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Wilfredo V. Lapitan

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 30 2016

Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 192428

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

-versus-

ELPEDIO CASTAÑAS Y ESPINOSA
Accused-Appellant.

Promulgated:

April 20, 2016

Wilfredo V. Lapitan

X-----X

DECISION

PEREZ, J.:

Before us for review is the Decision¹ of the Court of Appeals, Nineteenth Division in CA-G.R. CR-HC No. 00014 dated 31 March 2009, which dismissed the appeal of appellant Elpedio Castañas y Espinosa and affirmed with modification the Judgment² of the Regional Trial Court (RTC) of Naval, Biliran, Branch 16, in Criminal Case No. N-2295, finding appellant guilty beyond reasonable doubt of the crime of Statutory Rape.

In line with the ruling of this Court in *People v. Cabalquinto*,³ the real name and identity of the rape victim, as well as the members of her

¹ Rollo, pp. 2-15; Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Franchito N. Diamante and Edgardo L. Delos Santos concurring.
² Records, pp. 43-54; Presided by Presiding Judge Enrique C. Asis.
³ 533 Phil. 703 (2006)

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immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

Appellant was charged with the crime of rape in an Information, the accusatory portion of which reads as follows:

That on or about the 12th day of JANUARY, 2004, at about 10:30 o'clock in the morning, more or less, at Brgy. Banlas, Municipality of Maripipi, Biliran Province, Philippones (sic), and within the jurisdiction of this Honorable Court, said accused, actuated by lust and taking advantage of the innocence of [AAA], a 4-year old minor Day Care Pupil, did then and there brought the latter to the house of a certain Esok, and thereafter accused wilfully, unlawfully and feloniously laid her down and he, in turn took off his pants and underwear, laid on top of said minor [AAA] against her, to her damage and prejudice.

CONTRARY TO LAW with the aggravating circumstances of abuse of superior strength and that victim is a minor child 4 years of age.⁴

Appellant pleaded not guilty to the crime charged. Trial on the merits ensued.

AAA, who was only four (4) years old at the time of the commission of the crime, and five (5) years old when she took the witness stand, stated that she knows the appellant as "*tatay Pedio*." She testified that she had been sexually abused by the latter two (2) times. The first time was in the house of a certain *Uncle Haludo*. The second time was on 12 January 2004 when appellant brought her to the house of a certain Uncle Isok. With no one else in the house, appellant removed AAA's panty, touched and kissed her vagina, sexually abused and had sexual intercourse with her.⁵

BBB, AAA's mother, confirmed that AAA was four (4) years old at the time of the commission of the crime and this was supported by AAA's birth certificate presented in court. BBB narrated that in the morning of said date, she had asked AAA to bathe. Appellant, who was a neighbor and who was within the area, then interrupted to say in the vernacular, "*karigo Eday para makuha an hiras*" which means "take a bath, Eday, to take away the itchiness." After the bath, when AAA was without underwear, BBB noticed AAA's female anatomy to be reddish. BBB asked AAA the reason for the redness and AAA replied that appellant had kissed it. BBB then brought

⁴ Records, p. 21.

⁵ TSN, 6 October 2004, pp. 2-6.

AAA to her mother's house, and there AAA revealed that appellant sexually molested her or "*hupit*." Thus, BBB took AAA to the hospital for medical examination.⁶

AAA was physically examined by Dr. Noel Albeda on 12 January 2004. Per his Medical Certificate dated 12 January 2004:

Awake, concious (sic), coherent, ambulatory and not in CP distress.
Pelvic Exam: (+) hypermia (sic) at both labial, minor folds.
(+) tenderness at hymenal area with slight application of
cotton buds
POSITIVE for Spermatozoal Examination.⁷

During direct examination, Dr. Albeda explained that AAA's vaginal opening was reddish due to friction or hematoma from an object which could include a sexual organ. There was tenderness at the hymenal area as an examination of which caused AAA to complain; which examination yielded positive results for presence of spermatozoa. Dr. Albeda opines that someone forced himself into AAA's female anatomy but could not penetrate due to its smallness in size and thus the discharge outside it. There was trauma on the labia minora and spermatozoal specimen was found in the hymenal area, by the mouth of the vagina, on the face of the labia minora.⁸

Appellant, for his part, denied the charges. He testified that he knows AAA because they are neighbors. He claimed that on 12 January 2004, at 9 o'clock in the morning, AAA approached him and went to his house as she often did. There was no one else around at that time. Appellant claimed that AAA placed herself on his lap while he was merely wearing underwear. Appellant confessed that when he reached orgasm, he slapped AAA on her vagina. Appellant admitted to being inebriated that time.⁹

On 30 November 2004, appellant was found guilty beyond reasonable doubt of statutory rape. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, this [c]ourt finds the accused Elpedio Castañas Y Espinosa **GUILTY** in Criminal Case No. N-2295; hereby imposing upon him the penalty of **DEATH** by lethal injection.

