



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 220718

Present:

- versus -

CARPIO,* J.,
PERALTA,** *Acting Chairperson*,
MENDOZA,
LEONEN,*** and
MARTIRES, JJ.

Promulgated:

NICOLAS TUBILLO y ABELLA,
Accused-Appellant.

21 JUN 2017

X ----- *HM Cabalagor Jacto* ----- X

DECISION

MENDOZA, J.:

On appeal is the December 11, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05740, which affirmed the July 4, 2012 Decision,² of the Regional Trial Court, Branch 225, Quezon City (RTC) in Criminal Case No. Q-06-139031, finding accused-appellant Nicolas Tubillo y Abella (*Tubillo*) guilty of the crime of simple rape.

* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

*** On Leave.

¹ Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justice Isaias P. Dicedican and Associate Justice Socorro B. Inting, concurring; *rollo*, pp. 3-14.

² Penned by Acting Judge Cleto R. Villacorta III; *CA rollo*, pp. 45-53.

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On February 20, 2006, an Information³ was filed before the RTC charging Tubillo with rape, in relation to Republic Act (R.A.) No. 7610, which reads:

That on or about the 1st day of February 2006, in Quezon City, Philippines, the said accused, by means of force, violence and intimidation and at knife point, commit an act of sexual assault upon one HGE, a minor, 13 years of age, by then and there while complainant was sound asleep alone inside the room, forcibly opened the door then accused motivated by sexual desire, undressed her, pulled down her underwear and mounted on top of her, and thereafter have carnal knowledge with said complainant, all against her will and without consent, which act debases, degrades and demeans the intrinsic worth and dignity of said HGE, as a human being, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.⁴

On April 5, 2006, Tubillo was arraigned and he pleaded “not guilty.” At the pre-trial stage, the parties stipulated on the identity of Tubillo, the age of HGE, and the police investigation.

During the trial, the prosecution presented HGE and Dr. Paul Ortiz (*Dr. Ortiz*) as its witnesses.

Version of the Prosecution

At the time of the incident, HGE was only thirteen (13) years old and was living with AAA, the person who adopted her, at 249 St. Peter Street, Barangay Holy Spirit, Quezon City.

On February 1, 2006, at around 10:00 o'clock in the evening, HGE was sleeping at home alone, while AAA was working as a beautician at a salon. Suddenly, she was awakened when Tubillo, her neighbor, entered their house by breaking the padlock of the door.

Upon entry, Tubillo went directly to HGE and then he removed her clothes and his own. He then forcibly inserted his penis in her vagina by pushing his body towards her. HGE felt pain, but she did not resist as Tubillo was poking a knife at her neck. The incident lasted for about thirty (30) seconds.

On February 8, 2006, HGE revealed her ordeal at the hands of Tubillo to her aunt, leading to the filing of the subject complaint.

³ Records, p. 1.

⁴ *Id.*

Dr. Ortiz testified that he was the medico-legal officer who examined HGE. He found that she had a shallow healed laceration at 7:00 o'clock position in the hymen; that the periurethral and vaginal smears were negative for spermatozoa; and, that the findings were suggestive of the use of a blunt force or penetrating trauma to the hymen which could have been an erect penis.

Version of the Defense

The defense presented Tubillo as its sole witness. He denied the accusations against him and claimed that the complaint was filed simply because HGE's aunt was angry at him when he tried to collect some money from her.

The RTC Ruling

In its July 4, 2012 Decision, the RTC found Tubillo guilty beyond reasonable doubt of the crime of simple rape, defined under Article 266-A of the Revised Penal Code (*RPC*), and sentenced him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest at the rate of six percent (6%) *per annum* reckoned from the finality of the decision.

The RTC found that Tubillo sexually violated HGE on the date and time claimed by the latter. It appreciated HGE's consistent testimony and the medical report presented to establish the carnal knowledge committed against her will. The RTC disregarded Tubillo's bare defense of denial because it was unsubstantiated.

Aggrieved, Tubillo elevated an appeal before the CA, arguing that HGE's testimony was marred with inconsistencies, because she claimed prior rape incidents which were not proven.

