

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE ANTONIO Y PACINOS, ACCUSED-APPELLANT.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

Accused-appellant, Felipe Antonio y Pacinos, appeals the Decision[1] dated October 3, 2013 rendered by the Regional Trial Court (RTC) Branch 16 of Tabaco City in Criminal Case No. T-5160, finding him guilty beyond reasonable doubt of the crime of Statutory Rape, under paragraph 1, sub-paragraph (d) of Art. 266-A in relation to Art. 266-B of R.A. 8353 (Anti-Rape Law of 1997).

THE ANTECEDENTS

The facts of the case as culled from the records are as follows:

In the Amended Information[2] dated October 17, 2011, accused-appellant Felipe Antonio y Pacinos[3] was charged with the crime of Statutory Rape, defined and penalized under paragraph 1, sub-paragraph (d), Art. 266-A in relation to Art. 266-B of R.A. 8353, the accusatory portion of which reads:

“That on or about the 25[th] of July, 2010 in the afternoon in Barangay Ogob, Municipality of Malinao, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste designs, did then and there, willfully, unlawfully and feloniously have carnal knowledge with AAA aka BBB,[4] a nine (9) year old minor girl against her will and consent to her damage and prejudice

Contrary to law.”

Upon arraignment, Antonio pleaded “Not Guilty”[5] to the charge. Trial on the merits then ensued.

AAA was eight (8) years old[6] when the subject incident transpired. At a young age, AAA was entrusted by her biological mother to CCC, since she and her husband Antonio have no child of their own. AAA then grew up recognizing CCC and Antonio as her parents, even calling the latter “papa”.[7] Antonio also informally changed AAA's given name as appearing in the Office of the Municipal Registrar and have her carry his surname.[8]

On the witness stand, AAA testified that on the day of July 25, 2010, somebody in their neighborhood at Barangay Ogod, Malinao Albay, butchered a pig. Antonio then instructed her to bring him some meat in the nipa hut where he was staying at the time. The nipa hut was located in the mountainous area of Sitio Amaranto of Barangay Ogob which AAA frequented before the incident on July 25, 2010. To get there, AAA would walk which usually takes her about an hour to reach Antonio's nipa hut.

When AAA arrived at the nipa hut in the afternoon of July 25, 2010, she recalled that Antonio was alone and making copra. Thereafter, they went to look for a missing carabao and after locating it, Antonio returned to the nipa hut to cook some food while AAA fetched water.

Upon returning to the nipa hut, AAA saw Antonio sleeping inside but not too long thereafter, the latter was on his

way to the mountainous area. Thinking that Antonio was going up to gather woods, AAA followed him towards the area where there were cluster of trees.[9]

Subsequently, AAA saw Antonio gathering some banana leaves, and placing them on the ground as if making mats. Thereafter, he told her "marina bebe" (come here bebe).[10] Antonio then held AAA's left hand, pressed her chest as she lay down on the banana leaves,[11] and then pulled down her shorts and panty.[12]

While AAA was already laying down on the ground, Antonio likewise pulled down his shorts and brief and removed the bolo on his waist and placed it beside AAA. He then laid on top of AAA, tried to open her legs, held both her hands above her head and inserted his penis inside her vagina.[13] AAA recalled that the incident did not last long because she asked Antonio if she could go home already. After dressing her up and himself, Antonio returned to the nipa hut. Later on, a person arrived and started talking with Antonio. AAA again asked permission if she could leave but Antonio insisted that they go home together.

AAA left the place first, but not long thereafter, she heard an approaching motorcycle driven by Antonio who ordered AAA to ride with him on the motorcycle in going home. Thereafter, he asked her the whereabouts of his wife, CCC, with whom he was then not in good terms. To avoid seeing CCC, Antonio dropped off AAA in the lower part of Barangay Ogob.

