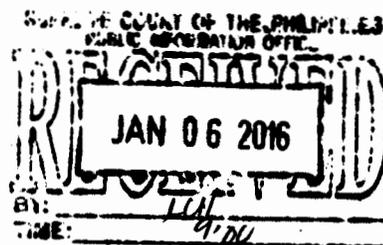




Republic of the Philippines  
**Supreme Court**  
 Manila



**FIRST DIVISION**

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

**G.R. No. 206972**

**Present:**

SERENO, *C.J.*,  
*Chairperson,*  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, *JJ.*

*-versus-*

**PAMUEL A. MAGNO,**  
 Accused-Appellant.

Promulgated:  
**DEC 02 2015**

X-----X

**RESOLUTION**

**PEREZ, J.:**

For review is the Decision<sup>1</sup> promulgated by the Court of Appeals (CA), affirming the Regional Trial Court's (RTC) Decision<sup>2</sup> in Criminal Case No. 2000-02-160 finding accused-appellant Pamuel A. Magno guilty of rape.

Accused-appellant was charged with the crime of kidnapping with rape in an Information which reads:

That on or about the 20<sup>th</sup> day of February, 2000, in the City of Tacloban, [Leyte,] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a private individual did, then and there, willfully, unlawfully and feloniously

<sup>1</sup> *Rollo*, pp. 5-20; Penned by Associate Justice Gabriel T. Ingles with Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr. concurring.

<sup>2</sup> Records, pp. 117-131; Presided by Judge Crisostomo L. Garrido.

kidnap, detain and deprive the minor [AAA],<sup>3</sup> a 5-month old baby girl, by surreptitiously taking said minor with him without the consent and against the will of BBB (mother), bringing said minor to unknown places and whereabouts and did, then and there willfully, unlawfully and feloniously have carnal knowledge with said [AAA] a 5-month old baby girl, against her will.<sup>4</sup>

The arguments of the prosecution at the trial was that on 20 February 2000, BBB left her 5-month old baby, AAA to the care of her eldest daughter CCC while she went to her mother's house to boil water. When BBB came back, AAA has gone missing. A neighbor informed them that he saw an ice cream vendor carrying a baby around the time when AAA went missing.

The incident was reported to the police. Meanwhile, a cargo truck driver narrated that while on his way home, he saw a man abusing a baby on a bench in Plaza Libertad, Tacloban City. He noticed that the baby's private parts were bloodied. He beckoned four bystanders but when they returned to the plaza, the man had already fled and left the baby lying on the bench.

The police proceeded to Plaza Libertad and found AAA thereat. Police Officer 2 Raul De Lima (PO2 Delima) informed BBB of a possible sighting of AAA in the plaza. He then accompanied BBB to the plaza. BBB confirmed that the baby lying on the bench is AAA. She then brought AAA to the hospital.

Acting on a tip, the police proceeded to *Barangay 37* in Seawall Area to apprehend accused-appellant. The cargo truck driver positively identified accused-appellant as the assailant.

For his part, accused-appellant claimed that he was sleeping inside the house when the police came, manhandled and arrested him. He denied raping AAA and claimed that he only came to know the charges against him during arraignment.

On 3 September 2002, the trial court rendered a Decision finding appellant guilty of the crime charged, thus:

---

<sup>3</sup> Pursuant to Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and its implementing rules, the real names of the victim and of the members of her immediate family or household are withheld, and fictitious initials are used instead to represent them in order to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 422.

<sup>4</sup> Records, p. 1.

**WHEREFORE, PREMISES CONSIDERED**, applying Article 267 and Article 266-A and 266-B of the Revised Penal Code as amended, and further amended by R.A. No. 8353, otherwise known as the Anti-Rape law of 1997, the [c]ourt found accused PAMUEL MAGNO, **GUILTY** for the Crime of KIDNAPPING WITH RAPE beyond reasonable doubt and sentenced to suffer the maximum penalty of DEATH and to indemnify AAA the sum of **FIFTY THOUSAND [PESOS] (P50,000.00)**, pay moral damages in the amount of **FIFTY THOUSAND PESOS (P50,000.00)** and pay the cost.<sup>5</sup>

In convicting accused-appellant, the trial court relied heavily on the testimony of the cargo truck driver who positively identified accused-appellant as the perpetrator of the crime.

