



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff-Appellee,

G.R. No. 207816

Present:

VELASCO, J.,
Chairperson,
LEONARDO-DE CASTRO,*
PERALTA,
PEREZ, and
REYES, JJ.

- versus -

RAUL YAMON TUANDO,
Accused-Appellant.

Promulgated:

February 24, 2016

x-----*[Signature]*-----x

DECISION

PEREZ, J.:

This is an appeal from the Decision¹ of the Court of Appeals dated 27 September 2012 in CA-G.R. CR-HC No. 04720, which affirmed with modifications the Decision² dated 26 August 2010 of the Regional Trial Court (RTC), Branch 69, Pasig City (stationed in Taguig City) in Criminal Case No. 134740-H, finding accused Raul Yamon Tuando (Tuando) guilty of qualified rape under Article 266-A(1) (c) in relation to Article 266-B (1) of the Revised Penal Code.³

* Per Raffle dated 22 February 2016.

¹ Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario concurring; *CA rollo*, pp. 120-142.

² Penned by Presiding Judge Lorifel Lacap Pahimna; records, pp. 204-215.

³ Republic Act No. 8353, 30 September 1997, 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 otherwise known as "The Anti-Rape Law of 1997."

On 9 January 2007, an Information was filed against Tuando against which he pleaded not guilty.

That on or about January 2006 in Taguig City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, actuated by lust, and abusing his authority over AAA, daughter of his common law wife, did, then and there willfully, unlawfully and feloniously succeeded in having sexual intercourse with said AAA, who was then thirteen (13) years old at the time of the commission of the offense, against her will and consent and to her damage and prejudice.

CONTRARY TO LAW.⁴

The factual antecedents are the following:

The victim AAA, in her testimony and sworn statement, narrated that she was 13 years old and a resident of Taguig City. She recalled that during the month of January 2006, upon coming home from school at noon-time, Tuando offered her softdrinks, which she accepted and drank. After consuming it, she felt dizzy. It was at this moment that Tuando pulled her inside the bedroom and put her on the bed. Tuando then removed her school uniform and undergarments, kissed her and laid himself on top of AAA. She tried to resist his advances but he boxed her hand and threatened to kill her whole family. Thereafter, he kissed the victim's breasts and inserted his penis inside the victim's private organ despite pleas to stop. After satisfying his lust, Tuando again threatened the victim not to tell her mother about what happened. Then he left her. Since then, Tuando continued raping her upon arriving from school with threats to kill her family.⁵

Months later, AAA's mother BBB noticed that AAA was not having her monthly menstrual period. Upon the advice of her employer, BBB brought AAA to a local health center but she was told to bring her child to the Child Protection Unit of Philippine General Hospital (PGH) for medical examination.⁶ There, she was medically examined by Dr. Irene Baluyot (Dr. Baluyot) of PGH. On 11 July 2006, Dr. Baluyot confirmed through her Final Medico-Legal Report that AAA was 20 to 22 weeks pregnant.⁷ It was at this moment that AAA revealed to BBB that Tuando raped her.⁸ BBB

⁴ Records, p. 1.

⁵ TSN of AAA, 3 March 2008, pp. 8-12; Sinumpaang Salaysay; records, pp. 144-145.

⁶ Sinumpaang Salaysay of BBB; records, pp. 142-143.

⁷ Final Medico-Legal Report; id. at 154.

⁸ Sinumpaang Salaysay; id. at 145.

brought AAA to her employer's house and let her stay there until she gave birth on 3 September 2006.⁹

On 7 October 2006, AAA was again raped by Tuando when she went back to their house to visit her brothers. She decided to spend the night inside the house upon learning that Tuando was not around during that time. However, late in the evening, she was awakened when she felt that Tuando was on top of her and started kissing her. Tuando covered her mouth and raped her again, this time with a knife poked at her.¹⁰

The next day, AAA told BBB that she was raped again by Tuando. Prompted by the abuse on her daughter, BBB filed a complaint before the *barangay* officials, who in turn, invited Tuando to their office for questioning. Thereafter, AAA and BBB proceeded to the National Bureau of Investigation (NBI) Office to report the rape and executed their respective sworn statements about the crime.¹¹ The *barangay* officials transferred Tuando to the NBI for investigation.¹²

Tuando denied raping AAA. He testified that sometime in the year 2005, he and AAA had a relationship like a husband and wife but only started to be sexually intimate in January 2006. Their relationship was kept secret because during that time, he and BBB were still in a common-law relationship. On June 2006, BBB came to know of his relationship with AAA when she noticed that the latter was getting very close to him. Turning her anger on her daughter, she scolded and brought AAA to her (BBB) employer's house.¹³

Tuando told the court that he knew that it was AAA's brother CCC who filed the case against him out of revenge when he scolded him.¹⁴

At the end of his testimony, Tuando insisted that he never forced AAA to submit to sexual intercourse; that it was consensual and that it was committed out of love. Finally, he found nothing wrong in his relationship with AAA despite her minority and the fact that she is the daughter of his common-law spouse.¹⁵

⁹ Id.

