



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218399

Present:

- versus -

GODOFREDO COMBOY y
CRONICO,
Accused-Appellant.

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

Promulgated:

MAR 02 2016

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DECISION

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellant Godofredo Comboy y Cronico (Comboy) assailing the Decision² dated June 13, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC. No. 06194, which affirmed the Decision³ dated February 22, 2013 of the Regional Trial Court of Tabaco City, Albay, Branch 16 (RTC) in Criminal Case Nos. T-5006, T-5009, and T-5010⁴ finding Comboy guilty beyond reasonable doubt of two (2) counts of the crime of Statutory Rape, and one (1) count of Attempted Rape under the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,⁵ otherwise known as the “Anti-Rape Law of 1997.”

¹ See Notice of Appeal dated June 30, 2014; *rollo*, pp. 17-18.

² Id. at 2-16. Penned by Associate Justice Isaias P. Dicedican with Associate Justices Victoria Isabel A. Paredes and Zenaida T. Galapate-Laguilles concurring.

³ CA *rollo*, pp. 50-80. Penned by Judge William B. Volante.

⁴ The CA Likewise affirmed the acquittal of Comboy in Criminal Case Nos. T-5007 and T-5008. See id. at 79.

⁵ Entitled “AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES” approved on September 30, 1997.

The Facts

On August 6, 2009, five (5) Informations were filed before the RTC charging Comboy of raping his minor biological daughter, AAA,⁶ viz.:

CRIM. CASE NO. T-5006

That on or about 11:00 o'clock in the evening for the first time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5007

That on or about 11:00 o'clock in the evening for the second time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5008

That on or about 11:00 o'clock in the evening for the third time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA] with lewd and unchaste design, exercising, moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an 11 year old minor girl while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

⁶ 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 RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; 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. (See footnote 4 in *People v. Cadano, Jr.*, G.R. No. 207819, March 12, 2014, 719 SCRA 234, 237, citing *People v. Lomaque*, G.R. No. 189297, June 5, 2013, 697 SCRA 383, 389.)

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5009

That sometime in the month of February 2008, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of the Honorable Court the above named accused, being the father of [AAA] with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter [AAA], an (sic) 12 year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.

CRIM. CASE NO. T-5010

That on or about 2:00 o'clock in the morning of May 17, 2009, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being the father of [AAA], with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of his own daughter [AAA], an (sic) 14 year old minor girl,⁷ while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.⁸

The prosecution alleged that sometime in the year 2006, at around 11 o'clock in the evening, AAA, who was sleeping beside her brother BBB,⁹ suddenly woke up with her father, Comboy, already on top of her, and the latter's penis already inside her vagina. Startled by the pain she felt in her vagina, AAA pushed Comboy and scampered away from him in order to move closer to BBB. This left Comboy no choice but to leave the room.¹⁰

The incident was repeated sometime in February 2008, when AAA, while sleeping beside her brother, BBB, was similarly awakened by the presence of her father, Comboy, on top of her with his penis already inside her vagina. During this time, Comboy told AAA not to make any noise so as not to disrupt the sleep of the other members of their family.¹¹

Finally, at around 2 o'clock in the morning of May 17, 2009, AAA, while again sleeping beside her brother, BBB, woke up with her father, Comboy, already on top of her and in the process of removing her

⁷ "11-year old minor girl" in some parts of the record; see *rollo*, p. 4.

⁸ See CA *rollo*, pp. 50-52.

⁹ See note 6.

¹⁰ *Rollo*, p. 5. See also CA *rollo*, p. 54.