On appeal, the appellate court rendered the assailed decision affirming with modification accused-appellant's conviction, to wit:

**WHEREFORE**, the appeal is **DENIED**. The Decision of the Regional Trial Court (RTC), Eight Judicial Region, Branch 7, Tacloban City, in Criminal Case No. 2000-02-160 is hereby **AFFIRMED with MODIFICATION**. Accused Pamuel A. Magno is found guilty beyond reasonable doubt of the special complex crime of kidnapping with rape and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the offended party AAA, the amounts of P75,000.00 as civil indemnity *ex delicto*, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.<sup>6</sup>

In a Resolution<sup>7</sup> dated 29 July 2013, the Court required the parties to simultaneously file their respective supplemental briefs. Both parties however manifested that they are adopting their briefs filed before the CA.<sup>8</sup>

In his Brief,<sup>9</sup> accused-appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He asserts that there was no proof that he intended to restrain the victim of her liberty, which is an element of kidnapping. Moreover, accused-appellant insists that the eyewitness did not see him inserting his penis on the victim's vagina hence carnal knowledge, as an element of rape, was not established. At most, accused-appellant concedes, that he may be held liable for rape under the second paragraph of Article 266-A in relation to Article 266-B.

---

<sup>5</sup> Id. at 131.

<sup>6</sup> *Rollo*, p. 20.

<sup>7</sup> Id. at 39-40.

<sup>8</sup> Id. at 41-45.

<sup>9</sup> CA *rollo*, pp. 47-48.

The issue devolves on whether accused-appellant has been proven guilty beyond reasonable doubt of rape.

The evidence of the prosecution overwhelmingly establishes accused-appellant's guilt beyond reasonable doubt of the special complex crime of kidnapping with rape.

The testimony of the eyewitness, which was given full faith and credit by the lower courts, clearly points to accused-appellant as the perpetrator.

The elements of kidnapping under Article 267, paragraph 4 of the Revised Penal Code are: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer.

The prosecution has satisfied the constitutionally required proof that the accused-appellant is a private individual; that accused-appellant took AAA, a baby, without the knowledge or consent of her parents; and that AAA was only five-months old at the time of the kidnapping.

In a prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty, in any manner, needs to be established by indubitable proof.<sup>10</sup> And in this case, the actual taking of the baby without the consent of her parents is clear proof of appellant's intent to deprive AAA of her liberty.

Aside from the testimony of the eyewitness, rape was also proven by the medical findings on AAA. As attested to by her physician, the Medico-Legal Report confirmed that AAA suffered injuries in her vagina, thus:

#### **O. Pelvic Exam**

Ext. Gen. 1<sup>st</sup> degree perineal laceration  
Int: - not examined due to resistance  
S/E: - not examined due to resistance  
I/E: - not examined due to resistance  
Intra-Operative Findings

Pelvic Exam under general anesthesia

---

<sup>10</sup> *People v. Ubongen*, 409 Phil. 140, 150 (2001).

External Genitalia – 1<sup>st</sup> degree perineal laceration (including the fourchette, vaginal mucosa and skin of perineum)

Introitus

Hymen: (+) complete circumferential fresh laceration (edges are sharp, reddened and edematous)

S/E: Admits virginal speculum with ease

Cervix small, hyperemic

(+) 1.5 cm. vaginal mucosal laceration lateral wall, (L)

I/E: Cervix small, firm

U= small

A= small

D- (+) moderate bloody discharge with blood clots

Intervention: Repair of vaginal laceration

x x x x

REMARKS:

CONCLUSION: 1. The above described physical injuries are found in the body of the subject, the age of which is compatible to the alleged date of infliction.<sup>11</sup>

x x x x

There is no dispute that rape was committed against AAA considering that her hymen had fresh laceration and the edges are “sharp, reddened and edematous.”<sup>12</sup>

Article 267 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, states that when the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

It has been established that appellant committed kidnapping and on the occasion thereof, he raped AAA. He is thus found guilty beyond reasonable doubt of the complex crime of kidnapping with rape, warranting the penalty of death. However, in view of R.A. No. 9346 entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines,” the penalty of death is hereby reduced to *reclusion perpetua*, without eligibility for parole.

---

<sup>11</sup> Records, p. 9.

<sup>12</sup> Id.

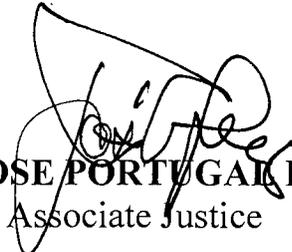
In accordance with prevailing jurisprudence,<sup>13</sup> the award of civil indemnity, moral and exemplary damages is modified. AAA is thus entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. Finally, all damages awarded shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.<sup>14</sup>

**WHEREFORE**, the 23 February 2012 Decision of the Court of Appeals finding accused-appellant Pamuel A. Magno guilty of the complex crime of kidnapping with rape and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Appellant is ordered to pay the victim AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and

(2) All damages awarded shall earn interest at the rate of 6% per annum from the date of finality of this resolution until fully paid.

**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

<sup>13</sup> *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508, 533.

<sup>14</sup> *People v. Colantava*, G.R. No. 190348, 9 February 2015.

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice