



Republic of the Philippines
Supreme Court
 Manila

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 SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 231358

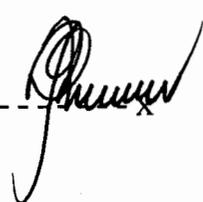
Present:

- versus -

BERSAMIN, C.J.,
DEL CASTILLO,
JARDELEZA,
GESMUNDO, and
CARANDANG, JJ.

ERNESTO AVELINO, JR. y
GRACILLIAN,*
Accused-Appellant.

Promulgated:
JUL 08 2019

X ----- 

DECISION

DEL CASTILLO, J.:

The appellant Ernesto Avelino, Jr. y Gracillian assails the August 31, 2016 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 07543 which affirmed with modification the May 28, 2015 Decision² of the Regional Trial Court (RTC) of Caloocan City, Branch 131, finding him guilty beyond reasonable doubt of rape.

Factual Antecedents

Appellant was criminally charged with rape in relation to Republic Act (RA) No. 7610, in an Information which states:



* Referred to as Gracillan in some parts of the records.
¹ CA *rollo*, pp. 94-106; penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Zenaida T. Galapate-Laguilles.
² Records, pp. 444-450; penned by Presiding Judge Ma. Teresa E. De Guzman-Alvarez.

That sometime in May 2006 in Caloocan City, M.M.[,] and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threats[,] and intimidation, did then and there willfully, unlawfully[,] and feloniously lie and have carnal knowledge of one AAA,³ a mental retardate, a minor and 15 years of age, against her will and without her consent.

CONTRARY TO LAW.⁴

Appellant pleaded not guilty to the charge of rape during his arraignment held on September 5, 2007.⁵

At the pre-trial, the prosecution and the defense stipulated: (1) the jurisdiction of the trial court to try the case; (2) the identity of the appellant as charged in the Information; (3) that the victim was a minor, subject to presentation of the birth certificate; and (4) the existence of the medico-legal certificate.⁶

Version of the Prosecution

The prosecution presented the testimonies of AAA and Police Chief Inspector Jesille Cui Baluyot (PCI Baluyot) of the Philippine National Police (PNP) Crime Laboratory at Camp Crame, Quezon City. The prosecution's version of the rape incident is, as follows:

AAA narrated that she and her family had been renting a house from appellant's father since May 2006, which house was adjacent to the house where appellant and his family were staying.⁷ Sometime in May 2006, AAA was on the second floor of appellant's house putting the latter's son to sleep.⁸ After appellant's son had already fallen asleep, AAA decided to leave but she was prevented by appellant, who was armed with a knife. Appellant threatened AAA that he would kill "all" of them, presumably referring to AAA's family.⁹



³ "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 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 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

⁴ Records, p 2.

⁵ Id. at 21.

⁶ Id. at 254-255.

⁷ CA *rollo*, p. 57.

⁸ Id. at 58.

⁹ Id.

AAA testified that while poking a knife at her, appellant told her to lie down and thereafter undressed her. She resisted but appellant went on undressing her, after which he removed his own shorts and briefs. Appellant then went on top of AAA and inserted his penis into her vagina. After the sexual intercourse, appellant told AAA, while poking a knife at her, not to tell her parents about what had happened.¹⁰

AAA narrated that it was only when she and her family had already transferred to another house and when she became pregnant that her family learned about the rape incident. Thereafter, AAA and her family reported the incident to the police, which led to the filing of the complaint for rape against appellant.¹¹

On September 30, 2006, AAA had an anogenital examination at the PNP Crime Laboratory in Camp Crame, Quezon City. Police Senior Inspector Edilberto S. Antonio (PSI Antonio), in his Medico-Legal Report No. R06-1894, found clear evidence of blunt force or penetrating trauma. PSI Antonio likewise found that AAA's hymen had a shallow healed laceration. During trial, PCI Baluyot testified on the findings of PSI Antonio, as the latter was no longer connected with the PNP Crime Laboratory in Camp Crame. In her testimony, PCI Baluyot categorically stated that the shallow healed laceration in AAA's hymen, as indicated in Medico-Legal Report No. R06-1894, could have been caused by a blunt penetrating trauma, such as an erect penis.¹²