¹¹ *Rollo*, p. 5. See also CA *rollo*, pp. 54-55.

underwear.¹² However, AAA was able to push Comboy away and thereafter, went closer to BBB, who was also awakened by the commotion. This prompted Comboy to simply leave the room. BBB then reported the matter to their stepmother.¹³

On May 28, 2009, AAA finally had the courage to report the foregoing incidents to Barangay *Kagawad* Donald Andres¹⁴ Briobo, who in turn, helped AAA seek police assistance. AAA was then examined by Municipal Health Officer Dr. Sotera C. Copino, who found her to have sustained lacerations in her hymen which could have been caused by the penetration of a hard object, such as an erect penis.¹⁵

For his part, Comboy interposed the defenses of denial and alibi. He claimed that he was in Manila in February 2006 and February 2008, while AAA was in her mother's house in Albay, hence, he could not have raped her. Comboy, however, revealed that he was actually working in Olongapo City at the time of the incidents, and that on May 17, 2009, he was actually in Bicol but he was staying with his common-law spouse. He further averred that AAA fabricated the accusations against him as she was angry with him and his common-law spouse. He also presented his brother Juan (Juan) who corroborated his claims. Juan maintained that he stayed in Comboy's house to look after the latter's children, and that their mother's house was near Comboy's residence. He disclosed that Comboy occasionally visited Bolo from Manila to visit his children and that the latter would stay for one to two weeks.¹⁶

Upon his arraignment on October 23, 2009, Comboy pleaded not guilty to each of the charges levelled against him. At the pre-trial conference, the parties stipulated that AAA is a minor, as evidenced by her Birth Certificate, and that Comboy is her father.¹⁷

The RTC Ruling

In a Decision¹⁸ dated February 22, 2013, the RTC found Comboy guilty beyond reasonable doubt of two (2) counts of Statutory Rape (Crim. Case Nos. T-5006 and T-5009) and one (1) count of Attempted Rape (Crim. Case No. T-5010) and, accordingly, sentenced him as follows: (a) in Crim Case No. T-5006, he was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs; (b) in Crim. Case No. T-5009, he was

¹² See CA *rollo*, p. 57.

¹³ See *rollo*, p. 6. See also CA *rollo*, pp. 55 and 57.

¹⁴ "Andes" in some parts of the records.

¹⁵ See *rollo*, p. 6. See also CA *rollo*, pp. 55-56.

¹⁶ See *rollo*, pp. 7-8. See also CA *rollo*, pp. 57-58.

¹⁷ See CA *rollo*, pp. 52-53.

¹⁸ *Id.* at 50-80.

sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs; and (c) in Crim. Case No. T-5010, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum and was ordered to pay the amounts of ₱30,000.00 as moral damages, and to pay the costs. Comboy, was however, acquitted in Crim. Case Nos. T-5007 and T-5008 for insufficiency of evidence.¹⁹

The RTC found that the prosecution successfully established that Comboy had carnal knowledge of AAA twice, the first time occurring sometime in 2006 and the other time in February 2008 (Crim. Case Nos. T-5006 and T-5009). Anent the incident that happened on May 17, 2009, the RTC found that while Comboy was already on top of AAA and was in the act of removing her underwear, he failed to realize his lustful desires as BBB woke up and exclaimed the word “*ate*” to AAA, prompting Comboy to leave the room. In this regard, the RTC opined that Comboy commenced the performance of an act which indicated his intent to rape AAA but was stopped by a reason other than his own desistance, *i.e.*, BBB’s intervention. On the other hand, the RTC did not lend credence to Comboy’s defenses of denial and alibi in light of AAA’s clear and categorical testimony which was corroborated by the medical findings.²⁰

Dissatisfied, Comboy appealed²¹ his conviction to the CA.

The CA Ruling

In a Decision²² dated June 13, 2014, the CA affirmed the RTC’s ruling *in toto*. It held that Comboy’s moral ascendancy and influence over AAA as the latter’s biological father were sufficient to comply with the force and intimidation required by law for one to have carnal knowledge without her consent.²³ Further, the CA gave scant consideration to Comboy’s assertion that AAA merely fabricated the accusations against him as she was angry at him for being too strict, opining that such reason is “too flimsy and insignificant for a daughter to falsely charge her father with so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial.”²⁴

¹⁹ Id. at 78-80.

