

PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS. EMETERIO MEDINA Y DAMO, ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

The present appeal assails the Decision dated September 22, 2011[1] in Criminal Case No. 9540 of Branch 11, Regional Trial Court, Laoag City, finding accused-appellant Emeterio Medina y Damo guilty beyond reasonable doubt of rape committed against four (4) year-old AAA,[2] daughter of accused-appellant's cousin.

THE ANTECEDENTS

The victim in this case, AAA, was born on December 31, 1995.[3] She was four (4) years old at the time of the incident and twelve (12) years old when she testified in court. She lived with her family in BBB.[4] Accused-appellant, a neighbor, was the cousin of her father, CCC.[5] AAA referred to accused-appellant as "Uncle Teriong." [6]

In the morning of May 9, 2000, AAA's mother, DDD, instructed her to buy vinegar at Aunt Iding's store.[7] On the way to the store, accused-appellant pulled AAA into his house which was only ten (10) meters away from AAA's house,[8] and led her inside a room.[9] He made AAA lie on a bed, removed her undergarment, and placed himself on top of her.[10] Accused-appellant spat on his fingers and wiped the saliva on AAA's vagina. He proceeded to remove his pants and inserted his penis into AAA's vagina.[11] AAA felt "hurt" and was crying.[12] She did not shout because accused-appellant told her that if she shouted, he would thrust a ballpen in her mouth.[13] When accused-appellant was through, he put AAA's clothes back on.[14] AAA did not go to the store anymore[15] and instead, went home and narrated the incident to her mother, DDD.[16] DDD did not believe her at first, but when AAA told her that liquid which looked like milk came out of accused-appellant's penis, she believed AAA.[17]

The factual findings of the trial court, based on the prosecution evidence, were summarized in its Decision dated September 22, 2011 as follows:

"On May 9, 2000 'she (I) was about to buy vinegar because her (my) mother told her (me) to go and buy x x x.' (Ibid) She was supposed to buy vinegar at the store of 'Aunt Iding.' (Ibid) She did not reach the store of Aunt Iding because 'Uncle Teriong took her (me)' (Ibid) 'The accused took her to the room of their house.' (Ibid, page 4) She was 'In front of their (accused's) kitchen' (Ibid) when 'he pulled her (me).' 'He used his right hand' (Ibid) in pulling her.

The accused brought her 'Inside their room x x x In a bed.' (Ibid, page 5) She could not remember what she was wearing as outer garment on her lower body. However, she remembers that she was wearing a panty.

The accused 'removed her (my) pants and undergarments.' (Ibid) Then, 'He removed his pants and inserted his penis into her (my) vagina.' (Ibid) At the time, 'she (I) was lying down on her (my) back x x On the bed.' (Ibid) This, because 'He let her (me) lie down.' (Ibid) 'He was lying down on top of her (me) fronting her (me) and that was when he inserted his penis inside her (my) vagina.'

She was 'hurt' (Ibid) when the accused inserted his penis inside her (my) vagina. 'He got some saliva from his mouth and wiped it on her (my) vagina.' (Ibid, page 6) She 'was crying.' (Ibid)

After she was able to leave the room, 'she (I) went to report it to her (my) mother.' (Ibid)"

On cross-examination, she testified that when she went to buy vinegar she was wearing "with sleeves"(TSN, February 19, 2008, page 9) and "Short pants." (Ibid) As regards the distance between their house and the house of the accused, she indicated a distance of "around ten meters." (Ibid, page 10)

She did not shout while the accused inserted his penis inside her vagina "Because he told her (me) that if I would shout, he would thrust a ballpen in her (my) mouth." (Ibid) Hence, what she did was just cry.

After the incident, she did not proceed to the store. She pointed to the accused as the one who put on her clothes.

The accused did not say anything to her after the incident.[18]

On August 21, 2000, an information was filed with the trial court charging accused-appellant with "Rape" committed as follows:

"That on or about the 9th day of May, 2000, in the city of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused called to his house AAA, a 4-year old girl and a neighbor of the accused in BBB, and inside his house he took AAA into a room and did then and there willfully, unlawfully and feloniously remove her pants and then let her lie down on a bed (papag) and thereafter have carnal knowledge of her without her consent

CONTRARY TO LAW."[19]

After finding probable cause "sufficient in law for the prosecution"[20] of accused-appellant, the trial court issued a warrant of arrest dated August 24, 2000.[21] However, said warrant of arrest was not served because accused-appellant could "not be contacted." [22] Thus, in an Order dated February 26, 2001,[23] the trial court ordered that (i) the "case be placed in the archives to be automatically revived upon the apprehension" of accused-appellant, and (ii) an "alias warrant of arrest be issued against" accused-appellant.