¹⁰ Id.

¹¹ Id. at 142-143.

¹² Id. at 150-151.

¹³ TSN of Raul Y. Tuando, 1 September 2009, pp. 5-9.

¹⁴ Id at pp. 9-10.

¹⁵ Id. at 19-20 and TSN of Tuando, 1 September 2009, pp. 22-23.

On 26 August 2010, after the trial, the RTC found that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. It found credible AAA's narration that she was raped by the accused sometime in January 2006. It emphasized that the victim testified in a straightforward, candid and natural manner in her recollection of her harrowing ordeal in the hands of the accused.

On the other hand, the trial court rejected the sweetheart defense advanced by the accused as the reason for his sexual congress of AAA. It anchored its denial on the fact that the accused failed to present any affirmative evidence to substantiate his claim such as mementos, love letters, notes or any picture proving that he and the victim were indeed sweethearts.

Convinced that Tuando raped AAA, the court found the accused guilty:

WHEREFORE, finding accused Ramon Yamon Tuando guilty beyond reasonable doubt of Qualified Rape, the court hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole. He is also ordered to pay AAA the amount of [P]75,000.00 for civil indemnity; [P]75,000.00 for moral damages; and [P]25,000.00 for exemplary damages to deter others similarly minded, with perverse tendencies and aberrant sexual behavior from preying upon the children victims.¹⁶

Upon appeal, the Court of Appeals affirmed with modifications the ruling of the trial court, the dispositive portion reads:

WHEREFORE, premises considered, the assailed decision is AFFIRMED subject however to the following MODIFICATIONS:

- a) The grant of exemplary damages is increased to [P]30,000.00.
- b) Appellant is further ordered to support the offspring born as consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.¹⁷

¹⁶ Records, p. 215.

¹⁷ CA *rollo*, pp. 140-141.

The appellate court found no error on the conviction of the accused. It placed more weight on the findings of fact of the trial judge who was in the best position to competently rule on the veracity of AAA's testimony. On the other hand, it gave scant consideration to the argument of the accused that AAA's continued performance of her regular household duties was contrary to the conduct of a rape victim. It further ruled that Tuando's threats to AAA's life and her family, coupled with the status of the accused as a common-law spouse of AAA's mother, was sufficient intimidation to put AAA to abject submission.

Hence, this present appeal.

Before this Court, Tuando raises the following assignment of errors: (1) The appellate court gravely erred in convicting the accused-appellant under a different criminal information thereby violating his right to be informed of the nature and cause of accusation against him; (2) The appellate court gravely erred when it convicted the accused-appellant when his guilt has not been proven beyond reasonable doubt; (3) The appellate court gravely erred in giving credence to the private complainant's testimony despite being contrary to common human experience.

We dismiss the appeal for lack of merit.

On the first issue of denial of due process, Tuando contends that his right to be informed of the nature and cause of accusation against him was violated when the appellate court affirmed his conviction despite the fact that the crime of which he was convicted by the trial court was different from the one he pleaded to and was charged with. To support his argument, he cited the case of *People v. Valdesancho*¹⁸ where the Court acquitted the accused due to the denial of his right to due process as he was charged with rape committed on 15 August 1994 and 16 August 1994, but was convicted for crimes of rape committed on 15 and 16 August 1993.

We disagree with the accused. His reliance on *Valdesancho* is misplaced.

In *Valdesancho*, the accused was charged with two sets of information for rape committed against AAA on 15 August 1994 and 16 August 1994, respectively. During the presentation of evidence, the prosecution submitted evidence proving that the victim was raped on the said dates. In his defense,

¹⁸ 410 Phil. 556, 569 (2001).

the accused interposed alibi and proved that he was in another town when the incidents happened. He was also able to prove that on the said dates, the victim was no longer living with them and was already residing in another town. However, upon promulgation of the decision, the trial court convicted the accused for raping the victim on 15 and 16 August 1993. It reasoned that due to the tender age of the victim and educational attainment, she could not possibly remember the dates when she was raped by the accused. On appeal, this Court acquitted the accused and held that his right to due process was violated since he was not able to present evidence to prove where he was on 15 and 16 August 1993. He was not given any opportunity to defend himself of the crimes of rape allegedly committed on the earlier dates.

