The dispositive portion of the CA decision reads:

ACCORDINGLY, the Decision dated July 30, 2010⁹ is AFFIRMED with MODIFICATION, pronouncing appellant ROBERTO GARCIA y PADIERNOS GUILTY of QUALIFIED RAPE and ORDERING him to PAY AAA ₱75,000.00 as moral damages, ₱75,000.00, civil indemnity; and ₱30,000.00, exemplary damages.

SO ORDERED.¹⁰

Garcia appealed the August 1, 2012 decision of the CA to the Court. In its Resolution,¹¹ dated June 5, 2013, the Court notified the parties regarding the submission of their respective supplemental briefs. On July 29, 2013, Garcia manifested that he would no longer file a supplemental brief and would just adopt the defenses and arguments in the Appellant’s Brief he filed before the CA.¹² Later, the Office of the Solicitor General manifested that it was submitting the case on the basis of the record on hand.¹³

The Issues

Professing innocence, Garcia assails the CA decision and presents for the Court’s review the following

⁹ Should be March 22, 2010.

¹⁰ *Rollo*, pp. 14-15.

¹¹ *Id.* at 21.

¹² *Id.* at 23-24.

¹³ *Id.* at 31-32.

ASSIGNMENT OF ERRORS:**I**

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE AFFIDAVIT OF DESISTANCE EXECUTED IN FAVOR OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.¹⁴

The Court's Ruling

The conviction of Garcia must be affirmed.

Rape by sexual assault, otherwise known as “instrument or object rape or gender free rape,”¹⁵ is punishable under Article 266-A, paragraph 2 of the Revised Penal Code (*RPC*), as amended by R.A. No. 8353. The said law provides:

Art. 266-A. Rape; when and how committed. - Rape is committed –

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.

In *People v. Soria*¹⁶, the Court enumerated the elements of this crime, to wit:

- (1) That the offender commits an act of sexual assault;
- (2) That the act of sexual assault is committed by any of the following means:
 - (a) By inserting his penis into another person's mouth or anal orifice; or
 - (b) By inserting any instrument or object into the genital or anal orifice of another person;

¹⁴ Brief for the Accused-Appellant, *CA rollo*, p. 40.

¹⁵ *People v. Abulon*, 557 Phil. 428, 454 (2007).

¹⁶ G.R. No. 179031, November 14, 2012, 685 SCRA 483, 504.

(3) That the act of sexual assault is accomplished under any of the following circumstances:

- (a) By using force or intimidation;
- (b) When the woman is deprived of reason or otherwise unconscious; or
- (c) By means of fraudulent machination or grave abuse of authority; or
- (d) When the woman is under 12 years of age or demented.

All these elements are present in the case at bench. Upon review, the Court finds AAA's testimony as credible, clear, categorical and convincing. AAA's ordeal was narrated in a manner the Court deems sufficient to establish the following facts: a) that Garcia took off her clothes and panty; b) that he inserted his index finger into her vagina; c) that she suffered excruciating pain; and d) that blood oozed from her vagina when she urinated after the sexual molestation. Without hesitation, she pointed to Garcia as her molestor.

Jurisprudence has been consistent that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, particularly when no significant fact or circumstance is shown to have been overlooked or disregarded, which if considered would have affected the outcome of the case.¹⁷ The rule finds an even more stringent application where said findings are sustained by the CA.¹⁸

In the case at bench, the Court finds no cogent reason to merit a departure from the findings of the RTC and its calibration of AAA's credibility. Her account of the ordeal she suffered in the hands of Garcia was straightforward and forthright, without any artificiality or pretension that would tarnish the veracity of her testimony. Despite her answers not being as complete and coherent as would be desired, considering her age, AAA was able to convincingly narrate her harrowing experience. Her natural innocence and naivete belied any attempt to characterize her testimony as a lie. Hence, there is neither cause nor reason to deny credence to what she had recounted on the witness stand.

¹⁷ *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

¹⁸ *People v. Boisan Cabugatan*, 544 Phil. 468, 479 (2007).

Moreover, Garcia failed to show any ill motive on the part of AAA which could have impelled her to falsely accuse him of committing such a reprehensible crime. Where there is no evidence to show any dubious reason or improper motive on why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.¹⁹ This failure on the part of Garcia all the more strengthens the credibility of AAA and the validity of her charge. Time and again, this Court has held that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter testify about her ordeal in a public trial, if she had not been impelled to seek justice for the wrong done to her.²⁰

In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, which the prosecution in this case was able to prove beyond reasonable doubt. The testimony of AAA on the sexual assault was amply corroborated by Medico-Legal Report No. M-4356-04 executed by Dr. Palmero stating that there was evidence of sexual abuse in view of the presence of hymenal laceration in her private part. Verily, the prosecution evidence is sufficient to sustain the conviction of Garcia.

In a futile attempt to produce reasonable doubt on his criminal culpability, Garcia highlights the statement of Dr. Palmero that there was only an attempt to insert an object into the hymen of AAA.²¹ He argues that such inconsistency in the prosecution evidence effectively taints the credibility of AAA and casts doubt on the truthfulness of her charge. Garcia is grasping at straws.

Garcia then puts in issue the alleged error committed by the RTC when it failed to act on the affidavit of desistance filed before it. The Court need not belabor this matter. The Court agrees with the CA when it wrote:

We first address the affidavit of desistance allegedly executed by AAA's parents. This document is not found in the record, nor attached to any of the pleadings filed before this Court. Hence, all arguments pertaining to this inexistent document must fail. At any rate, affidavits of desistance, especially those extracted from poor, unlettered, young and gullible witnesses, are generally frowned upon. Testimony solemnly given before a court of justice and subjected to the test of cross-examination cannot just be set aside. The credibility of trials and the pursuit of truth cannot be placed at the unilateral disposal of timorous witnesses or made dependent on

¹⁹ *People v. Ferrer*, 356 Phil. 497, 508 (1998).