Accused-appellant remained at large for six (6) years. On November 12, 2007, upon information from DDD that accused-appellant had returned home and was seen at their family house, police officers immediately went to

BBB and arrested accused-appellant.[24] On November 13, 2007, accused-appellant was turned over to the trial court by the National Bureau of Investigation (NBI), Laoag District Office and was subsequently detained at the Bureau of Jail Management and Penology (BJMP), Laoag City.[25]

Upon arraignment, accused-appellant pleaded “not guilty” to the charge.[26] During the pre-trial,[27] the parties stipulated on the following:

- “1. The Court has jurisdiction over the case;
2. The identity of the accused is admitted in that whenever prosecution witnesses refer to Emeterio Medina y Damo, they refer to the same accused charged and arraigned under the information;
3. The private complainant was born on December 31, 1995;
4. The private complainant was only four (4) years, four (4) months and nine (9) days old on May 9, 2000;
5. The accused was in Laoag City on May 9, 2000;
6. The private complainant and the accused are neighbors at BBB;
7. The existence of the medical results of the examination of the private complainant on May 10, 2000 is admitted;
8. The existence of the gynecology cytology report issued by the Mariano Marcos Memorial Hospital and Medical Center is admitted; and
9. CCC, the father of the private complainant is the first degree cousin of the accused.”

Trial ensued. The prosecution presented AAA,[28] DDD,[29] Jewell C. Diaz,[30] Administrative Aide III of the Medical Records Section of the Mariano Marcos Memorial Hospital and Medical Center, Dr. Mona Liza Pastrana[31] and Dr. Maria Geraldine Andaya La Madrid[32] as its witnesses. On the other hand, the defense presented accused-appellant[33] as its sole witness.

In a Decision dated September 22, 2011,[34] the trial court convicted accused-appellant of qualified rape and sentenced him as follows:

“WHEREFORE, judgment is hereby rendered finding accused EMETERIO MEDINA y DAMO, GUILTY BEYOND REASONABLE DOUBT of qualified rape. He is hereby sentenced to a penalty of RECLUSION

PERPETUA. Further, he is hereby directed to pay the private complainant the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

SO ORDERED.”[35]

Thus, accused-appellant filed the present appeal which is premised on the following assignment of errors:

“I

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

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S INCONSISTENT AND INCREDIBLE TESTIMONY.”[36]

THE ISSUE

Whether the trial court erred in finding accused-appellant guilty beyond reasonable doubt of rape.

THE COURT'S RULING

The present appeal is premised on the argument that the trial court based accused-appellant's conviction on AAA's “unbelievable testimony.” Allegedly, “AAA admitted that there were many houses in the neighborhood” and “a few people were around during that time,” hence, it was “unlikely that nobody noticed the bestial act that was supposedly being done to her by accused-appellant.”[37] Furthermore, AAA's family filed the rape case against accused-appellant because they were allegedly envious “as his niece from Hawaii was helping him out.”[38]

The arguments are puerile and unfounded.

It must be stressed that AAA was only four (4) years old at the time of the complained incident, and twelve (12) years old when she testified in court. Accused-appellant managed to remain at large for six (6) long years before he was eventually arrested. In finding accused-appellant guilty of rape, the trial court gave credence to the testimony of AAA who, despite her tender age, candidly and positively testified on the material details of the incident as follows:

AAA on direct examination

“Q Now AAA, let us go to the date of May 9, 2000. Do you remember of any unusual incident on May 9, 2000?

A Yes, ma'am.

Q Where were you on May 2000 in the morning?

A I was about to buy vinegar because my mother told me to go and buy, ma'am.

Q Where were you supposed to buy vinegar?

A Aunt Iding's, ma'am.

Q Why, what is the place of Aunt Iding?

A Store, ma'am.

Q Did you reach that store of your Aunt Iding?

A No, ma'am.

Q Why not? What happened to you?

A Uncle Teriong took me, ma'am.

Q Who is Uncle Teriong. Please state the full name?

A Emeterio Medina, ma'am.

Q You said Uncle Teriong took you. Where did he take you?

A To the room of their house, ma'am.

Q When he took you, where were you located?

A In front of their kitchen, ma'am.

Q You said that you were on your way to buy vinegar to a store. How come that you were in front of the kitchen door of Emeterio Medina?

A He pulled me, ma'am. (Witness is crying)

X X X

Q You said that Emeterio Medina pulled you in front of his kitchen. What did he use to pull you?

A Right hand, ma'am.

Q What part of your body was pulled?

A Right, ma'am.

Q When he pulled you, where did you go?

A Inside their room, ma'am. In a bed.

Q After you were pulled inside a room with a bed, what happened?

A He removed my pants and undergarments, ma'am.

Q What were you wearing as outer garment on your lower body?

A I could not remember, ma'am.

Q And inside, what were you wearing?

A Panty, ma'am.

Q After he removed your underwear and your outer garments, what happened?

