

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN MADRIGALEJOS Y DALDE, ACCUSED-APPELLANT.

Ponente: TIJAM, J.

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TIJAM, J.:

This is an appeal from the Decision dated September 15, 2011 of the Regional Trial Court (RTC) of Legazpi City, Branch 8, in Criminal Case No. FC-07-0020, finding Accused-Appellant, Benjamin Madrigalejos y Dalde, guilty of Rape by Sexual Assault as defined under Article 266-A(2) of the Revised Penal Code.

Accused-Appellant was charged in an Information[1] that reads:

“That between 6 A.M. And 11 A.M. Of October 11, 2006, in Barangay Malobago, Municipality of Manito, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, did, then and there, willfully, unlawfully and feloniously insert his finger(s) inside the sexual organ of his granddaughter, AAA[2], a two-year old minor and the daughter of one of his children, against her will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.”

When arraigned on April 18, 2007, Accused-Appellant pleaded not guilty[3] to the charge.

During the pre-trial conference on June 7, 2007, the following statement of facts were admitted:

“A. Admitted

- The offended party was 2 years & 10 months old at the time of the commission of the offense;
- Identity of the accused;
- Accused resides in Malobago, Manito, Albay, the same place where offended party resides;
- Jurisdiction of the court.”[4]

The prosecution presented the mother, “BBB”, “AAA”, Dr. James Belgira and Teresita Azuela. It submitted, among others, the sworn statements of “BBB”[5], Certificate of Live Birth of “AAA”[6], Certificate of Marriage of BBB and the father “CCC”[7], Medico-Legal Report MLB-91-06[8], and pictures of the residence of “BBB” and that of Accused-Appellant[9].

The prosecution evidence established that “BBB” and “CCC” are husband and wife[10] and that “AAA” is their daughter.[11] The Accused-Appellant is the father of “CCC” and is thus the grandfather of “AAA”.

On October 11, 2006, at six o'clock in the morning, one of the Accused-Appellant's daughters, “DDD”, fetched “AAA” from “BBB's” house and brought her to their house across the street. “DDD” went to school and left “AAA” in their house.

“BBB” stayed in her own house attending to her household chores, and saw through the window[12] that “AAA”

was with the Accused-Appellant in the latter's home. She heard Accused-Appellant say “putol kamay, putol paa, tanggal mata, hihiwain ang tiyan”. She also heard Accused-Appellant say that “AAA” is no longer dear to him.[13]

Accused-Appellant's other daughter, “EEE”, brought “AAA” back to “BBB's” house at around eleven o'clock in the morning. “BBB” noticed that “AAA” was limping and was complaining of pain on her lower back. “BBB” noticed that “AAA” smelled of human saliva and cigarettes. “BBB” proceeded to check on “AAA's” anus, and when she did not find anything wrong, she checked “AAA's” vagina and found that it was swollen and bloodied. When asked who did that to her, “AAA” replied that the perpetrator will cut her hands and legs, slash her tummy and pull out her eyes. When “AAA” was asked again who did it to her, she (AAA) said that it was the Accused-Appellant.

“BBB” cleaned “AAA's” face and neck but did not touch her vagina and went to the Office of the DSWD at Manito Albay to ask for assistance. She was advised to go to Dra. Bolanos, who referred them to Camp Simeon Ola, at the Crime Laboratory. The doctor at the Crime Laboratory, however, was on assignment, so they went home.

The next day, the Medico-Legal Officer at the Crime Laboratory, Dr. James Belgira (“Dr. Belgira”) examined “AAA”. He found that she had a slightly dilated hymen with deep healed laceration at eight o'clock position. Dr. Belgira was of the opinion that such injury could be produced by the insertion of a hard, blunt object like a tense finger. The medico-legal report reads as follows:

“xxx

FINDINGS:

xxx

GENITAL:

There is absence of growth of pubic hair. The labia majora are full, convex and coaptated. On separating the same disclosed, a fleshy type and slightly dilated hymen with deep healed laceration at 8 o'clock position. The posterior fouchette is sharp.

CONCLUSION:

Finding show clear signs of blunt vaginal penetrating trauma.

There are no extra genital signs of application of any form of physical trauma.

xxx”[14]

The defense on the other hand, presented the Accused-Appellant, “EEE” and Accused-Appellant's wife “FFF” as witnesses.

