



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff-Appellee,

G.R. No. 183100

Present:

- versus -

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
*PEREZ, JJ.

ROGELIO ABRENCILLO,
Accused-Appellant.

Promulgated:

NOV 28 2012

DECISION

BERSAMIN, J.:

This appeal seeks to undo the conviction of the accused for the rape he had committed against AAA,¹ the 15-year-old daughter of BBB, his common-law wife. The Regional Trial Court, Branch 61, in Gumaca, Quezon (RTC) sentenced him to death on March 4, 2002 on the ground that the crime was qualified by his being the step-father of the victim and her minority under 18 years. By its January 29, 2008 decision rendered in CA-G.R.CR-HC No. 01123,² however, the Court of Appeals (CA) affirmed the conviction but found the crime to be simple rape, reducing the penalty to *reclusion perpetua*.

* Vice Associate Justice Bienvenido L. Reyes, who is on Wellness Leave, per Special Order No. 1356 dated November 13, 2012.

¹ The real name of the victim and her immediate family are withheld per R.A. No. 7610 and R.A. No. 9262 "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-422.

² *Rollo*, pp. 4-10; penned by Associate Justice Mario L. Guariña III (retired), with Associate Justice Japar B. Dimaampao and Associate Justice Sixto C. Marella, Jr. (deceased) concurring.

The records show that the accused and BBB started their cohabitation when AAA and CCC, who were twin sisters, were only about three years of age; that the common-law partners lived with BBB's daughters in the same house for the next 12 years; that a father-daughter relationship developed between the accused and BBB's daughters, with AAA and CCC even considering him as their own father and addressing him as *itay* (father); that AAA frequently accompanied him when he gathered wood and made charcoal in a hut in the nearby forest; that on March 1, 1999, BBB left the house early to sell fish; that AAA was left alone in the house and had lunch by herself because he went out to chat with neighbors; that after her lunch, AAA took a nap in the house, but his return to the house awakened her; that taking advantage of AAA being alone in the house, he took off his pants and laid down beside her; that he embraced her, but she brushed away his arms; that he then got up and started taking her shorts off; that she resisted and held on to her shorts; that in frustration, he went to take his *bolo* and poked its sharp tip unto her throat while threatening to kill her; that she became petrified with fear and could not do anything more after that; that he then undress her, went on top of her, and inserted his penis into her vagina; that the penile insertion caused her pain; that he then made push and pull motions until he spent himself inside her; that she could only beg for him to stop but he paid no heed to her pleas; that she cried later on; and that he left her alone afterwards.

The records further show that once the accused left her alone, she ran to the house of her *Lolo Armin* and reported what the accused had just done to her; that *Lolo Armin* accompanied her to the police station to report the rape; that she narrated in her complaint affidavit that the accused had raped her even before that time, when she was still younger; and that she underwent physical examination by the municipal health officer, Dra. Constancia Mecija, about two hours after the commission of the rape.

Dra. Mecija rendered the following findings in the medico-legal report relevant to AAA's physical examination, *viz*:

x x x x

Genital Examination:

Pubic hair fully grown, moderate labia majora and minora coaptated, fourchette lax, Vestibular mucosa pinkish. Hymen, tall, thin with old healed complete laceration at 3:00 o'clock and 9:00 o'clock position; corresponding to the face of a watch. Edges rounded, Hymenal orifice – admits a tube of 2.5 cm. in diameter with moderate resistance, vaginal walls tight. Rugosities prominent.

CONCLUSIONS:

1. No evident sign of extragenital physical injuries noted in the body of the subject at the time of examination.
2. Old healed hymenal laceration, present.³

x x x x

The Provincial Prosecutor of Quezon filed in the RTC the information dated March 26, 1999 charging the accused with qualified rape allegedly committed as follows:

That on or about the 1st day of March 1999, at Barangay No. 8 Poblacion, in the Municipality of Gen. Luna, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with lewd design, by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, his step-daughter, and a minor, 15 years of age, against her will.

CONTRARY TO LAW.⁴

The accused pleaded *not guilty* to the information on September 6, 2000.

During the trial, the accused denied having sexual intercourse with AAA, although he admitted being in the house at the alleged time of the rape. He insisted that nobody was in the house when he returned that afternoon from his chore of gathering wood in the nearby forest; that upon

³ Records, p. 142.