A He removed his pants and he inserted his penis into my vagina, ma'am.

Q When he inserted his penis into your vagina, what was your position?

A I was lying down on my back, ma'am.

Q Where at?

A On the bed, ma'am.

Q How come you were already lying down. How did it happen?

A He let me lie down, ma'am.

Q When he inserted his penis into your vagina, how did you feel?

A It hurt, ma'am.

Q When he inserted his penis into your vagina, what happened?

A He got some saliva from his mouth and wiped it on my vagina, ma'am.

Q While he was doing that, what were you doing?

A I was crying, ma'am.

Q After doing that inserting his penis into your vagina and getting saliva from his mouth and wiping it against your vagina, what happened?

A I do not know, ma'am.

Q How did it stop?

A I do not know, ma'am.

Q Were you able to leave the room?

A Yes, ma'am.

Q Where did you proceed?

A I went to report it to my mother, ma'am.

Q What did you tell your mother exactly if you remember?

A I said, 'Mother, my Uncle Teriong inserted his penis inside my vagina.'

Q You said that your panty and your lower garments were removed by Emeterio Medina. When you went home, what happened to your clothes?

A He put on my garments, ma'am.

X X X

Q You said you were lying down when he inserted his penis inside your vagina. How about Emeterio, what was his position?

A He was lying down on top of me, fronting me and that was when he inserted his penis inside my vagina, ma'am.”[39]

AAA on cross-examination

Q You said that this man let you lie down in a bed, correct?

A Yes, maám.

Q You said that he inserted his penis inside your vagina?

A Yes, ma'am.

Q Did you not shout after feeling that his penis was going inside your vagina?

A No, máam.

Q Why?

A Because he told me that if I would shout, he would thrust a ballpen in my mouth, maám. (Witness used the vernacular tuduken)[40]

Republic Act (RA) No. 8353, otherwise known as “The Anti-Rape Law of 1997,” provides that rape is committed 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.” (Underlining supplied.)

What was committed by accused-appellant in the present case is rape of a child below twelve (12) years of age, or what is otherwise known as statutory rape. In fact, AAA was only four years old at the time of the rape, as shown by her certificate of live birth[41] and as admitted by accused-appellant during the pre-trial.[42] It is well-settled that if the victim is under twelve (12) years of age, force need not be proven for it is not an element of statutory rape.[43] Nonetheless, the aforementioned testimony of AAA positively proved that AAA was threatened by accused-appellant that if she shouted, he would thrust a ballpen in her mouth.[44]

There is no merit in accused-appellant's claim that “it is rather unlikely that nobody noticed the bestial act that was supposedly being done to her by the accused-appellant” because “there were many houses in the neighborhood” and “a few people were around during that time.” Too basic to require further elaboration is the settled doctrine that lust is no respecter of time and place.[45] Moreover, a four (4)-year old victim, like AAA,

cannot be expected to have the behavioral response of a grown-up woman during and even after her defilement by the accused.[46]

Accused-appellant argues that the prosecution failed to prove “that it was the accused-appellant who is responsible for” the “trauma to the tissues surrounding” AAA's vagina, nor was it “proven by the prosecution that only sexual intercourse is the sole and exclusive reason for such trauma.”[47] Allegedly, “the physician who conducted physical examination on AAA” was not presented and thus, the two (2) physicians presented by the prosecution had “no personal knowledge as to who sexually abused AAA.”[48] Accused-appellant's contention is unfounded.

It is basic that a medical examination is not an indispensable element in prosecutions for rape.[49] That the prosecution did not present the physician who examined AAA is, therefore, not an obstacle to a finding of guilt on the part of accused-appellant. As held:

In any event, appellant's argument proceeds from a misconception that a medical certificate is an indispensable element in the prosecution for rape and runs roughshod over the well-settled rule that the absence of medical findings by a medico-legal officer does not disprove the occurrence of rape. The fact that the medical certificate shows no external signs of physical injuries and spermatozoa on the victim does not negate the commission of rape for the slightest penetration of the labia consummates the offense. The medical examination of the victim, as well as the medical certificate, is merely corroborative in character. What is important is that the testimony of private complainant about the incident is clear, unequivocal and credible. When a woman testifies that she has been raped, she says all that is needed to signify that the crime has been committed.[50]

At any rate, records bear that on May 10, 2000, just a day following the incident, AAA underwent physical examination, wherein the physician found “fresh vertical laceration on the right lateral aspect of the hymen about 0.4 cm,”[51] “[p]redominance of Coccobacilli with shift in vaginal flora,” and “inflammation.”[52] The non-presentation of the concerned physician on the witness stand is not fatal to the prosecution, as said physician was already out of the country at the time. Nonetheless, the prosecution presented another physician who made a pap smear examination on AAA and explained her findings. As the trial court noted:

Dr. Claribel Agatep who was then connected with the Mariano Marcos Memorial Hospital and Medical Center conducted medical examination on the private complainant. Unfortunately, when the accused was apprehended on November 13, 2007, more than six (6) years after he was charged with rape, Dr. Claribel Agatep was no longer connected with the hospital and that he was reported to be already out of the country, more particularly in New Zealand. Nevertheless, the prosecution presented Dr. Ma. Geraldine Andaya La Madrid, a medical doctor who was trained in Anatomical Clinical Pathology of the Mariano Marcos Memorial Hospital and Medical Center.