Accused-Appellant denied the charge against him. Accused-Appellant claimed that he went to work at the back of their house, around twelve to thirteen meters away where he was constructing a fishing boat. He also claimed that his wife “FFF” and daughter “EEE” never left the house.

Accused-Appellant saw “AAA” go to their house the morning of October 11, 2006 with his daughter “DDD” and that “EEE” took care of “AAA” after “DDD” left for school. When he returned to his home at noon, “AAA” was no longer there.

Accused-Appellant alleged that the standing grudge between him and “BBB’s” father is the reason why “BBB” filed the case against him. “BBB’s” father allegedly had ill feelings towards him because he refused to support the former’s political party and that they did not get along well with each other as officers of a landowner’s association.

The RTC rendered a Decision dated September 15, 2011, the dispositive portion of which reads as follows:

“ALL THE FOREGOING CONSIDERED, the prosecution having proved the guilt of the accused beyond peradventure of doubt, BENJAMIN MADRIGALEJOS is hereby found GUILTY of rape by sexual assault as defined under Article 266-A(2) of the Revised Penal Code. There being one aggravating/qualifying circumstance, he is accordingly sentenced to suffer the penalty of six (6) years and one (1) day of prison mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. He is likewise ordered to indemnify the private offended party, 'AAA', the amount of Php 75,000.00 as moral damages, Php 75,000.00 as civil indemnity and Php 30,000.00 as exemplary damages.

SO ORDERED.”

On October 3, 2011, the Accused-Appellant filed the instant appeal raising the following of errors:

“I

The trial court gravely erred in finding the minor-victim a competent and credible witness.

II

The trial court gravely erred in giving weight and credence to the testimony of the private complainant’s mother.

III

The trial court gravely erred in convicting the accused despite the prosecution’s failure to prove the fact of the crime and the perpetrator’s identity.

IV

The trial court gravely erred in convicting the accused appellant despite the prosecution’s failure to prove his guilt beyond reasonable doubt.”[15]

Accused-Appellant claims that the prosecution failed to prove “AAA’s” credibility and competency. He also claims that “AAA” was not sworn in as witness and that her testimony was rehearsed.

The Plaintiff-Appellee counters Accused-Appellant’s claims stating that every child is presumed qualified to be a witness and that the party seeking to challenge the child’s competence has the burden of proving his claim.

We find that “AAA” was a credible and competent witness.

In determining the competency of a child witness, the court must consider his capacity (a) at the time the fact to be testified to occurred such that he could receive correct impressions thereof; (b) to comprehend the obligation of an oath; and (c) to relate those facts truly to the court at the time he is offered as a witness. The examination should show that the child has some understanding of the punishment which may result from false swearing. The requisite appreciation of consequences is disclosed where the child states that he knows that it is wrong to tell a lie, and that he would be punished if he does so, or that he uses language which is equivalent to saying that he would be sent to hell for false swearing. A child can be disqualified only if it can be shown that his mental

maturity renders him incapable of perceiving facts respecting which he is being examined and of relating them truthfully.[16]

During “AAA’s” fifth appearance as witness, it was Accused-Appellant’s counsel himself, Atty. Rey Daep, who asked the child if she is aware that she is testifying under oath.

“Atty. Daep:

Q: Do you know that you are testifying under oath?

INTERPRETER:

Witness answered by nodding her head.

Q: In the event that you would tell a lie, you know the consequences?

INTERPRETER:

No answer from the witness.

COURT:

Alright, proceed.”[17]

Furthermore, as correctly pointed out by the Plaintiff-Appellee, the competence of a child witness is not impaired merely because she was not sworn in. It is well-established that any child regardless of age can be a competent witness if he can perceive and perceiving can make known his perception to others and that he is capable of relating truthfully for which he is examined. The child’s competence as a witness are: (a) capacity of observation; (b) capacity of recollection; and, (c) capacity of communication.[18]

In this case, while the initial stages of the presentation of “AAA” as witness resulted in a struggle for her to testify, the RTC found “AAA” to be a competent witness:

“Although the undersigned Presiding Judge took over the hearing of this case only at its final stages, a cautious reading of the transcripts of stenographic notes revealed that the private offended party, minor that she is, was able to demonstrate with straightforwardness, san verbal explication, the identity of her abuser and the manner by which the act complained of was committed against her. Even the trauma and the stigma attached to it, though not verbalized, were plainly revealed by actions that only show two things: she was abused and she was devastated.”[19]