When AAA was finally home, CCC noticed that she looked pale and asked her "naano ka?". AAA then revealed that Antonio did something bad to her.[14] CCC then relayed the information to a neighbor called "Tiya Malou"[15] who, in turn, related the incident to a teacher.[16] The teacher then conveyed such information to a nun which led AAA to be eventually brought to a police station in Malinao.[17]

In the PNP Malinao Station, AAA was interviewed by PO3 Delia Cargullo who also recorded the incident as Blotter Entry No. 579 and Blotter Entry No. 5278.[18] Thereafter, AAA was turned-over to the Municipal Social Welfare and Development Officer of Malinao for her to be accompanied to the hospital for medical examination. On their way, thereto, they chanced upon Antonio who was sitting on a motorcycle along the road. As Antonio was about to start the engine, AAA pinpointed to his direction and told the policemen that he was the man who raped her, by reason of which, Antonio was apprehended immediately.[19]

The following day, PO3 Delia Cargullo and her team, together with AAA, went to the place of the incident to conduct an ocular inspection. AAA showed them the place which was about 80 meters away from Antonio's nipa hut,[20] where piles of banana leaves lay on the ground.

As for the medical examination conducted on AAA by Dr. Cesar D. Cometa on the night of July 25, 2010, the same yielded the following results:

- 1) Positive irritation vaginal wall (Vault) left (3ocklock) (sic), right (9:0000 ocklock) (sic),
- 2) Positive bloody discharged (sic) scanty at vaginal smear (swab specimen xxx[21])

On the witness stand, Dr. Cesar Cometa stated that the irritation he found on AAA's vaginal wall at 3:00 o'clock left and 9:00 o'clock right positions,[22] may be caused by repeated pressure applied on the area, regardless of the hardness or softness of the object or the pressure applied. Dr. Cesar Cometa categorically declared that an erect penis could have caused such irritation.[23] The bloody discharge, on the other hand, was the result of a possible tear or injury on the blood vessels affected by the pressure applied on AAA's genitals.[24]

For his part, Antonio denied the accusations hurled against him. He claimed that on the day of July 25, 2010, he was cleaning his abaca and coconut plantation situated in Barangay Bulang, Bahuan, Malinao, which was about 4-5 kilometers away from their house in Barangay Ogob and that he came home around nighttime already.[25] While Antonio admitted that he owned several parcels of land, he, however, denied owning any farm in the

mountainous area of Barangay Ogob.[26] He also stated that he cannot think of any reason why AAA, whom he has raised as his own child, would file the instant case against him.[27]

Helen Cana, Antonio's aunt, who resides in a nipa hut within the coconut plantation owned by Antonio, corroborated his statement that he was in Barangay Bulang when AAA's alleged rape took place. She testified that Antonio arrived at around 7:00 to 8:00 o'clock in the morning of July 25, 2010 in Barangay Bulang, spent the day clearing the grassy portion of his coconut plantation,[28] and left past 4:00 o'clock in the afternoon of the same date.[29] She also mentioned that aside from the coconut plantation in Barangay Bulang, Antonio does not own any other property, however, he tills a land which was mortgaged to him located in Barangay Ogob.[30]

As rebuttal evidence for the prosecution, AAA was recalled to the witness stand who reiterated that Antonio was in his plantation in the mountainous part of Barangay Ogob on July 25, 2010. She averred that Antonio instructed her to go to his place of work, bring some meat, and that sometime in the afternoon of July 25, 2010, she was raped by Antonio.[31]

The trial court gave credence to the prosecution's evidence and thus, rendered the assailed Decision[32] the fallo of which reads:

"WHEREFORE, foregoing premises duly considered, the Court hereby renders judgment finding accused Felipe Antonio y Pacinos guilty beyond reasonable doubt of the crime of Rape defined and penalized under paragraph 1 (d), Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as "the Anti-Rape Act of 1997" and is accordingly sentenced to suffer the penalty of reclusion perpetua.

He is also ordered to pay private complainant AAA the sum of P50,000.00 as civil indemnity and another sum of P50,000.00 for moral damages. Costs against the accused.

Meanwhile, the period of the preventive imprisonment of the accused starting May 4, 2011 shall be credited in his favor.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT, this 3rd day of October, 2013 at Tabaco City, Albay, Philippines."

Antonio filed a Notice of Appeal,[33] hence, this appeal with the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[34]

The appeal lacks merit.

Antonio argues that the trial court erred in convicting him for the crime of Statutory Rape, based on the following reasons

1. AAA is not a credible witness because of the glaring inconsistencies in her statements as to the order of events when the alleged rape transpired, i.e., the time when she arrived at the mountainous area; where Antonio was when she reached the coconut plantation; and whether Antonio cooked first or they looked for the

missing carabao. Considering such inconsistencies and guided by the maxim "falsus in uno, falsus in omnibus", therefore, the probability that AAA merely concocted such story should be not discounted.