The circumstances in *Valdesancho* are different from that of the present case.

In this case, the accused was charged with rape committed sometime in January 2006 against AAA. He was able to present evidence proving where he was on January 2006 when the crime was committed. In fact, he was able to present evidence based on sweetheart defense in that he and AAA were lovers and that they had a consensual sexual intercourse on the said date. During trial, he testified that he and AAA were in a secret relationship as husband and wife and he was surprised when he was charged with rape.

As embodied in Section 14 (1), Article III of the 1987 Constitution, no person shall be held to answer for a criminal offense without due process of law. Further, paragraph 2 of the same section, it provides that in all criminal prosecutions, the accused has a right to be informed of the nature and cause of the accusation against him. It is further provided under Sections 8 and 9 of Rule 110 of the Revised Rules of Court that a complaint or information to be filed in court must contain a designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it and the acts or omissions complained of as constituting the offense.

In *Patula v. People*,¹⁹ the Court emphasized the importance of the proper manner of alleging the nature and cause of the accusation in the information:

¹⁹ 685 Phil. 376, 388 (2012).

x x x An accused cannot be convicted of an offense that is not clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be violative of the Constitutional right to be informed of the nature and cause of the accusation. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless the crime is alleged or necessarily included in the information filed against him.²⁰

The appellant cannot rely on the foregoing cases. He was sufficiently informed of the crime he was accused of. This is clear from the defense that he mounted, i.e., that the victim is his sweetheart and that they treated each other as spouses. In short, Tuando was not denied of his constitutional right and was given every opportunity to answer the accusation against him.

Now, the merits.

Tuando assails that the prosecution failed to present sufficient evidence to convict him of qualified rape. He finds fault in the decision of the trial court and Court of Appeals in its reliance mainly on the testimony of AAA and on the alleged weakness of the defense evidence.

We disagree.

Under Article 266 (A) (1) of the Revised Penal Code,²¹ rape is committed through the following acts:

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

The rape is qualified under paragraph 1, Article 266-B of the same code if the victim is under 18 years of age and the offender is the common-law spouse of the parent of the victim.²²

²⁰ Id.

²¹ *The Anti-Rape Law of 1997*, Republic Act No. 8353, 30 September 1997.

²² Art. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

In this case, We find that the prosecution was able to prove that Tuando had sexual intercourse with AAA, the then 13 year old daughter of his common-law wife, against her will. The prosecution was able to present the evidence to support conviction for qualified rape: that (1) the accused had carnal knowledge of the victim under 18 years of age at the time of rape; (2) said act was accomplished (a) through the use of force, when he boxed her hand while inserting his penis into AAA's private organ, (b) through the threat of killing AAA's family and (c) through intimidation being the common-law spouse of the victim's mother.

The concurrence of both the minority of the victim, as proven by her birth certificate,²³ and her relationship with her offender, qualified the rape raising the penalty to death. In *People v. Floro Barcelá*²⁴ it is essential, as in this case, that both circumstances must be alleged in the criminal complaint or information and proven as the crime itself.²⁵

We find credibility with AAA's narration that she was raped by Tuando. It was when the victim's senses were weakened by dizziness that the accused laid her on top of the bed. He undressed the victim, kissed her and inserted his penis inside the victim's private organ despite appeals and struggle against the act. Not just the victim but her entire family was threatened with death if she would expose the commission of the offense.

Dr. Baluyot confirmed in her final evaluation report that there was definite evidence of sexual abuse and sexual contact committed against AAA.²⁶

On the other hand, we cannot sustain the sweetheart defense presented by Tuando that he and AAA were involved in a romantic relationship as that of husband and wife, hence justifying the sexual intercourse between them.

As testified to by the accused, he and BBB were common-law spouses living under the same roof with the children of the latter, including AAA. After four years, he now claims before this Court that upon his separation

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.

²³ Records, p. 153.

²⁴ G.R. No. 208760, 23 April 2014, 723 SCRA 647.

²⁵ Id. at 666.