Version of the Defense

As set forth in his Accused-Appellant's Brief,¹³ appellant denied that he personally knew AAA. While he acknowledged that AAA's family rented the adjacent house owned by his father, appellant claimed that he lived with his own family in a two-storey house. Appellant averred that his wife took care of their two children, ages five and two, while he was at work. He strongly denied that he hired AAA to take care of his children. He insisted that he did not know how long AAA and her family had been renting their house because it was his father who had dealt with them with respect to the lease. On the day of the alleged rape, he claimed that neither he nor his family left their house. He did not know of any reason why AAA filed a rape case against him.

Appellant's father corroborated his son's testimony. According to appellant's father, he lived with the appellant and the latter's family, while AAA and her family stayed at the adjacent house which he owned and rented out to

¹⁰ Id.

¹¹ Id. at 59.

¹² Id.

¹³ Id at 22-38.

AAA's family for ₱1,500.00 per month. Appellant's father likewise declared that, whenever he or the appellant would go out of the house, there would always be someone left to look after the appellant's two children.

Ruling of the Regional Trial Court

On May 28, 2015, the RTC of Caloocan City, Branch 131, found that the prosecution had successfully discharged the burden of proving that appellant did in fact rape AAA. It held that all the elements of the crime had been duly established. The RTC upheld the credible and positive declaration of the victim as against the weak defense of alibi and denial by the appellant. The dispositive portion of the Decision reads:

WHEREFORE, accused ERNESTO AVELINO, JR. y GRACILLAN, is found GUILTY beyond reasonable doubt for the crime of Rape defined and punishable under Article 266-A paragraph 1 in relation to Article 266-B par. 1 of the Revised Penal Code, as amended by R.A. 8353 and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

Likewise, he is ordered to pay complainant civil indemnity in the amount of ₱50,000.00, moral damages of ₱50,000.00, and ₱50,000.00 as and by way of exemplary damages.

SO ORDERED.¹⁴

From this judgment, appellant appealed to the CA.

Ruling of the Court of Appeals

In its August 31, 2016 Decision, the CA affirmed with modification the appellant's conviction of rape. The dispositive portion of the CA's Decision reads:

WHEREFORE, the instant appeal is DISMISSED. The *Decision* dated 28 May 2015 of Regional Trial Court of Caloocan City, Branch 131, in *Criminal Case No. C-77813* is hereby AFFIRMED with MODIFICATION, in that Accused-Appellant Ernesto Avelino, Jr. y Gracillian is ORDERED to pay AAA ₱30,000.00 as exemplary damages.

SO ORDERED.¹⁵

Dissatisfied with the CA's Decision, appellant filed this appeal with the Court.

¹⁴ Records, p. 450.

¹⁵ CA rollo, p. 105.

Issue

Whether or not appellant is guilty of rape.

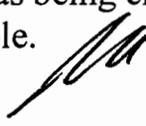
According to appellant, the RTC gravely erred in convicting him of rape and giving weight and credence to the inconsistent testimony of AAA. He also claims that the RTC erred in failing to take into consideration his defense of denial. Finally, he asserts that the RTC erred in sentencing him to *reclusion perpetua* since the proper penalty should have been that provided for in Section 5 of RA 7610.

Our Ruling

After a careful review of the records, the Court finds the appeal unmeritorious, there being no cogent reason to reverse the CA in affirming with modification the RTC's ruling which found appellant guilty beyond reasonable doubt of rape. Both the RTC and the CA correctly found that all the elements of rape had been sufficiently established by the prosecution. More particularly, the prosecution had proved that appellant had carnal knowledge of AAA without her consent and through force, threat, and intimidation with the use of a knife.