The question of competency of a child-witness rests primarily in the sound discretion of the trial court. This is so because the trial judge sees the proposed witness and observes his manner of testifying, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. Since many of the witness’ manners cannot be photographed into the record, the finding of the trial judge will not be disturbed or reversed unless from what is preserved it is clear that such finding was erroneous.[20]

Accused-Appellant questions “BBB’s” credibility, pointing out that there were inconsistencies in her testimony in

court and in her sinumpaang salaysay. He claimed that Dr. Belgira's testimony regarding "AAA's" vaginal laceration is insufficient to sustain a conviction since it does not prove that "AAA" was a victim of rape by sexual assault and that it does not identify the Accused-Appellant to have caused the same.

We find Accused-Appellant's arguments unmeritorious.

The totality of the evidence when scrutinized and taken together leads to a conclusion that the Accused-Appellant is guilty beyond reasonable doubt of rape by sexual assault.

Rape by sexual assault is committed by any person who, under any of the circumstances mentioned in paragraph 1[21] hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice or any instrument or object, into the genital or anal orifice of another person.[22]

In this case, it was established that "AAA" was sexually assaulted. "AAA" was able to describe what transpired on October 11, 2006 during her testimony, through a combination of head movements and words:

"COURT:

All right, few questions from the Court.

Q:

Did somebody touch your vagina?

INTERPRETER:

Witness answered by nodding her head.

Q:

Who?

INTERPRETER:

Witness did not make an answer but instead pointing to the accused inside the chamber.

Q:

What did you do when the accused hold (sic) your vagina?

INTERPRETER:

Witness demonstrated by placing her pointing finger to the center of her private organ.

Q:

You mean to tell the Court that actually the forefinger was inserted or the finger was inserted to your vagina?

INTERPRETER:

Witness answered by nodding her head.

Q:

What did you feel when the finger was inserted to your vagina?

WITNESS:

A:

Masakit.

Q:

Did you cry?

INTERPRETER:

Witness answered by nodding her head.”[23]

The rape by sexual assault was likewise confirmed by Dr. James M. Belgira, the police chief inspector forensic physician, in his Medico-Legal Report No. MLB-91-06.

Dr. Belgira further elucidated his findings during his testimony:

“Q:

In your medical opinion what could have been the causes of these injuries of the victim?

A:

You mean to say the injury on the hymen?

Q:

Yes, doctor.

A:

It could be secondary to the insertion of any hard blunt object, sir.

Q:

Blunt object, you mean sharp?

A:

It is sharp and it exceeded the diameter and elasticity of the opening which caused it to lacerate at 8:00 o'clock position.

Q: With this medical opinion, can you consider that the insertion of a human finger inside the vagina of the victim will cause the said laceration?

A: Precisely, sir, because I consider that as a very good example of a hard blunt object.

Q: How about Mr. Witness, an adult human finger?

A: Yes, I consider that, if it is tense. I consider that as a hard blunt object which will cause such particular injury.”[24]

“AAA” likewise identified the Accused-Appellant as the one who caused the injury to her:

“Q:

Okay, “AAA”, during the last hearing, you were asked by Atty. Lorenzana to point the accused who happens to be Lolo Ben. You did not point to him but instead you looked only at him. Why is it that you were not able to point him? Are you afraid of him?

INTERPRETER:

Witness answered by nodding her head.

Q:

Why are you afraid of Lolo Ben?

INTERPRETER:

Witness did not utter a word but instead making a sign by placing her finger on her private genital organ.

Q: Do you love Lolo Ben?

INTERPRETER:

Witness answered by shaking her head left to right.

Q: Why is it that you do not love Lolo Ben?

INTERPRETER:

Witness gave the same answer by again placing her pointing finger on her private genital organ.”[25]

xxx

“COURT:

All right, few questions from the Court.

Q: Did somebody touch your vagina?

INTERPRETER:

Witness answered by nodding her head.

Q: Who?