²⁰ See id. at 59-77.

²¹ See Brief for Accused-Appellant dated December 16, 2013; id. at 23-48.

²² *Rollo*, pp. 2-16.

²³ See id. at 13.

²⁴ Id. at 14.

Hence, the instant appeal.²⁵

The Issue Before the Court

The issue for the Court's resolution is whether or not Comboy is guilty beyond reasonable doubt of two (2) counts of Rape and one (1) count of Attempted Rape.

The Court's Ruling

The appeal is bereft of merit.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.²⁶

Proceeding from the foregoing, the Court deems it proper to modify Comboy's conviction from two (2) counts of Statutory Rape and one (1) count of Attempted Rape to **two (2) counts of Qualified Rape and one (1) count of Attempted Qualified Rape**, as will be explained hereunder.

Article 266-A (1) (a) and (d), in relation to Article 266-B (1), of the RPC, read 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;

x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

²⁵ See Notice of Appeal dated June 30, 2014; id. at 17-18.

²⁶ See *Manansala v. People*, G.R. No. 215424, December 9, 2015, citing *Wacoy v. People*, G.R. No. 213792, June 22, 2015.

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 aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

X X X X

The elements of Rape under Article 266-A (1) (a) are: (a) the offender had carnal knowledge of a woman; and (b) said carnal knowledge was accomplished through force, threat or intimidation.²⁷ The gravamen of Rape is sexual intercourse with a woman against her will.²⁸ On the other hand, Statutory Rape under Article 266-A (1) (d) is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of it, to the sexual act. Proof of force, threat, or intimidation, or consent of the offended party is unnecessary as these are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). The law presumes that the offended party does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to sustain a conviction for statutory rape, the prosecution must establish the following: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.²⁹ The foregoing acts of Rape shall be qualified pursuant to Article 266-B (1) of the RPC if: (a) the victim is under eighteen (18) years of age; and (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

In the case at bar, the Court agrees with the finding of the courts *a quo* that the prosecution was able to prove that Comboy: (a) had carnal knowledge of her without her consent on two (2) separate occasions, the first occurring sometime in 2006 and the second in February 2008; and (b) attempted to have carnal knowledge of her on May 17, 2009, but was stopped by a reason other than his own desistance, *i.e.*, BBB's intervention. Suffice it to say that Comboy's flimsy defense of denial and alibi cannot prevail over the positive and categorical testimony of AAA identifying him as the perpetrator of the crimes.³⁰ In this regard, it has

²⁷ *People v. Viojela*, 697 Phil. 513, 521 (2012).

²⁸ *People v. Mateo*, 588 Phil. 543, 554 (2008).

²⁹ *People v. Cadano, Jr.*, *supra* note 6, at 244.

³⁰ See *People v. Balcueva*, G.R. No. 214466, July 1, 2015, citing *People v. Amistoso*, G.R. No. 201447, January 9, 2013, 688 SCRA 376, 394.

been long settled that “a young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. Hence, there is no plausible reason why AAA would testify against her own father, imputing to him the grave crime of rape, if this crime did not happen,”³¹ as in this case. However, since a plain reading of the Informations in Crim. Case Nos. T-5006, T-5009, and T-5010³² would readily reveal that Comboy was actually charged of raping his own biological minor daughter, AAA, which facts of minority and relationship were already stipulated upon during pre-trial,³³ the Court finds it appropriate to modify Comboy’s conviction from two (2) counts of Statutory Rape and one (1) count of Attempted Rape to **two (2) counts of Qualified Rape and one (1) count of Attempted Qualified Rape.**