⁴ Id. at 2.

learning from a neighbor that AAA had left the house with her *kabarkada*, he himself did the cooking and waited for her to return home; and that he scolded her, causing her to run away from home.

After trial, the RTC rendered judgment, convicting the accused for qualified rape and prescribing the death penalty. It considered AAA's testimony as credible and reliable because the medico-legal findings corroborated her accusation. It found that the rape was qualified by relationship, the accused being her stepfather, and by her minority, she being 15 years of age at the time of the commission of the crime. It ruled as follows:

WHEREFORE, based on the foregoing, the Court finds the accused **ROGELIO ABRENCILLO** guilty beyond reasonable doubt for rape under Article 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and sentencing him the penalty of **DEATH**. He is further ordered to pay the amount of ₱75,000.00 to AAA as indemnity and moral damages in the amount of ₱50,000.00.

SO ORDERED.⁵

On intermediate review, the accused claimed that the medico-legal evidence did not prove recent sexual intercourse in view of the finding of old healed laceration that indicated the non-virgin state of AAA.

Nonetheless, the CA, upholding the conviction but downgrading the offense to simple rape because the accused was not AAA's stepfather due to him and BBB not having been legally married, disposed thus:

IN VIEW OF THE FOREGOING, the decision appealed from is **AFFIRMED** with the modification that the accused shall suffer the penalty of *reclusion perpetua*, in addition to the indemnity and damages awarded therein.

SO ORDERED.⁶

⁵ Id. at 138.

⁶ CA *rollo*, p. 104.

In his appeal, the accused reiterated his arguments in the CA,⁷ still assailing the credibility of AAA's accusation of a recent coerced sexual encounter with him.

We affirm the conviction.

Firstly, the findings of the RTC and the CA deserve respect mainly because the RTC as the trial court was in the best position to observe the demeanor and conduct of AAA when she incriminated the accused by her recollection of the incident in court. The personal observation of AAA's conduct and demeanor enabled the trial judge to discern whether she was telling the truth or inventing it.⁸ The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to the Court's attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted by the lower courts but would materially affect the disposition of the case differently if duly considered.⁹ Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, ignored, misapprehended, or misinterpreted any facts or circumstances supportive of or crucial to his defense.¹⁰

Secondly, carnal knowledge of AAA as an element of rape was proved although Dra. Mecija's findings indicated no physical injuries on the body of AAA.¹¹ Rather than disproving the commission of the rape, the absence of a finding of physical injuries on AAA corroborated her testimony that she became petrified with fear and could not offer any physical resistance to his sexual assault after he poked the sharp tip of the *bolo* unto her neck.

⁷ Id. at 36-47.

⁸ *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

⁹ *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

¹⁰ *People v. Felan*, G.R. No. 176631, February 2, 2011, 641 SCRA 449, 453.

¹¹ TSN, February 1, 2001, p. 7.

It is relevant to mention that carnal knowledge as an element of rape does not require penetration. Carnal knowledge is simply the act of a man having sexual bodily connections with a woman.¹² Indeed, all that is necessary for rape to be consummated, according to *People v. Campuhan*,¹³ is for the penis of the accused to come into contact with the lips of the *pudendum* of the victim. Hence, rape is consummated once the penis of the accused touches either *labia* of the *pudendum*.

Thirdly, we reject the posture of the accused that AAA's old-healed hymenal lacerations, as Dra. Mecija found, disproved the recent commission of the rape charged. Proof of the presence of hymenal laceration in the victim is neither indispensable nor necessary in order to establish the commission of rape. Hence, whether the hymenal lacerations of AAA were fresh or healed was not decisive.¹⁴ In this connection, it is timely to remind that the commission of rape may be proved by evidence *other than* the physical manifestations of force being applied on the victim's genitalia, like the presence of hymenal laceration. For sure, even the sole testimony of the victim, if found to be credible, suffices to prove the commission of rape. This rule avoids the situation of letting the rapist escape punishment and go scot-free should he commit the rape with only himself and the victim as the witnesses to its commission.

Fourthly, the CA correctly prescribed *reclusion perpetua*. The rape that was committed was not qualified rape because the accused and BBB were not legally married to each other. What the records show, instead, was that they were in a common-law relationship, which meant that he was not the stepfather of AAA, contrary to the allegation of the information. Under Article 266-B of the *Revised Penal Code*, rape through force, threat or intimidation of a woman 12 years or over in age is punished by *reclusion perpetua*.