INTERPRETER:

Witness did not make an answer but instead pointing to the accused inside the chamber.”[26]

In a string of cases, it has been said that the testimony of a rape victim who is of young or tender age is credible and deserves full credit especially where no motive is attributed to the victim that would make her testify falsely against the accused. Indeed, a girl of such age would not concoct a story of defloration; allow the examination of her private parts; and undergo the expense, trouble, inconvenience, and the trauma of a public trial unless she was in fact raped.[27]

Accused-Appellant's claim that the identity of the person who caused injury on “AAA” was not identified with certainty is unfounded. It has been held in the case of *People vs. Abello* that determining the guilt or innocence of an accused, based solely on the victim’s testimony, is not an easy task in reviewing convictions for rape and sexual abuse cases. With this in mind, we exercise utmost care in scrutinizing the parties’ testimonies to determine who of them is believable. Oftentimes, we rely on the surrounding circumstances as shown by the evidence, and on common human experience.[28]

In this case, the testimony of “AAA” and the findings of Dr. Belgira were corroborated by “AAA's” mother, “BBB”, who also supplied the surrounding circumstances of the incident. When the victim's testimony of her violation is corroborated by the physician's findings of penetration, then there is sufficient foundation to conclude the existence of the essential requisite of rape.[29]

“BBB” testified that her sister-in-law “DDD” fetched “AAA” and brought her to the house of the Accused-Appellant which was at the other side of the road. She also testified that the house was a stone's throw away from her own house, and that she can see and hear “AAA” with the Accused-Appellant. She likewise testified on the fact that after “AAA” was brought back from the Accused-Appellant's house, she smelled like human saliva and cigarette, and that “AAA” was “nakabukaka” and limping and complaining of something aching on her lower part. It was “BBB” who examined “AAA” and found her vagina swollen and bloody and it was to “BBB” that “AAA” divulged that “Lolo Ben” did that to her.[30]

Accused-Appellant's allegation that he was not at home at the time of the incident but out working on his fishing boat, cannot stand against the positive identification of “AAA” and the surrounding circumstances provided by “BBB”. As shown in the records, Accused-Appellant's fishing boat, which he claimed he was constructing behind his house, was twelve to thirteen meters away from Accused-Appellant's house.

Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the Accused-Appellant must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed.[31]

Also, the testimonies of Accused-Appellant's daughter “EEE”, and his wife “FFF”, deserve scant consideration. Inconsistencies were present such that they contradict each other and the Accused-Appellant. “EEE” testified that she brought “AAA” home to “BBB” at 9:00 o'clock in the morning[32], which was contradicted by “FFF” who

said “AAA” was with “EEE” the whole time until “AAA” was brought home at 11:00 o'clock in the morning by “EEE”.[33] This was likewise different from Accused-Appellant's claim that “EEE” never left the house while “AAA” was there.[34] Another is when the Accused-Appellant testified that he went home for lunch[35], and “FFF”, on the other hand, testified that he brought his lunch and was out the whole day.[36]

It has been held that when alibi is established only by the Accused-Appellant, his relatives or close friends, the same should be treated with strictest scrutiny.[37] Close scrutiny of the testimonies of Accused-Appellant's family, however, indicate inconsistencies and contradictions that do not support Accused-Appellant's alibi.

Accused-Appellant would also make it appear that “BBB” and her family had an axe to grind against him because of his differences with “BBB's” father with regard to politics and the landowner's association. This claim, however, has no leg to stand on. Notably, no witnesses or evidence were offered to support such claim, thus it remains as an unsubstantiated allegation. The cited motive, if at all, is preposterous considering that the Accused-Appellant is the grandfather of “AAA”. No parent would subject their child to such circumstances if only for a flimsy reason. No mother in her right mind would use her offspring as an engine of malice. She would not subject her child to the humiliation, disgrace, and even the stigma attendant to a prosecution for rape unless she is motivated by the desire to bring to justice the person responsible for her child's defilement.[38]

Given the foregoing, rape by sexual assault of the Accused-Appellant on “AAA” was established beyond reasonable doubt.

The penalty imposable for sexual assault is as follows:

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

Xxx

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Xxx

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.”[39]

Among the enumeration in Art. 266-B are:

“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.