2. AAA did not sustain any injury on her body despite her claims that he pressed her chest as he laid her down and that while on top of her, he allegedly tried to open her legs as she was closing the same. More importantly, contrary to AAA's claim that Antonio inserted his penis inside her vagina, the medico-legal findings glaringly stated that there were no lacerations in her hymen. He then submits that the case of *People vs. Campuhan*[35] should be applied as it was held therein that "[I]n cases of rape where there is a positive testimony and a medical certificate, both should in all respects complement each other; otherwise, to rely on the testimonial evidence alone, in utter disregard of the manifest variance in the medical certificate, would be productive of unwarranted or even mischievous results".

After a careful perusal of the records and the arguments raised by the accused-appellant, We find no reason to reverse his conviction for the crime of Statutory Rape.

Antonio was charged and convicted for Statutory Rape defined in Article 266-A paragraph (1), sub-paragraph (d) of the Revised Penal Code, which provides:

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:

- Through force, threat, or intimidation;
- When the offended party is deprived of reason or otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority; and
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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In the case of *People vs. Vergara*,[36] reiterating the dictum in *People vs. Teodoro*,[37] the Supreme Court further explained the elements of Statutory Rape, to wit:

Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil. (Emphasis Supplied)

In the instant case, the defense never disputed that AAA was only eight (8) years old when the incident took place. Although AAA has no record/certification of her birth or baptism, her age at the time of the commission of the crime was established through the certification issued by the Office of the Municipal Registrar of Malinao.[38]

What is left for consideration, therefore, is the issue of whether the prosecution successfully proved that Antonio had carnal knowledge of AAA.

In her *Sinumpaang Salaysay*[39] dated July 26, 2010, AAA narrated and described in detail how Antonio raped her. During the trial, AAA personally testified in a clear and categorical manner about her ordeal on what transpired on that fateful day in the hands of the man whom she treated as her own father. As a rebuttal witness, AAA unwaveringly pointed to Antonio as the man who raped her, affirming her previous statement on how

Antonio carried out his bestial desires.

In a litany of cases, the Supreme Court has ruled that "the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will xxx motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony — provided it is credible, natural, convincing and consistent with human nature and the normal course of things." [40]

Applying the foregoing jurisprudential doctrine and AAA's unyielding assertion that Antonio raped her, coupled by the latter's own admission that he knows of no reason or motive why the former would implicate him to such a grave crime, the trial court clearly did not err in giving weight and credence to AAA's testimony.

On the alleged discrepancies in the testimony of AAA regarding the exact time and order of events leading to her sexual ravishment, the same is understandable given her tender age (she was 10 years old then) when she testified before the trial court. Error-free testimony cannot be expected, most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion. [41]

Thus, instead of diminishing AAA's credibility, such variance on minor details only bolsters the truthfulness of her accusations. The Supreme Court is consistent in declaring that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses because they discount the possibility of their being rehearsed testimony." [42] Moreover, the place and exact time of rape are not elements of the crime, and thus, cannot be considered as a ground for acquittal.

As regards Antonio's contention that AAA's accusation of rape is inconsistent with the Medico Legal findings since no hymenal lacerations were found in her genitals, it is already settled that "proof of hymenal laceration is not an element of rape. Nor is proof of genital bleeding. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape." [43] Thus, Dr. Cesar Cometa's confirmation that the irritation on AAA's vaginal wall and the resultant bloody discharge could have been caused by an erect penis, only bolsters the fact that Antonio inserted his penis inside AAA's vagina.

In view of the foregoing disquisition, Antonio's defense of denial and alibi cannot prevail over the prosecution witnesses' positive testimonies, coupled with the physical evidence consistent with AAA's assertion that she was raped. The defense of denial has been invariably viewed with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for rape. In order to prosper, the defense of denial must be proved with strong and convincing evidence. [44] Unfortunately, Antonio was not able to discharge such burden.

The defense witnesses (Antonio and Helen Cana) tried to impress upon the trial court that Antonio was working the entire day in his coconut plantation in Barangay Bulang which was about 4-5 kilometers away from Barangay Ogob when the alleged incident of rape occurred. However, Helen Cana herself testified that the distance between the two barangays may be reached two hours by foot, [45] and of course, even less, if riding a motorcycle. The records are replete with indications that Antonio owns a motorcycle, thus, it was not physically impossible for him to be at the locus criminis on the occasion of the rape, given the relatively short distance and the availability of transportation.

