

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTO ACEDO Y GUCOR, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Under review in this APPEAL is the Joint Decision[1] dated March 9, 2012 of the Regional Trial Court, Branch 22, Cagayan de Oro City in FC Criminal Case Nos. 2007-314 and 2007-315 finding accused-appellant, FAUSTO ACEDO y GUCOR, guilty of rape as defined and penalized in Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353[2] and Violation of Section 5 (b) of Republic Act No. 7610[3].

The facts are as follows:

Complainant AAA[4] is a mentally deficient person and the stepdaughter of accused-appellant Fausto Acedo as the latter is married to AAA's mother, BBB. AAA was born out of wedlock on April 1, 1989. At the time of the incident, AAA lived with her mother and accused-appellant, together with their four (4) children in a one (1) room dwelling. Accused-appellant, whom AAA calls "Papa Kulot", is a trisikad (tricycle propelled by pedals) driver while BBB is a laundry woman.

In her Affidavit-Complaint[5], AAA alleged that she was raped by accused-appellant on July 20, 2007 at around 4 o'clock in the afternoon. She further alleged that accused-appellant kissed her face, sucked her breast, laid her down, and proceeded to have carnal knowledge with her. AAA could not do anything but cry. Then, on July 21, 2007, accused-appellant urged AAA to take a bath and told her that he will assist her. Accused-appellant then shampooed her hair, applied soap on her breast, and washed her genitalia. AAA ran away because she felt embarrassed and afraid that she would be raped again. She hid in her neighbor's house and related the incident to her neighbor Myrna, who later sought the assistance of the barangay authorities of Barangay Canitoan. The barangay chairperson then called for police assistance. The responding police authorities investigated AAA. Thereafter, AAA identified accused-appellant as the assailant in the presence of the police officers. They then arrested accused-appellant.

On August 8, 2007, two Informations were filed against accused-appellant docketed as FC Criminal Case Nos. 2007-314 and 2007-315, viz:

FC Criminal Case No. 2007-314[6]

The undersigned Assistant City Prosecutor accuses FAUSTO ACEDO y Gucor of the crime of RAPE, contrary to and in violation of Article 266-A of the Revised Penal Code, as amended by R.A. 8353, in relation to Section 3 of R.A. 7610, committed as follows:

That on July 20, 2007 (Friday), at around 4 o'clock in the afternoon, more or less, at Calaanan, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with grave abuse of authority, have carnal knowledge with AAA, his 18-year old (birthdate-April 1, 1989) mentally deficient stepdaughter, against her will and consent.

Contrary to law, and with the aggravating circumstance that AAA is accused's stepdaughter and accused knows AAA is mentally deficient.

FC Criminal Case No. 2007-315[7]

The undersigned Assistant City Prosecutor, upon the prior sworn complaint of AAA, mentally deficient 18-year-old (birthdate- April 1, 1989), accuses FAUSTO ACEDO y Gucor of the crime of violating Section 5 (b) of R.A. 7610, in relation to Section 3, and to Article 336 of the Revised Penal Code, as amended, and in relation to the Family Courts Act of 1997 or RA 8369, committed as follows:

That sometime on July 21, 2007 (Saturday), at Calanan, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with an intent to abuse, humiliate, harass or degrade the victim AAA, his stepdaughter, or arouse or gratify his sexual desire, did then and there willfully, unlawfully and feloniously commit lasciviousness conduct upon AAA by then and there applying soap on her breast and washing her genitalia, against her will and consent, to her damage and prejudice.

Contrary to law.

AAA was brought to the Northern Mindanao Medical Center (NMMC) on July 23, 2007 for a medical examination which was conducted by Dr. Judith Faye Metillo. The Living Case Report[8] revealed thus:

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FINDINGS

GENERAL PHYSICAL EXAMINATION

Breast- Tanner 2

GENITAL EXAMINATION:

Genitalia- Tanner- 2

Introitus- old healed hymenal lacerations at 3 and 9 o'clock positions. Clumps of warty-like lesions at both right and left sides of the vaginal opening at 5 and 7 o'clock positions.

Upon arraignment, accused-appellant pleaded not guilty in both cases.[9]

Per court order, AAA was brought to the NMMC for a psychiatric examination, which was conducted by Dr. Marlou Sustiguer. The Clinical Report[10] provided, inter alia, that AAA "is found to be having a provisional diagnosis of Mental Retardation". In his testimony, Dr. Sustiguer stated that based on his assessment, AAA's age would fall between 6-8 years old and that no symptom of psychosis was found in her.

Thereafter, trial ensued.

The witnesses for the prosecution were: Dr. Marlou B. Sustiguer, Dr. Judith Faye Metillo and AAA.

On the other hand, the defense presented accused-appellant himself as its witness.