Anent the proper penalty to be imposed upon Comboy in Crim. Case Nos. T-5006 and T-5009, it is noted that Section 3 of RA 9346³⁴ provides that “[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.” Pursuant thereto, and in accordance with Section 2³⁵ of the same law, he must be sentenced to suffer the penalty of **reclusion perpetua, without eligibility for parole**, for each count of Qualified Rape.³⁶ Furthermore, in view of prevailing jurisprudence, where the penalty for the crime committed is death, which, however, cannot be imposed upon Comboy because of the provisions of RA 9346, the Court hereby increases the damages awarded to AAA as follows: (a) ₱100,000.00 as civil indemnity, (b) ₱100,000.00 as moral damages, and (c) ₱100,000.00 as exemplary damages.³⁷

Finally, since Comboy was convicted for Attempted Qualified Rape in Crim. Case No. T-5010, the courts *a quo* properly took into consideration the provisions of Article 51³⁸ of the RPC, as well as the Indeterminate

³¹ Id., citing *People v. Rayon, Sr.*, G.R. No. 194236, January 30, 2013, 689 SCRA 745, 755.

³² See *CA rollo*, pp. 51-52.

³³ See *id.* at 52-53.

³⁴ Entitled “AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES” approved on June 24, 2006.

³⁵ Section 2. In lieu of the death penalty, the following shall be imposed:

- a. the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- b. the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

³⁶ See *People v. Arguta*, G.R. No. 213216, April 20, 2015.

³⁷ See *People v. Balcueva*, *supra* note 30, citing *People v. Cataytay*, G.R. No. 196315, October 22, 2014. See also *People v. Bangsoy*, G.R. No. 204047, January 13, 2016, citing *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.

³⁸ Article 51 of the RPC reads:

Sentence Law, in determining the imposable penalty against him. Hence, it is correct that Comboy be meted the penalty of imprisonment for the indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. Further, Comboy should also be ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱10,000.00 as exemplary damages.³⁹

In addition, the Court imposes interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid, for each count of Qualified Rape and Attempted Qualified Rape.⁴⁰

WHEREFORE, the appeal is **DENIED**. The Decision dated June 13, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 06194 is hereby **AFFIRMED** with **MODIFICATIONS**, finding accused-appellant Godofredo Comboy y Cronico (Comboy), **GUILTY** beyond reasonable doubt of two (2) counts of Qualified Rape and one (1) count of Qualified Attempted Rape, defined and penalized under Article 266-A (1) (a) and (d), in relation to Article 266-B (1), of the Revised Penal Code. Accordingly:

- (a) In Criminal Case No. T-5006, Comboy is **SENTENCED** to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is **ORDERED** to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid;
- (b) In Criminal Case No. T-5009, Comboy is **SENTENCED** to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is **ORDERED** to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of judgment until fully paid;
- (c) In Criminal Case No. T-5010, Comboy is **SENTENCED** to suffer the penalty of imprisonment with an indeterminate period of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as


Article 51. *Penalty to be imposed upon principals of attempted crime.* – A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

³⁹ See *People v. Castillo*, G.R. No. 193666, February 19, 2014, 717 SCRA 113, 135, citing *People v. Brioso*, 600 Phil. 530, 546 (2009).


⁴⁰ See *People v. Balcueva*, supra note 30, citing *People v. Cataytay*, supra note 37, further citing *Roallos v. People*, G.R. No. 198389, December 11, 2013, 712 SCRA 593, 608.


maximum, and is **ORDERED** to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱10,000.00 as exemplary damages, and the costs of suit, with interest at the rate of six percent (6%) *per annum* on all monetary awards from the date of finality of judgment until fully paid.


SO ORDERED.

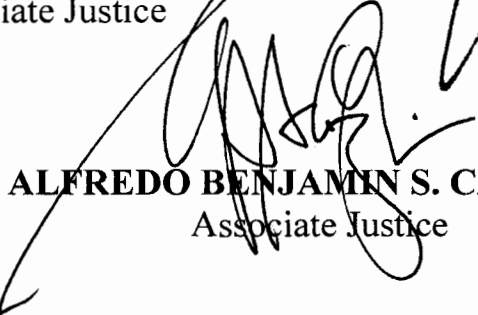

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
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