

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY L. ORTINEZ, ACCUSED-APPELLANT.

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

This is an appeal from the Decision dated 23 September 2009[1] of the Regional Trial Court, Branch 52, Guagua, Pampanga where the dispositive portion reads:

“x x x

WHEREFORE, this court hereby (a) finds accused Rey Ortinez guilty beyond reasonable doubt of statutory rape under Article 335 of the Revised Penal Code; (b) sentences him to suffer the penalty of reclusion perpetua; and (c) orders the accused to pay Hazel Maninang Php50,000.00 moral damages, Php50,000.00 civil indemnity and Php25,000.00 exemplary damages.

The preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.

x x x”

FACTS OF THE CASE

On 19 October 1999, accused-appellant Rey L. Ortinez was charged with Rape under Article 335 of the Revised Penal Code under the following Information:[2]

“x x x

That on or about the month of July, 1996, at Barangay Del Carmen, Municipality of Lubao, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused REY ORTINEZ, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge with the undersigned complainant, AAA[3], eight (8) years old, by inserting his penis into her vagina, against her will and consent.

CONTRARY TO LAW.”

When arraigned, accused-appellant pleaded not guilty to the charge. Thereafter, trial on the merits ensued.

From the testimonies of the private complainant AAA, her mother (BBB), and Dr. Ma. Victoria M. Bajao, it is gathered that sometime in July 1996, AAA – then eight (8) years old - was playing “hide and seek” with her playmates when accused-appellant told her that she can hide in his house. AAA agreed and went with appellant to the second floor of his house. AAA was then brought inside a room where accused-appellant forcibly removed her pants. AAA resisted and struggled against accused-appellant's sexual advances, but she was helpless. Thus, accused-appellant succeeded in inserting his penis inside AAA's vagina. AAA felt pain in her vagina and when

accused-appellant was done, she saw an excretion from accused-appellant's penis and the latter let the fluid drop on top of her vagina. After AAA's ordeal, accused-appellant told her to put on her pants again and that he would kill her if she would tell anyone what had happened. Afraid and shaken, AAA went home and did not report the incident to anyone.[4]

It was only on 14 August 1999 when AAA found the courage to confide to BBB her harrowing experience in the hands of accused-appellant. Thereafter, AAA and BBB reported the matter to the local authorities.

On 16 August 1999, AAA was medically examined by Dr. Maria Victoria Bajao of Jose B. Lingad Memorial Regional Hospital who reported that AAA's hymen had deep healed lacerations at 4, 7, 9, 11 o'clock position incomplete, multiple superficial healed lacerations.[5]

On the other hand, relying on the testimonies of accused-appellant and his uncle, Nicasio Labo, the defense invokes denial and alibi. Accused-appellant denied having carnal knowledge with AAA, alleging that for the whole month of July 1996, he was working in a farm harvesting palay from 2:00 a.m. until 6:00 p.m. everyday. After work, he would rest in his house which is about forty (40) meters away from AAA's house.

Furthermore, according to accused-appellant, AAA's parents apparently harbored ill feelings toward his family because his father returned the rice thresher of AAA's parents that his father used to manage and operate.[6]

After trial, a guilty verdict was rendered. In this appeal, accused-appellant raised the following assignment of errors:

I.

WITH ALL DUE RESPECT (sic) THE HONORABLE PRESIDING JUDGE FAILED TO APPRECIATE THE FACT THAT THE HONORABLE PROSECUTOR FAILED TO PROVE THAT (sic) GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT; and

II.

WITH ALL DUE RESPECT (sic) THE HONORABLE PRESIDING JUDGE FAILED TO APPRECIATE THE FACT THAT THE REPORTING OF THE ALLEGED CRIME FOR MORE THAN THREE (3) YEARS UPON ITS ALLEGED COMMISSION CAST DOUBTS TO THE CREDIBILITY AND TRUTHFULNESS OF THE PRIVATE COMPLAINANT'S TESTIMONY.

OUR RULING

At the outset, it is significant to note that the rape incident occurred in July 1996 before the effectivity of RA 8353 (the Anti-Rape Law of 1997) which took effect on 22 October 1997. Hence, the prevailing law at the time the crime was committed in 1996 was Article 335 of the Revised Penal Code, as amended by RA 7659. In this regard, it need be stated that both laws, the rape – under the circumstances alleged in the Information – is penalized by reclusion perpetua.

Under Article 335 of the Revised Penal Code, Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force of intimidation;
2. When the woman is deprived of reason or otherwise is unconscious; and
3. When the woman is under twelve years of age or is demented.