Accused-appellant vehemently denied the accusations against him. He insisted that during the time of the alleged incidents, he was at Carmen, Cagayan de Oro City driving a trisikad (tricycle propelled by pedals); and that usually, he only goes home at Calanan, Cagayan de Oro City once every month. Accused-appellant also testified that the allegations against him were purely fabricated considering that he had been living in Carmen, Cagayan de Oro City even before the year 2007 with a live-in-partner which made AAA's mother BBB very angry and could have been the reason that the instant cases were filed against him.

On March 9, 2012, the RTC rendered a Joint Decision finding accused-appellant guilty beyond reasonable doubt, the dispositive portion of which provides:

WHEREFORE, the foregoing premises considered judgment is hereby rendered finding the accused FAUSTO ACEDO y GUCOR:

- GUILTY beyond reasonable doubt of rape in FC Criminal Case No. 2007-314 and is sentenced to suffer the penalty of reclusion perpetua, and to pay “AAA” P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.

- GUILTY beyond reasonable doubt for Violation of Section 5 (b) of Republic Act No. 7610, and is hereby sentenced to suffer the penalty of 14 years and 8 months of reclusion temporal as minimum, to 20 years of reclusion temporal as maximum and ordered to pay AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages and a fine of P15,000.00.

SO ORDERED.

Hence, this appeal by accused-appellant raising the lone assignment of error[11], viz:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Our Ruling

We affirm the conviction.

Accused-appellant hinges his first contention on the Clinical Report made by Dr. Sustiguer which stated that AAA “is not deemed psychologically and intellectually capable of providing a reliable testimony”. With that declaration, he argues that AAA is not aware of the effects of her testimony on the life of accused-appellant nor the concept of what is right or wrong. He further argues that AAA never gave straight or definite answers regarding the alleged rape; that the idea that she was raped was just fed to her; that upon questioning on the alleged rape, she answers with monosyllabic answers only.

Furthermore, accused-appellant takes exception to the rule relied upon by the court a quo that the positive identification of the accused prevails over the denial and alibi interposed by him. Accused-appellant finally argues that he was charged with rape out of BBB's spite, and without any factual basis.

The contentions are unmeritorious.

The crime of rape as defined and penalized by the Revised Penal Code (RPC) reads:

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 is otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority;
- 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.

For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when

she was under 12 years of age or was demented.[12] “From these requisites, it can thus be deduced that rape is committed the moment the offender has sexual intercourse with a person suffering from mental retardation. Carnal knowledge of a woman who is a mental retardate is rape. A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape, without requiring proof that the accused used force and intimidation in committing the act. Only the facts of sexual congress between the accused and the victim and the latter’s mental retardation need to be proved.”[13]

The prosecution was able to satisfactorily prove AAA’s mental retardation. Dr. Sustiguer, the psychiatrist who conducted a mental status examination on AAA, testified that AAA was found to have mental retardation. She further testified that based on his assessment, AAA’s age would fall between 6-8 years old. Notably, the defense did not impugn AAA’s mental retardation.

But accused-appellant argues that based on the Clinical Report made by Dr. Sustiguer which provided that AAA “is not deemed psychologically and intellectually capable of providing a reliable testimony”, AAA is not aware of the effects of her testimony on the life of appellant nor the concept of what is right or wrong. He further argues that the bare answers of “yes” by AAA during direct examination where it was made to appear that accused-appellant raped her cannot suffice to establish a moral certainty as to his guilt.

We do not agree.

First, settled is the rule that the trial court’s conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth.[14]

Second, at the heart of almost all rape cases is the issue of credibility of the witness.[15] When asked to recount, AAA’s recollection of the abuses on her honor was clear and straightforward, thus[16]:

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Q: AAA are you okay now?

A: Yes (nodding her head).

Q: Do you know Fausto Acedo?

A: Yes (nodding her head).

Q: Can you answer yes or no AAA?

A: Yes.

Q: Can you say loud yes or no so that Atty. Emano can hear your voice?

A: Yes.

Q: Do you call Fausto Acedo as “Papa Kolot”?

A: Yes.

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Q: When you were together in that house, did Papa Kolot kissed you?

A: He squeezed me.

Q: What part of your body did Papa Kolot squeezed?

Interpreter: Witness is pointing to her breast.

Q: Can you demonstrate to us how did Papa Kolot squeezed your breast?

A: He went near me and I went out the house.

Q: Where did you go when you went out the house?

A: I went to the comfort room.

Q: Comfort room of your house?

A: I was given a bath.

Q: Was it Papa Kolot who gave you a bath?

A: Yes.

Q: When you took a bath, was your dress removed by Papa Kolot?

A: Yes.

Q: Was it Papa Kolot who applied soap to you?

A: Yes.

Q: In soaping you, did he touch your breast?

A: Yes.

Q: Did he also touch your genitalia (sic)?

A: Yes.