Moreover, the Court upholds the findings of the RTC which were affirmed by the CA, that AAA's testimony was credible. It is settled that the RTC's findings on the credibility of witnesses and their testimonies are entitled great weight and respect and the same should not be overturned on appeal in the absence of any clear showing that the trial court overlooked, misunderstood, or misapplied some facts or circumstances which would have affected the case. Questions on the credibility of witnesses are best addressed to the trial court due to its unique position to observe the witnesses' deportment on the stand while testifying. In this case, both the RTC and the CA held that AAA was credible and her testimony categorically identified appellant as the person who, with the use of a knife, intimidated her and raped her. The Court finds no reason to doubt the findings of both the RTC and CA, especially since no evidence was adduced showing that AAA had ill motive to falsely charge appellant with the crime of rape.

Faced with such serious accusation, appellant raised the defense of denial and argued that he did not commit the same and that he did not know why he was being charged with rape in the first place. His defense, however, is untenable.



As held by the CA, denial cannot prevail over the positive and categorical testimony of the victim identifying him as the perpetrator of the crime of rape. As against appellant's bare denial, the Court upholds the CA's ruling that the positive and categorical testimony of AAA identifying appellant as her rapist should prevail.

Both the RTC and the CA correctly found appellant guilty of simple rape. Although it was alleged in the Information that AAA was suffering from mental retardation, no evidence was shown to prove such mental condition.¹⁶ Moreover, it was not also proved that appellant knew of AAA's mental disability at the time of the commission of the crime.¹⁷

Nor is there merit in appellant's contention that the proper imposable penalty in this case is that provided by Section 5 of RA 7610. RA 7610 is inapplicable in the present case because the said law governs criminal cases where the victims are children exploited in prostitution or other sexual abuse. In this case, AAA was not an exploited child who indulged in sexual intercourse or lascivious conduct for money or profit or any other consideration; neither was she coerced or influenced by an adult, syndicate, or group to indulge in the said conduct. Given the fact that AAA was not a child exploited in prostitution, the penalty provided for under RA 7610 does not apply. Hence, the RTC correctly imposed the penalty of *reclusion perpetua* provided for under Article 266-B of the Revised Penal Code for the crime of simple rape.

It is necessary, however, to modify the amounts of civil indemnity and damages imposed by the RTC as modified by the CA. In line with recent jurisprudence, in rape where the penalty imposed is *reclusion perpetua*, this Court has upgraded the amounts of civil indemnity from ₱50,000.00 to ₱75,000.00; moral damages from ₱50,000.00 to ₱75,000.00; and exemplary damages from ₱30,000.00 to ₱75,000.00.

WHEREFORE, the appeal is **DISMISSED**. The August 31, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07543 is **AFFIRMED with MODIFICATION** in that, appellant Ernesto Avelino, Jr. y Gracillan is ordered to pay AAA the following amounts: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages; all these monetary awards to earn legal interest at the rate of 6% *per annum* reckoned from the date of finality of this Decision until fully paid.

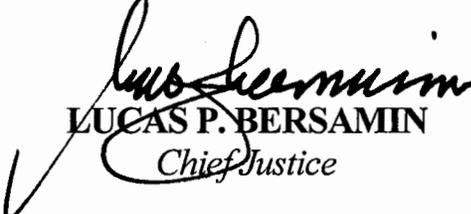
¹⁶ Records, p. 447.

¹⁷ REVISED PENAL CODE, Article 266(B)(10).

SO ORDERED.

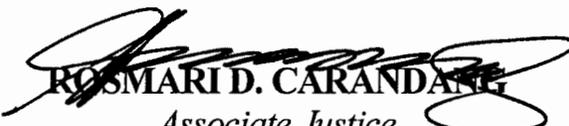

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice


FRANCIS H. JARDELEZA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARI D. CARANDANG
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.


LUCAS P. BERSAMIN
Chief Justice