Rape committed under paragraph 3 of the above-mentioned article is termed as statutory rape as it departs from the usual modes of committing rape. Notably, what the law punishes therein is carnal knowledge of a woman below twelve (12) years of age. Thus, it bears emphasis that 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.[7]

In this case, the first element of AAA's minority was clearly established by the birth record of AAA that was presented in court showing her date of birth on 30 March 1988.[8] Hence, AAA was only eight (8) years old when the rape incident took place in July 1996.

On the second element, We agree with the findings of the trial court that accused-appellant had carnal knowledge with AAA during that incident in July 1996. AAA's narration of the event when she was lured, duped, and sexually ravaged by accused-appellant was consistent, candid, and straightforward, additionally, the physical examination findings conducted by Dr. Bajao affirmed the fact of sexual intercourse as narrated by AAA in that multiple deep healed lacerations were found in the hymen of AAA.

In this connection, jurisprudence holds that the testimony of a child-victim is normally given full weight and credit by the courts. 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. Indeed, courts are inclined to give credit to her account of what transpired, not only because of her relative vulnerability but also because of 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.[9]

The trial court in this case found AAA's testimony on the fact of molestation to be positive and credible; and as earlier stated, We do not diverge therefrom. In a string of cases, the Supreme Court had always stressed that the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying. Even then, We have read the transcript of her testimony and agree with the trial court's conclusion. In fine, We adopt the factual findings of the trial court, especially its assessments of the witnesses and their credibility[10].

In his appeal memorandum, accused-appellant bewails the fact that the rape incident was reported to the authorities more than three (3) years from the alleged commission in July 1996, and thus, should not be given credence.

We disagree. Contrary to this, We find AAA's narration to be frank, honest and straightforward. This can only mean that the physical, mental and psychological trauma was deeply etched in her memory.

We find the delay to be justified. It is well acknowledged that delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded on threats made by accused-appellant. It has been shown that accused-appellant had threatened to kill AAA if she should tell anyone about the rape. At that time, AAA was only eight (8) years of age, and obviously, such threat could easily, as it did intimidate her. Moreover, there can also be delay when the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny.[11]

Furthermore, the defenses of denial and alibi set up by accused-appellant are weak defenses. For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise impossible for him to be at the locus criminis at the time of the alleged crime.[12] Accused-appellant alleged that he was working in the farm from 2:00 a.m. until 6:00 p.m., during the whole month of July 1996 when said rape incident took place. It is significant to mention, however, that Nicasio

Lobo, uncle of accused-appellant, admitted that he was not actually with accused-appellant during the whole month, nor any day, hour or minute of July 1996.[13] Thus, it is not physically impossible for accused-appellant to be in the place of incident at any given time of any day of the said month. Note that accused-appellant's house is only forty (40) meters away from AAA's house.

Evidently, accused-appellant's bare assertion pales as compared to AAA's positive and categorical testimony. Likewise, accused-appellant was identified by AAA as the one who committed the dastardly act upon her. Positive identification destroys the defense of denial and alibi, and renders it impotent, especially where such identification is credible and categorical.[14]

WHEREFORE, in view of the foregoing, the Decision dated 23 September 2009 of the Regional Trial Court, Branch 52, Guagua, Pampanga is AFFIRMED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Rollo, pp. 21-37.

[2] Records, p. 3.

[3] This is pursuant to the ruling of the Supreme Court in *People vs. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein the High Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective 15 November 2004.

[4] TSN, 09 February 2000, Direct Examination, pp. 2-6.

[5] TSN, 13 June 2001/ Records, Medico Legal OB Gyne Report, p.175.

[6] TSN, 13 October 2004, 15 December 2004, 06 February 2008.

[7] *People of the Philippines vs. Marciano Dollano, Jr.*, G.R. No. 188851, 19 October 2011.

[8] Records, p. 8.

[9] *People of the Philippines vs. Domingo Araojo*, G.R. No. 185203, 17 September 2009.

[10] *People v. Virrey*, G.R. No. 133910, 14 November 2001.

[11] *People of the Philippines vs. Eduardo Navarette, Jr. y Nato*, G.R. No. 191365, 22 February 2012.

[12] *People of the Philippines vs. Arnold T. Agcanas*, G.R. No. 174476, 11 October 2011.

[13] TSN, 11 February 2009, p. 3.

[14] People vs. Dela Cruz, G.R. No. 173308, June 25, 2008.

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