¹² *Black's Law Dictionary* 193 (5th ed., 1979).

¹³ G.R. No. 129433, March 30, 2000, 329 SCRA 270, 280-281.

¹⁴ *People v. Domantay*, G.R. No. 130612, May 11, 1999, 307 SCRA 1.

Article 266-B of the *Revised Penal Code* prescribes the penalty of *reclusion perpetua* to death whenever the rape is committed with the use of a deadly weapon. Although the information alleged the use by the accused of a deadly weapon (*bolo*) in the commission of the rape, the CA still correctly prescribed the lesser penalty of *reclusion perpetua* because the information did not allege the attendance of any aggravating circumstances. With the intervening revision of the *Rules of Criminal Procedure* (*i.e.*, effective on December 1, 2000) in order to now require the information to state the “acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances xxx in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstance and for the court to pronounce judgment,”¹⁵ the Prosecution became precluded from establishing any act or circumstance not specifically alleged in the information if such act or circumstance would increase the penalty to the maximum period.¹⁶

Lastly, the Court reduces the indemnity from ₱75,000.00 to ₱50,000.00 in view of the crime actually proved being simple rape. However, the RTC and the CA did not award exemplary damages to AAA, despite her being entitled to such damages by reason of her minority under 18 years at the time of the rape, and because of the use by the accused of the *bolo*, a deadly weapon. This recognition of her right accords with the perceptive pronouncement in *People v. Catubig*¹⁷ to the effect that exemplary

¹⁵ Section 9, Rule 110, *Rules of Criminal Procedure*.

¹⁶ *E.g.*, *Catiis v. Court of Appeals*, G.R. No. 153979, February 9, 2006, 482 SCRA 71, 84, where the RTC granted bail despite the offense charged being *estafa* (Article 315, *Revised Penal Code*, in conjunction with Presidential Decree 1689) and the penalty prescribed was *reclusion temporal* to *reclusion perpetua* if the amount involved exceeded ₱100,000.00. The RTC justified the grant of bail by holding that because the information had averred no qualifying or aggravating circumstance that would justify the imposition of the maximum of *reclusion perpetua* in the case, and because the omission already precluded the State from proving the aggravating circumstance during the trial, the crime was bailable. The bail grant was assailed by the private complainant in the CA, which upheld the RTC. The SC sustained the CA because “it is now a requirement that the aggravating as well as the qualifying circumstances be expressly and specifically alleged in the complaint or information (; o)therwise, they cannot be considered by the trial court in their judgment, even if they are subsequently proved during trial. A reading of the Information shows that there was no allegation of any aggravating circumstance, thus (the trial judge) is correct when he found that the lesser penalty, *i.e.*, *reclusion temporal*, is imposable in case of conviction.”

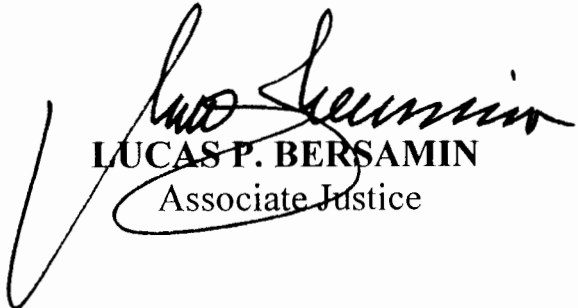
¹⁷ G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

damages were justified regardless of whether or not the generic or qualifying aggravating circumstances were alleged in the information because the grant of such damages pursuant to Article 2230 of the *Civil Code* was intended for the sole benefit of the victim and did not concern the criminal liability, the exclusive concern of the State. For that purpose, therefore, exemplary damages of ₱25,000.00 are hereby fixed.

WHEREFORE, we **AFFIRM** the decision promulgated on January 29, 2008, subject to the **MODIFICATION** that Rogelio Abrencillo is ordered to pay ~~AAA~~ the reduced amount of ₱50,000.00 as civil indemnity, and the further amount of ₱25,000.00 as exemplary damages in addition to the moral damages of ₱50,000.00 awarded by the trial court.

The accused shall pay the costs of suit.

SO ORDERED.




LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



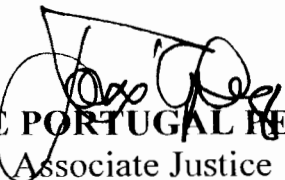
MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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