²⁶ Id. at 154.

from BBB, he entered into a romantic relationship, this time with the minor daughter of his former partner. When the trial judge asked the accused if he found nothing wrong with his relationship with a minor, he answered negatively. It is hard for this Court to fathom that a minor, a 13-year old child-woman, would enter into a relationship with a man thrice her age and worse, a former common-law spouse of her own mother. It is even absurd, if not disturbing, to even entertain the thought that a child like AAA, who has been living with her step father, the accused, since she was 9 years old, would freely consent to sexual intercourse with the accused in their own home.

We reiterate the principle that no young girl such as AAA would concoct a sordid tale, on her own or through the influence of her mother BBB or even his brother CCC, and undergo the ordeal of having her private parts examined by a medical doctor, of being questioned by NBI operatives about the details of how she was raped by Tuando, then eventually being subjected to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.²⁷

As often repeated by the Court:

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.²⁸

All told, we are convinced that the elements constituting the crime of qualified rape were sufficiently established.

Finally, as a desperate attempt to escape conviction, Tuando points to the supposedly incredible conduct of his victim living what to the accused

²⁷ *People v. Cuaycong*, G.R. No. 196051, 2 October 2013, 706 SCRA 644, 658; *People v. Edgar Padigos*, 700 Phil. 368, 376 (2012).

²⁸ *People v. Cuaycong*, supra at 658-659.

was a normal life. He insisted that AAA's act of doing her usual chores and regular attendance at school is unusual for a rape victim.

Understanding the last issue presented, the accused is trying to destroy the credibility of AAA due to the fact that she tried to live a normal life despite being raped by him. The accused finds fault with AAA when she continued to live normally after she was sexually abused.

There is ample basis to conclude that AAA's resumption to normal life after the commission of rape cannot be taken against her. A victim's reaction after a harrowing experience, especially in a crime of rape, is subjective and not everyone responds in the same way. There is no standard form of behavior that can be anticipated of a rape victim following her sexual abuse.²⁹ People respond differently to emotional stress, particularly minor children subjected to such level of emotional trauma.

With respect to the penalty, the Court affirms the penalties imposed by the Court of Appeals with modifications.

Under Article 266-B of the Revised Penal Code, the penalty of death shall be imposed when the victim of rape 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. However, upon the effectivity of Republic Act No. 9346³⁰ prohibiting the imposition of death penalty in the Philippines, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death penalty, shall be imposed on Tuando.³¹ Hence, the Court affirms the imposition of penalty meted by the Court of Appeals.

Pursuant to our recent rulings in *People v. Gambao*³² and recently by *People v. Colentava*,³³ we modify the award of damages to AAA from ₱75,000.00 to ₱100,000.00 as civil indemnity, ₱75,000.00 to ₱100,000.00 as moral damages and ₱30,000.00 to ₱100,000.00 as exemplary damages, for qualified rape.

²⁹ *People v. Lomaque*, 710 Phil. 338, 352 (2013).

³⁰ Approved on 24 June 2006.

³¹ *People v. Colentava*, G.R. No. 190348, 9 February 2015; *People of the Philippines v. Jose Estalin Prodeciado*, G.R. No. 192232, 10 December 2014.

³² G.R. No. 172707, 1 October 2013, 706 SCRA 508.

³³ *Supra* note 28.

All damages awarded shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.³⁴

We also affirm the ruling of the appellate court ordering Tuando to provide financial support to AAA's offspring pursuant to Article 345 of the Revised Penal Code.³⁵

WHEREFORE, the appeal is **DISMISSED** and the Decision of the Court of Appeals dated 27 September 2012 in CA-G.R. CR-HC No. 04720, finding accused-appellant **RAMON YAMON TUANDO** guilty of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED with the following modifications**:

- (1) Appellant RAUL YAMON TUANDO 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;
- (2) All damages awarded shall earn interest at the rate of 6% per *annum* from the date of finality of this decision until fully paid;
- (3) Appellant is further ordered to support the offspring born as a consequence of the rape. The amount of support shall be determined by the trial court after due notice and hearing, with support in arrears to be reckoned from the date the appealed decision was promulgated by the trial court.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

³⁴ *People v. Colentava*, supra note 28.

³⁵ Article 345. Civil liability of persons guilty of crimes against chastity. — Person guilty of rape, seduction or abduction, shall also be sentenced:

1. To indemnify the offended woman.
2. To acknowledge the offspring, unless the law should prevent him from so doing.
3. In every case to support the offspring.

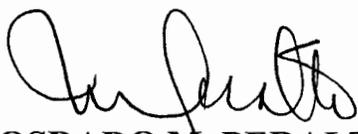
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

A T T E S T A T I O N

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, 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