Q: Aside from touching your breast and your genitalia (sic), did Papa Kolot inserted his penis to your genitalia (sic)?

A: Yes.

Q: Did Papa Kolot's penis inserted to your vagina?

A: Yes.

Q: What did you feel when Papa Kolot inserted his penis to your vagina?

A: I was lying down.

Q: Were you lying down in your room when Papa Kulot inserted his penis to your vagina?

A: Yes.

Q: How did you feel when he did that?

A: He's having a sexual intercourse with me.

Q: When Papa Kolot inserted his penis to your vagina, did you feel pain?

A: Yes.

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The fact of the carnal knowledge between accused-appellant and AAA was therefore sufficiently proved by the prosecution. Additionally, AAA was able to positively identify accused-appellant as the one who raped her.[17]

Whether or not AAA does not have a good grasp on the effects of her testimony on the life of accused-appellant nor on the concept of what is right or wrong is entirely beside the point since these are not even among the elements of the crime of rape. The evidence presented by the prosecution established beyond reasonable doubt the

sexual congress between accused-appellant and AAA and the latter's mental retardation. As AAA was a mental retardate, the prosecution propounded leading questions to her, without any objection from the defense.[18] This explains the "monosyllabic answers" of AAA.

In the recent case of *People of the Philippines v. Suansing*[19], the Supreme Court held:

There is also nothing from "AAA's" testimony that would arouse suspicion. Considering the mental retardation of "AAA," we find it highly improbable that she would fabricate the rape charge against appellant. It is likewise unlikely that she was instructed into accusing appellant given her limited intellect. Due to her mental condition, only a very traumatic experience would leave a lasting impression on her so that she would be able to recall it when asked.

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Further, "AAA" was able to make known her perception, communicate her ordeal, in spite of some difficulty, and identify appellant as her rapist. Even a mental retardate qualifies as a competent witness if she can perceive, and can make known her perception to others

Appellant was also charged with violation of Article 336 of the Revised Penal Code, as amended, in relation to Section 5(b), Article III of Republic Act No. 7610. These provisions state:

Art. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prison correccional.

Section 5. Child Prostitution and Other Sexual Abuse. – 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, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x x

(b)

Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x

The elements of sexual abuse under Section 5, Article III of Republic Act No. 7610 are as follows:

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to sexual abuse.
- The child, whether male or female, is below 18 years of age.[20]

Under Section 32, Article XIII of the Implementing Rules and Regulations of RA 7610, lascivious conduct is defined as follows:

[T]he intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh,

or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person.

In this case, the prosecution established that accused-appellant, after urging AAA to take a bath with his assistance, touched AAA's breast and washed her genitalia for his sexual gratification. Second, accused-appellant, as a stepfather having moral ascendancy over his stepdaughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse. Third, even if AAA was already 18 years old at the time of the commission of the offense, she is a mentally retarded person. Hence, she falls within the purview of Section 3(a), Article I of Republic Act No. 7610 which provides:

Section 3. Definition of Terms. –

(a) "Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

Since all three elements of the crime are present, the conviction of accused-appellant for acts of lasciviousness is proper.

Anent accused-appellant's defense of alibi and denial, We find the same unmeritorious.

It is a settled rule that denial is a weak defense as against the positive identification by the victim.[21] Both denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[22] For the defense of alibi to prosper, it is not sufficient that appellant prove that he was somewhere else when the crime was committed, he must also show that it was physically impossible for him to be at the locus criminis or its immediate vicinity when the crime was perpetrated.[23] Further, the defense of alibi may not prosper if it is established mainly by the accused themselves and their relatives and not by credible persons.[24] In the instant cases, accused-appellant's alibi was that he was at Carmen, Cagayan de Oro at the time the crimes were committed. Considering his work as a trisikad driver, he could have easily returned home at any given time. Even AAA testified that accused-appellant sometimes returns home during lunch time.[25] Accused-appellant's defense of denial and alibi is self-serving and must fail over the positive and straightforward testimony of AAA on the incident.

As regards accused-appellant's imputation of ill-motive on the part of BBB as the reason for the charges filed against him, We find it devoid of merit. Suffice it to state that the resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse accused-appellant of rape and acts of lasciviousness or necessarily detract from her credibility as witness.[26] Motives, such as those arising from family feuds, resentment, or revenge, have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants who remained consistent throughout their direct and cross-examinations.[27] Furthermore, it is hard to believe that BBB as AAA's mother would expose her to a public trial if the charges were not true. Accused-appellant's claim is simply self-serving and uncorroborated.