Withal, the prosecution has indeed proved beyond reasonable doubt that AAA was raped by Antonio on July 25, 2010. Consequently, Article 266-B of the Revised Penal Code requires that the penalty of reclusion perpetua be imposed in cases of rape under the first paragraph of Article 266-A, where there are no aggravating or qualifying circumstances present. Accordingly, the trial court correctly imposed this penalty.

Finally, while We find no compelling reason to reverse Antonio's conviction, the award of damages must, however, be modified, in light of recent jurisprudence[46]. The awards of civil indemnity and moral damages by the trial court are increased in the amount of P100,000.00 each. In addition thereto, We likewise find it proper to award exemplary damages in the amount of P100,000.00, in accordance with Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[47]

The interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[48]

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated October 3, 2013 rendered by the Regional Trial Court (RTC) Branch 16 of Tabaco City in Criminal Case No. T-5160, finding Felipe Antonio y Pacinos guilty beyond reasonable doubt of statutory rape and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with MODIFICATION. The award on the civil indemnity and moral damages are both increased from P50,000.00 to P100,000.00. Felipe Antonio y Pacinos is further ORDERED to PAY P100,000.00 as exemplary damages. The award of damages shall earn interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

SO ORDERED.

Carandang, R.D., Chairperson, and Barza, R.F., JJ., concur.

[1] Rollo, pp. 28-44

[2] Records, p. 39

[3] Hereinafter referred to as "Antonio"

[4] In line with the ruling in *People vs Gilbert Castro* (G.R. No. 188901 December 15, 2010) citing the case of *People vs. Cabalquinto* (G.R. No. 167693, 19 September 2006), the real name and identity of the rape victim, is withheld and, 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, are not disclosed in this decision. Instead, the rape victim shall herein be referred to as AAA and Felipe Antonio's wife as CCC

[5] Records, p. 27

[6] AAA's date of birth is April 18, 2002.

[7] TSN dated January 24, 2012, p. 4

[8] Records, p. 77

[9] TSN dated January 24, 2012, p.10

[10] See: Investigator's Report, Records, pp. 4-6

[11] TSN dated January 24, 2012, p. 11

- [12] TSN dated January 24, 2012, p. 12
- [13] TSN dated January 24, 2012, pp. 13-14
- [14] TSN dated January 24, 2012, p. 18
- [15] Ibid.
- [16] TSN dated January 24, 2012, p. 19
- [17] Ibid.
- [18] Records, pp. 7-8 Investigation Report prepared by PO3 Delia Cargullo
- [19] Supra note 9
- [20] Records, p. 10
- [21] Records, p. 9 Medico Legal Certificate
- [22] TSN dated July 24, 2012, p. 5
- [23] TSN dated July 24, 2012, p. 6
- [24] TSN dated July 24, 2012, p. 7
- [25] TSN dated September 19, 2012, pp. 3-4
- [26] TSN dated September 19, 2012, p. 6
- [27] TSN dated September 19, 2012, p. 8
- [28] TSN, dated February 8, 2013, p. 4
- [29] TSN, dated February 8, 2013, p. 9
- [30] TSN, dated February 8, 2013, p. 10
- [31] TSN, dated July 16, 2013, p. 3
- [32] Supra note 1
- [33] Records, p. 114
- [34] Appellant's Brief, Rollo, p. 62
- [35] G.R. No. 129433 March 30, 2000
- [36] G.R. No. 199226 January 15, 2014
- [37] G.R. No. 172372 December 4, 2009
- [38] Supra note 7
- [39] Records, pp. 2-3
- [40] People vs Gutierrez G.R. No. 208007. April 2, 2014, citing People vs. Veloso G.R. No. 188849, February 13, 2013; People v. Salazar, G.R. No. 181900, October 20, 2010
- [41] People vs. Castillo G.R. No. 193666 February 19, 2014

[42] People vs. Gahi G.R. No. 202976 February 19, 2014

[43] People vs. Castillo G.R. No. 193666 February 19, 2014

[44] People vs Besmonte G.R. No. 196228 June 4, 2014

[45] TSN, dated February 8, 2013, p. 4

[46] People vs. Balino G.R. No. 194833 July 2, 2014

[47] Supra note 43

[48] People vs. Buclao G.R. No. 208173. June 11, 2014

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