⁶ TSN, 13 October 2004, pp. pp. 11-18.

⁷ Records, p. 4.

⁸ TSN, 13 October 2004, pp. 2-11.

⁹ TSN, 27 October 2004, pp. 2-7.



The accused shall pay [AAA] the amount of P75,000.00 as moral damages and to further pay P50,000.00 in civil indemnity for the rape committed.¹⁰

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, in view of all the foregoing, the assailed Decision of the Regional Trial Court dated November 30, 2004 finding accused-appellant Elpedio Castañas y Espinosa guilty beyond reasonable doubt of Rape is hereby **AFFIRMED with MODIFICATION**. Accordingly, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to indemnify AAA the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages.¹¹

Appellant filed the instant appeal. In a Resolution¹² dated 04 August 2010, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. OSG manifested that it was adopting its brief filed before the appellate court¹³ while appellant filed his Supplemental Brief¹⁴ in which he insists that if he indeed raped AAA, such a violent act would have left a physical sign or mark.

We affirm the appellant's conviction.

Rape is committed as follows:

Article 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 otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority; and
- d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

¹⁰ Records, p. 54.

¹¹ *Rollo*, p. 14.

¹² Id. at 20-21

¹³ Id. at 31-33.

¹⁴ Id. at 37-40.

x x x x

Article 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 attendant circumstances:

x x x x

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

x x x x

Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary. These are not elements of statutory rape as the absence of free consent is conclusively presumed when the victim is below the age of twelve. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving; (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.¹⁵

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.¹⁶ Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.¹⁷

The prosecution presented proof of the required elements of statutory rape. AAA's age, only four (4) years old at the time of the crime, was shown by her Birth Certificate; she was born on 6 February 1999 while the alleged rape was committed on 12 January 2004.¹⁸ AAA also positively identified in court appellant as the perpetrator of the crime.¹⁹ AAA, in the painstaking and

¹⁵ *People v. Mingming*, 594 Phil. 170, 186 (2008).

¹⁶ *People v. Pascua*, 462 Phil. 245, 252 (2003).

¹⁷ *People v. Aguilar*, 628 SCRA 437, 447 citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

¹⁸ TSN, 13 October 2004, p. 12 and Records, p. 32.

¹⁹ TSN, 6 October 2004, p. 2.

degrading public trial, in all of her five (5) years, also related the painful ordeal of her sexual abuse by appellant. AAA's testimony was found by the trial court, which had the better position to evaluate and appreciate testimonial evidence, to be more credible than that of the defense.²⁰ Following are pertinent portions:

Q [AAA], do you know a certain "Pedio"?

A Yes, Sir.

Q Please point him out if he is inside this office[.]

A That man. (Witness pointing to a man who when asked of his name answered Elpedio Castañas)

Q Personally, how do you call him?

A Tatay Pedio.

Q What did your Tay Pedio do to you?

A "Guinhupit ako." (Meaning: "He sexually abused me.")

Q Who sexually abused you?

A Tay Pedio.

x x x x

Q On January 12, 2004, do you remember what your Tay Pedio do to you?

A Yes, Sir.

Q What did your Tay Pedio do to you?

A I was undressed by him.

Q In whose house?

A In the house of Uncle Isok.

Q After your Tay Pedio undressed you, what did he do to you?

A I was sexually abused.²¹

Even during cross-examination, AAA clearly testified, to wit :

Q [AAA], when you said you were sexually abused by Pedio, you mean to tell this [c]ourt that he touched your vagina?

A Yes, Sir.

Q And that time when your Tay Pedio touched your vagina, your panty was in its place?

A No more.

Q Who removed your panty?

²⁰ Records, p. 51.

²¹ TSN, 6 October 2004, pp. 2-4.

A Tay Pedio?

Q And in your affidavit [AAA], you also mentioned that your Tay Pedio kissed your vagina?

A Yes, Sir.

Q And that time when your Tay Pedio kissed your vagina, your panty was still in its place?

A No more.

x x x x

Q And your Tay Pedio did no other act except touching and kissing your vagina?

A He sexually abused me, he succeeded in having sexual intercourse with me.

Q That was after he touched your vagina?

A Yes, Sir.

Q [AAA], was there anybod[y] who told you what to say to this [c]ourt?

A None Sir.²²

The medical report and the testimony of the examining physician, Dr. Albeda, confirm the truthfulness of the charge. Appellant, however, only confesses to having had an ejaculation near AAA's female anatomy but denies having sexual contact or intercourse with AAA. He asserts that the absence of hymenal lacerations supports his statements.