With regard to FC Criminal Case No. 2007-314, paragraph 10 of Article 266-B of the RPC expressly provides that the penalty of death shall be imposed "when the offender knew of the mental disability x x x of the offended party at the time of the commission of the crime." The supreme penalty of death should have been imposed on accused-appellant due to the special qualifying circumstance of knowledge at the time of the rape that "AAA" was mentally disabled.[28]

However, the enactment of RA 9346[29] prohibited the imposition of the death penalty. In lieu thereof, the

penalty of reclusion perpetua is imposed in accordance with Section 2 of RA 9346. In addition, as provided under Section 3 thereof, accused-appellant shall not be eligible for parole.[30]

As to the damages granted, pursuant to prevailing jurisprudence, the civil indemnity for the victim shall be P75,000.00 if the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. Moral damages must also be awarded in rape cases without need of proof other than the fact of rape since it is assumed that the victim suffered moral injuries entitling her to such an award. However, the court a quo's award of P50,000.00 must be increased to P75,000.00 to conform to existing case law. Exemplary damages are likewise called for, by way of public example and to protect the young from sexual abuse. We therefore order accused-appellant to pay AAA exemplary damages in the amount of P25,000.00.[31]

As to the penalty imposed by the court a quo in FC Criminal Case No. 2007-315, We modify it. In crimes against chastity, like acts of lasciviousness, relationship is considered aggravating.[32] The information properly alleged that AAA is the stepdaughter of accused-appellant and this fact was never rebutted by him, hence, deemed admitted. As such, the penalty shall be applied in its maximum period that ranges from sixteen (16) years, five (5) months and ten (10) days to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the penalty next lower in degree is reclusion temporal in its minimum period with a range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, the proper indeterminate penalty is fourteen (14) years, eight (8) months of reclusion temporal as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.[33] The award for indemnity is sustained.

WHEREFORE, the Joint Decision dated March 9, 2012 of the Regional Trial Court, Branch 22, Cagayan de Oro City in FC Criminal Case Nos. 2007-314 and 2007-315 is hereby AFFIRMED with MODIFICATION. We find accused-appellant FAUSTO ACEDO y GUCOR:

- GUILTY beyond reasonable doubt of rape in FC Criminal Case No. 2007-314 and is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, and to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.
- GUILTY beyond reasonable doubt for Violation of Section 5 (b) of Republic Act No. 7610, and is hereby sentenced to suffer the penalty of 14 years and 8 months of reclusion temporal as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum and ordered to pay AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages and a fine of P15,000.00.

Furthermore, all monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of the finality of this judgment until fully paid.[34]

SO ORDERED.

Camello (Chairperson) and Lopez, JJ., concur.

[1] Records, pp. 153-169, penned by Hon. Judge Richard D. Mordeno

[2] "The Anti- Rape Law of 1997"

[3] "An Act Providing For Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And For Other Purposes"

[4] In *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), the real name and the personal circumstances of the victim, and any other information tending to establish or compromise her identity,

including those of her immediate family or household members were withheld in order to maintain the confidentiality of information on child abuse cases, and consistent with the application of: (1) the provisions of Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and its implementing rules; (2) Republic Act No. 9262 (Anti-Violence Against Women and their Children Act of 2004) and its implementing rules; and (3) this Court's Resolution dated 19 October 2004 in A.M. No. 04-10-11-SC (Rule on Violence Against Women and their Children). While it would appear that victims of rape who are already of legal age are not covered by the provisions of Republic Act No. 9262, we deem it best to extend similar protection to them in order to respect their dignity and protect their privacy and that of their families. (People v. Tubat, G.R. No. 183093, February 1, 2012)

[5] Records, p. 11

[6] Records, p. 4

[7] Records, p. 21

[8] Records, p. 15

[9] Records, p. 43

[10] Index of Exhibits, Records, pp. 1-2

[11] Rollo, p. 20

[12] People v. Suansing, G.R. No. 189822, September 2, 2013

[13] Supra

[14] People v. Dollano, G.R. No. 188851, October 19, 2011

[15] People vs. Villanueva, G.R. Nos. 146464-67, November 15, 2002.

[16] TSN, January 28, 2010, pp. 4-7

[17] TSN, January 28, 2010, pp. 7-8

[18] People v. Roosare, G.R. No. 118823, November 19, 1996

[19] G.R. No. 189822, September 2, 2013

[20] People v. Fragante, G.R. No. 182521, February 9, 2011

[21] Garingarao v. People, G.R. No. 192760, July 20, 2011

[22] Supra

[23] People v. Leonardo, G.R. No. 181036, July 6, 2010

[24] Supra

[25] TSN, January 28, 2010, p. 12

[26] Supra Note No. 18

[27] Supra

[28] Supra Note. 17

[29] “An Act Prohibiting The Imposition Of The Death Penalty”. Approved June 24, 2006.

[30] Supra Note No. 17

[31] Supra

[32] Supra Note No. 18

[33] People v. Lomaque, G.R. No. 189297, June 5, 2013

[34] People v. Morante, G.R. No. 187732, November 28, 2012

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