The CA Ruling

In its assailed December 11, 2014 Decision, the CA affirmed Tubillo's conviction with modifications. It was of the view that HGE candidly testified about the sexual violation committed by Tubillo against her and that the inconsistencies in her testimony were trivial.

The CA, however, opined that as HGE was more than twelve (12) years old, Tubillo could be charged with either rape under the *RPC* or child abuse under R.A. No. 7610. The appellate court concluded that considering that Tubillo was charged with rape in relation to R.A. No. 7610, he should be penalized under Section 5(b), Article III of R.A. No. 7610 instead. Thus,

the CA modified the penalty imposed upon Tubillo by reducing it to fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

Hence, this appeal.

ISSUE

WHETHER THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution,⁵ dated December 9, 2015, the Court required the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation and Motion,⁶ dated February 16, 2016, the Office of the Solicitor General (*OSG*) stated that it was no longer filing any supplemental brief as it was adopting its Brief for the Appellee previously filed on November 5, 2013 before the CA.

In their Manifestation in lieu of Supplemental Brief,⁷ dated March 2, 2016, the Public Attorney's Office manifested that they would not any more file a supplemental brief, considering that Tubillo had exhaustively discussed the assigned error in the Appellant's Brief before the CA.

The Court's Ruling

The appeal lacks merit.

Rape through force or intimidation was committed

Under Article 266-A (1) of the RPC, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.⁸

In this case, the CA and the RTC fully appreciated the testimony of HGE that, on February 1, 2006, Tubillo forcibly entered the house where she was sleeping alone; that he took off her clothes and his; that he forcibly

⁵*Rollo*, pp. 21-22.

⁶ *Id.* at 23-26.

⁷ *Id.* at 28-30.

⁸ *People v. Court of Appeals*, G.R. No. 183652, February 25, 2015.

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inserted his penis in her vagina; and that she could not resist because he poked a knife at her neck. The sexual violation suffered by HGE in Tubillo's hands was corroborated by the medical findings of Dr. Ortiz.

On the other hand, Tubillo merely invoked the defense of denial. In addition, he claimed that the complaint was filed because HGE's aunt was angry at him. Mere denial, however, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.⁹

As to the argument of Tubillo that HGE's testimony was incredible due to her inconsistent claim that she was earlier sexually abused by him, it is simply bereft of merit. As correctly observed by the CA, although HGE claimed that she was abused earlier by Tubillo, she did not report the said incidents because she was scared. It was only after the dastardly deed committed by Tubillo on February 1, 2006 that HGE mustered enough courage to tell her aunt about.

Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being.¹⁰

Hence, the Court is of the view that Tubillo committed rape with force and intimidation against HGE.

*Proper crime committed
and imposable penalty*

The CA found that Tubillo committed the crime of rape against HGE, then a 13-year-old minor. Nevertheless, it opined that he must be convicted under Section 5(b) of R.A. No. 7610 because it was the crime alleged in the information.

The Court disagrees.

To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.¹¹

On the other hand, the elements of Section 5(b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to

⁹ *People v. Amaro*, G.R. No. 199100, July 18, 2014, 730 SCRA 190, 199.

¹⁰ *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 162.

¹¹ *People v. Padigos*, 700 Phil. 368 (2012).

other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It is also stated there that children exploited in prostitution and other sexual abuse are those children, whether male or female, who, for money, profit, or any other consideration or **due to the coercion or influence** of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.

In the recent case of *Quimvel v. People*,¹² the Court ruled that the term “coercion and influence” as appearing in the law is **broad enough** to cover “force and intimidation.” Black’s Law Dictionary defines coercion as compulsion; force; duress, while undue influence is defined as persuasion carried to the point of overpowering the will. On the other hand, force refers to constraining power, compulsion; strength directed to an end; while jurisprudence defines intimidation as unlawful coercion; extortion; duress; putting in fear. As can be gleaned, the terms are used almost synonymously.¹³ Thus, it is not improbable that an act of committing carnal knowledge against a child, twelve (12) years old or older, constitutes both rape under Section 266-A of the RPC and child abuse under Section 5(b) of R.A. No. 7610.