The Court rebuffs this defense of denial. Aside from being weak, it is self-serving evidence which pales in comparison to AAA's and BBB's clear narration of facts and positive identification of appellant. Moreover, the Court disbelieves that appellant could only have had a spontaneous ejaculation without having done other acts to bring about the same. The medical findings of AAA's hyperemia at both her labial folds, the tenderness at her hymenal area and the presence of spermatozoa evidence that sexual contact did occur. Mere spanking of AAA's female anatomy could not have caused these conditions. The Court also has said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. To be precise, the touching of the *labia majora* or the *labia minora* of the pudendum by the penis constitutes consummated rape.²³

²² TSN, 6 October 2004, pp. 4-6.

²³ See *People v. Campuhan*, 385 Phil. 912, 921 (2000).

Appellant's contention that the Information filed against him did not clearly state the elements of the crime as it did not state the gravamen of the crime of rape, that is, sexual intercourse or sexual assault through insertion of any instrument or object²⁴ also deserves scant consideration.

While generally, an accused cannot be convicted of an offense that is not clearly charged in the information, this rule is not without exception. The right to assail the sufficiency of the information or the admission of the evidence may be waived by the accused.²⁵ As held in *People v. Torillos*:²⁶

Appellant contends that the information failed to specify the acts which constituted the crime. It is too late in the day for him to assail the insufficiency of the allegations in the information. *He should have raised this issue prior to his arraignment by filing a motion to quash. Failing to do so, he is deemed to have waived any objection on this ground pursuant to Rule 117, Section 9 (formerly Section 8) of the Revised Rules of Criminal Procedure x x x*

x x x x

In *People v. Palarca*, the accusatory portion of the information failed to specifically allege that the rape was committed through force or intimidation, although the prosecution was able to establish by evidence that the appellant was guilty of rape as defined under Article 266-A, paragraph (I) (a) of the Revised Penal Code. Similarly, the appellant failed to object to the sufficiency of the information or to the admission of evidence. *In affirming his conviction, it was held that an information which lacks certain essential allegations may still sustain a conviction when the accused fails to object to its sufficiency during the trial, and the deficiency was cured by competent evidence presented therein*²⁷. (Emphasis supplied and citations omitted)

Herein, if there was any missing allegation of carnal knowledge, the Court believes the appellant had been adequately informed of the nature and the cause of the accusation against him by the initial complaint filed against him together with the supporting affidavits of the witnesses and the medical examination of AAA. Thus:

That on or about 10:30 o'clock in the morning of January 12, 2004, at Barangay Banlas, Maripipi, Biliran, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused with deliberate intent, with lewd designs approached AAA, 4

²⁴ CA rollo, p. 45.

²⁵ *People v. Navarro*, 460 Phil. 565, 575 (2003).

²⁶ 448 Phil. 287 (2003).

²⁷ Id. at 298.

years old, Day Care Pupil, and bring it to the house of one Esok did then and there willfully, unlawfully and feloniously had sexual intercourse with the victim which was against her will.²⁸

Notably, appellant has belatedly first raised this issue on appeal. He failed to raise this before the trial court. Relevantly, appellant neither interposed objection to the prosecution's presentation of evidence of carnal knowledge. In fact, he actively participated during trial and was able to present his defense evidence.

In sum, appellant's guilt of the crime charged was established beyond reasonable doubt.

Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997, carries the penalty of *reclusion perpetua* unless attended by qualifying circumstances defined under Article 266-B. In the instant case, as the victim, AAA, is below seven (7) years old, or four (4) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the appellate correctly reduced the penalty from death penalty to *reclusion perpetua*.

We, however, modify the appellate court's award of damages and increase it as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence,²⁹ the most recent of which is *People v. Jugueta*.³⁰ Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.³¹

WHEREFORE, premises considered, the Decision dated 31 March 2009 of the Court of Appeals of Cebu City, Nineteenth Division, in CA-G.R. CR-H.C. No. 00014, finding appellant Elpedio Castañas y Espinosa guilty beyond reasonable doubt of the crime of statutory rape in Criminal Case No. N-2295, is hereby **AFFIRMED WITH MODIFICATION**. Appellant Elpedio Castañas y Espinosa is ordered to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages,

²⁸ Records, p. 1.

²⁹ *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508.

³⁰ G.R. No. 202124, 5 April 2016.

³¹ *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

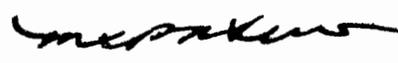
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



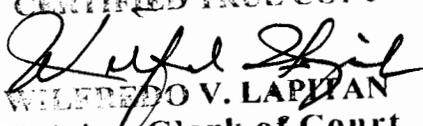
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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

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WILFREDO V. LAPID
Division Clerk of Court
Third Division

MAY 30 2016