Xxx

5) When the victim is a child below seven (7) years old.”[40]

It was duly alleged and admitted that “AAA” was only two years and ten months old at the time of the commission of the act complained of.[41] It was also alleged and proved that Accused-Appellant is the grandfather of “AAA”, she being the daughter of his son, “CCC”.[42]

Anent the aggravating circumstances, the RTC correctly noted that the imposable penalty is reclusion temporal or imprisonment ranging from 12 years and 1 day to 20 years.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC. Other than the aggravating/qualifying circumstances of minority and

relationship which have been taken into account to raise the penalty to reclusion temporal, no other aggravating circumstance was alleged and proven. Hence, the penalty shall be imposed in its medium period, or from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code which is prision mayor or six (6) years and one (1) day to twelve (12) years.[43]

Considering the circumstances in this case, We deem it proper to modify the penalty meted out by the RTC and impose the penalty of imprisonment ranging from ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

The RTC awarded the amount of Php 75,000.00 for moral damages, Php 75,000.00 for civil indemnity and Php 30,000.00 for exemplary damages. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of “AAA” due to the rape. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example or correction for the public good.

We deem it proper to lower the costs to Php 50,000.00 for moral damages and Php 50,000.00 for civil indemnification to coincide with jurisprudence. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded, to earn from the date of the finality of the Court's resolution until fully paid.[44]

WHEREFORE, the Decision dated September 15, 2011 of RTC Legazpi City, Branch 8 finding Accused-Appellant Benjamin Madrigalejos of rape by sexual assault as defined under Article 266-A(2) of the Revised Penal Code is hereby **AFFIRMED** with **MODIFICATION**. Accused-Appellant is hereby sentenced to suffer the penalty of imprisonment of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. Accused-Appellant is ordered to indemnify the complainant, “AAA”, the amount of Php 50,000.00 for moral damages, Php 50,000.00 for civil indemnity, and Php 30,000.00 for exemplary damages. Interest at the rate of six percent (6%) per annum shall be imposed on all the damages awarded, to earn from the date of the finality of the Court's resolution until fully paid.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

Baltazar-Padilla, P.J., and Reyes-Carpio, A., JJ., concur.

[1] Records, p. 1.

[2] Consistent with *People v. Cabalquinto*, G.R. No. 167693, Sept. 11, 2006, the real name of the rape victim is withheld. Instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed.

[3] Records, p. 27.

[4] Records, p. 54.

- [5] Records, pp. 7-9.
- [6] Records, p. 226.
- [7] Records, p. 227.
- [8] Records, p. 228.
- [9] Records, pp. 231-233.
- [10] Records, p. 227.
- [11] Records, p. 226.
- [12] TSN, July 23, 2007, p. 9; TSN, Aug. 15, 2007, p. 5.
- [13] TSN, Aug. 15, 2007, pp. 5-6.
- [14] Records, p. 228.
- [15] Brief for the Accused-Appellant; Rollo, pp. 3-4.
- [16] People vs. Manuel Pruna, G. R. No. 138461, October 10, 2002.
- [17] TSN, October 5, 2009, p. 5.
- [18] People vs. Librando, et. al., G.R. No. 132251, July 6, 2000.
- [19] Rollo, Volume 1, p. 24.
- [20] People vs. Manuel Pruna, supra at 12.
- [21] Art. 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 mentined above be present;
- [22] Art. 266-A, Revised Penal Code.
- [23] TSN, October 5, 2009, pp. 10-11.
- [24] TSN, October 23, 2008, pp. 7-8.
- [25] TSN, October 5, 2009, pp. 3-4.
- [26] TSN, Oct. 5, 2009, pp. 10-11.
- [27] People vs. Pruna, supra at 12.
- [28] People vs. Abello, G.R. No. 151952, March 25, 2009.
- [29] People vs. Estoya, G.R. No. 200531, December 5, 2012.

- [30] TSN, July 23, 2007, pp. 9-12.
- [31] People vs. Gani, G.R. No. 195523, June 5, 2013.
- [32] TSN, Dec. 18, 2009, pp. 6-7.
- [33] TSN, Nov. 25, 2010, p. 6.
- [34] TSN, Nov. 10, 2009, pp. 6-7.
- [35] TSN, Nov. 10, 2009, p. 7.
- [36] TSN, Nov. 25, 2010, p. 10.
- [37] People vs. Dela Concha, G.R. No. 140205, September 3, 2002.
- [38] People vs. Antivola, G.R. No. 139236, February 3, 2004.
- [39] Revised Penal Code.
- [40] Ibid.
- [41] Rollo, Volume 2, p. 1 and p. 226.
- [42] Rollo, Volume 2, pp. 226-227.
- [43] People vs. Subesa, G.R. No. 193660, November 16, 2011.
- [44] People vs. Cedenio, G.R. No. 201103, September 25, 2013.

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