In *People v. Abay*,¹⁴ the Court was faced with the same predicament. In that case, both the elements of Section 266-A of the RPC and Section 5(b) of R.A. No. 7610 were alleged in the information. Nevertheless, these provisions were harmonized, to wit:

Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1) (d) of the Revised Penal Code and penalized with *reclusion perpetua*. **On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code.** However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law.¹⁵ (Emphasis supplied)

In *Abay*, the offended party was thirteen (13) years old at the time of the rape incident. Again, the information therein contained all the elements

¹² G.R. No. 214497, April 18, 2017.

¹³ *Id.*

¹⁴ 599 Phil. 390 (2009).

¹⁵ *Id.* at 396.

of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610. Nevertheless, the Court observed that the prosecution's evidence only focused on the specific fact that accused therein sexually violated the offended party through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, accused therein was convicted of the crime of rape under Article 266-A (1) of the RPC. Notably, the prosecution did not tackle the broader scope of "influence or coercion" under Section 5(b) of R.A. No. 7610.

Similarly, in *People v. Pangilinan*,¹⁶ the Court was faced with the same dilemma because all the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610 were present. It was ruled therein that the accused can be charged with either rape or child abuse and be convicted therefor. The Court observed, however, that the prosecution's evidence proved that accused had carnal knowledge with the victim through force and intimidation by threatening her with a samurai sword. Thus, rape was established.¹⁷ Again, the evidence in that case did not refer to the broader scope of "influence or coercion" under Section 5(b) of R.A. No. 7610.

In the present case, the RTC convicted Tubillo for the crime of rape because the prosecution proved that there was carnal knowledge against HGE by means of force or intimidation, particularly, with a bladed weapon.¹⁸ On the other hand, the CA convicted Tubillo with violation of Section 5(b) of R.A. No. 7610 because the charge of rape under the information was in relation to R.A. No. 7610.¹⁹

After a judicious study of the records, the Court rules that Tubillo should be convicted of rape under Article 266-A (1) (a) of the RPC.

A reading of the information would show that the case at bench involves both the elements of Article 266-A (1) of the RPC and Section 5(b) of R.A. No. 7610. As elucidated in *People v. Abay* and *People v. Pangilinan*, in such instance, the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim.

Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A (1) (a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a

¹⁶ 676 Phil. 16-38 (2011).

¹⁷ *People v. Pangilinan*, supra at 36.

¹⁸ CA rollo, p. 49.

¹⁹ Rollo, p. 13.

knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.

In fine, Tubillo should be found guilty of rape under Article 266-A (1) (a) of the RPC with a prescribed penalty of *reclusion perpetua*, instead of Section 5 (b) of R.A. No. 7610.

Awards of damages

The Court finds that the damages awarded by the CA and the RTC should be modified. *People v. Jugueta*²⁰ established the standard of damages to be awarded. Where the penalty imposed is *reclusion perpetua*, the minimum indemnity and damages are as follows:

1. ₱75,000.00 as civil indemnity;
2. ₱75,000.00 as moral damages; and
3. ₱75,000.00 as exemplary damages.

WHEREFORE, the July 4, 2012 Decision of the Regional Trial Court, Branch 225, Quezon City, in Criminal Case No. Q-06-139031, is **AFFIRMED** with the following **MODIFICATIONS**:

WHEREFORE, finding Nicolas Tubillo y Abella guilty beyond reasonable doubt of one (1) count of **SIMPLE RAPE**, the Court hereby sentences him to suffer the penalty of *reclusion perpetua*; and to pay HGE the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All the amounts of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

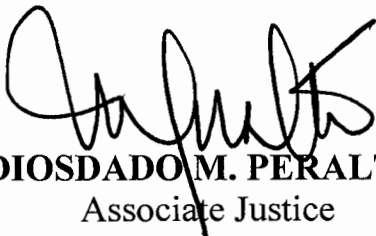
SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁰ G.R. No. 202124, April 5, 2016.

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice

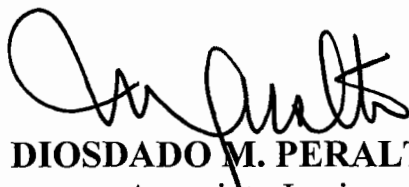

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

(On Leave)
MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
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.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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