²⁰ *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 391.

²¹ CA rollo, p. 41.

one-sided statements prepared by notaries (*People v. Garcia*, G.R. No. 120387-88, March 31, 1998).²²

Having established with certitude the guilt of Garcia for the crime of rape by sexual assault, the Court will now proceed to the determination of the proper imposable penalty and award of damages.

Article 266-B of the RPC, as amended by R.A. No. 8353, provides:

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x x

5. When the victim is a child below seven (7) years old.

x x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

x x x x.

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphases supplied)

In the case at bench, the CA held that the qualifying circumstance of minority was proven beyond reasonable doubt. According to the CA, the unrefuted testimony of AAA that she was 3 years old when the incident happened, and Medico-Legal Report No. M-4356-04, which stated that AAA was 3 years old when she was examined for any evidence of sexual abuse, had established the qualifying circumstance that “the victim is a child below 7 years old.” It further declared that since AAA was under 7 years old at the time of the commission of the object rape, Garcia should be convicted of qualified rape and meted the death penalty.²³

The Court has to disagree.

²² *Rollo*, p. 7.

²³ *Id.* at 14.

Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself.²⁴ The victim's minority must be proved conclusively and indubitably as the crime itself.²⁵

In *People v. Arpon*,²⁶ the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. **In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**
5. It is the prosecution that has the burden of proving the age of the offended party. **The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.** (Emphases supplied.)

²⁴ *People v. Eduardo Limos*, 465 Phil. 66, 96 (2004), citing *People v. Ocumen*, 458 Phil. 111, 128 (2003).

²⁵ *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546.

²⁶ G.R. No. 183563, December 14, 2011, 662 SCRA 506, 530-531, citing *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

In this case, there is nothing on record to prove the qualifying circumstance that “the victim is a child below 7 years old.” The testimony of AAA anent her age and the absence of denial on the part of Garcia are not sufficient evidence of her age. On the other hand, the information regarding the age of AAA as indicated in Medico Legal Report No. M-4356-04 is not reliable because there was no showing who supplied the same. Lamentably, her age was not one of the subjects of stipulation during the pre-trial conference.

It bears stressing that the prosecution did not adduce any independent and competent documentary evidence such as AAA’s original or duly certified birth certificate, baptismal certificate, school records or any authentic documents indicating her date of birth, to show that the commission of the crime was attended by the subject qualifying circumstance of minority. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable, or otherwise totally absent. Her mother or any member of her family, by affinity or consanguinity, never testified on her age or date of birth. Further, there is no showing that the testimony of AAA as to her age at the time of the commission of the crime was expressly and clearly admitted by Garcia. In the light of the foregoing, the subject qualifying circumstance cannot be appreciated against Garcia.

In the absence of any qualifying circumstance, the crime committed by Garcia is Simple Rape by Sexual Assault and the penalty should be *prision mayor* as provided in Art. 266-B par. 7 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64(1)²⁷ of the RPC. Applying the Indeterminate Sentence Law, Garcia should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision correccional* (6 months and 1 day to 6 years) and the maximum of which should be within the range of *prision mayor* in its medium period (8 years and 1 day to 10 years). Accordingly, the Court imposes the indeterminate penalty ranging from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

²⁷ Art. 64. Rule for application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, xxx, the courts shall observe for application of the penalty the following rules, xxx:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. xxx

On the damages, the Court agrees with the CA that AAA is entitled to moral damages as they are automatically awarded to rape victims without need of pleading or proof.²⁸ The award of civil indemnity is likewise proper 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.²⁹

The award of exemplary damages finds basis in Art. 2229 of the Civil Code as it pertinently provides that exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Being corrective in nature, exemplary damages can be awarded where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.³⁰ The circumstances of the present case show the high degree of perversity and depravity of Garcia in sexually assaulting his neighbor's child. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who would be similarly disposed.

In line with prevailing jurisprudence,³¹ the award of damages would be ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages.

WHEREFORE, the August 1, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04814 is **AFFIRMED** with **MODIFICATION** in that accused Roberto Garcia y Padiernos is found **GUILTY** of Simple Rape by Sexual Assault and sentenced to suffer the indeterminate penalty ranging from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is also ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁸ *People v. Orande*, 461Phil. 403, 421 (2003).

²⁹ *People v. Tablang*, G.R. No. 174859, October 30, 2009, 604 SCRA 757, 774.

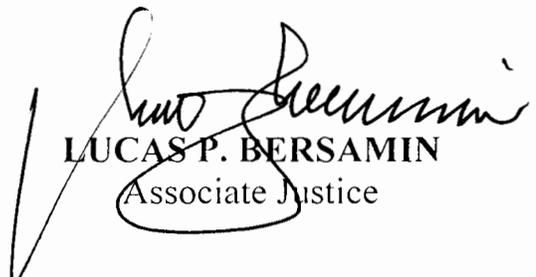
³⁰ *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

³¹ *People v. Lindo*, G.R. No. 189818, August 9, 2010, 627 SCRA 519, 534; *People v. Dominguez*, G.R. No. 191065, June 13, 2011, 651 SCRA 791, 807.

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ROBERTO A. ABAD
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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