On the witness stand, Dr. La Madrid testified that she received “a request for papsmear examination for a patient named AAA.” (Ibid) She and Leonisa Flojo Abon, cytopathologist and department head of the laboratory, examined the specimen. They issued a Gynecologic Cytology Report. (Exhibits “E”; “E-1”; “E-2”) They noted that there were actually “predominance of infectious organisms which were found in the specimen surrounding the cells.” (Ibid) According to her, the presence of “infectious organisms” shows that “There was manipulation of the vagina of the patient.” (Ibid) Further, according to her, “manipulation refers to trauma to the issues surrounding the vagina” (Ibid) and the trauma could have been caused by the insertion into the

vagina of a blunt object. A male reproductive organ could have caused the trauma.

They also found “reactive changes associated with inflammations” (Ibid) which could have caused by “manipulation.” (Ibid)

The medical findings clearly confirm the testimony of the private complainant that the accused inserted his penis into her vagina which caused the trauma to the issues surrounding her vagina.[53]

There is likewise no merit in accused-appellant's claim that AAA's testimony was incredible and the filing of the rape case against him was prompted by ill-motive of AAA's parents who were envious of the help accused-appellant was receiving from “his niece from Hawaii.”[54]

It suffices to stress that AAA herself identified accused-appellant in open court and even referred to him as her "Uncle Teriong," the person who raped her.[55] The positive identification made by AAA prevails over accused-appellant's self-serving allegation that the rape case was filed against him because AAA's parents were envious of him. Hornbook is the doctrine that testimonies of child-victims are normally given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity.[56]

Ineluctably, there is no merit in accused-appellant's defense of alibi.[57] Between the categorical and positive testimony of AAA establishing the fact of rape and the identity of accused-appellant as the perpetrator, and accused-appellant's denial and alibi which are uncorroborated by reliable and independent evidence, the former undisputably deserve more credence and is entitled to greater evidentiary weight.[58]

Then again, squarely applicable in this case is the time-honored rule that the trial court's assessment of credibility of the prosecution and the defense “is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand, and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth.”[59]

Anent the trial court's imposition of the penalty of reclusion perpetua, the same should be without eligibility for parole pursuant to Article 266-B,[60] Revised Penal Code, as amended by RA No. 8353. The award of civil indemnity of P75,000.00 and moral damages of P75,000.00 are also correct pursuant to prevailing jurisprudence.[61] However, the award of exemplary damages of P25,000.00 should be increased to P30,000.00.[62]

WHEREFORE, the trial court's Decision dated September 22, 2011 finding accused-appellant Emeterio Medina y Damo guilty beyond reasonable doubt of rape is affirmed, subject to the modification that the penalty of reclusion perpetua should be without eligibility for parole, and the award of exemplary damages is increased to P30,000.00.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] pp. 47-67, Rollo

[2] Pursuant to Section 44, RA No. 9262 (Anti-Violence Against Women and Their Children Act of 2004) and the Supreme Court Decision dated September 19, 2006 in *People vs. Cabalquinto* (502 SCRA 419) and Decision dated November 22, 2007 in *People vs. Ching* (538 SCRA 117), the identities of the victim and her immediate family members, including any identifying information, are withheld.

[3] pp. 9-10, Original Records

[4] p. 2, TSN dated January 24, 2008

[5] pp. 3, 2, TSN dated June 26, 2008

[6] p. 3, TSN dated January 24, 2008

[7] pp. 3-4, Ibid.

[8] p. 10, TSN dated February 19, 2008

[9] pp. 4-5, TSN dated January 24, 2008

[10] pp. 5, 7, Ibid.

[11] p. 15, TSN dated February 19, 2008

[12] pp. 5-6, TSN dated January 24, 2008

[13] p. 15, TSN dated February 19, 2008

[14] p. 6, TSN dated January 24, 2008; p. 15, TSN dated February 19, 2008

[15] p. 15, TSN dated February 19, 2008

[16] p. 6, TSN dated January 24, 2008

[17] p. 4, TSN dated June 26, 2008

[18] pp. 49-50, Rollo

[19] p. 1, Original Records

[20] p. 15, Ibid.

[21] p. 16, Ibid.

[22] p. 17 (dorsal page), Ibid.

[23] pp. 19-20, Ibid.

[24] p. 22, Ibid.

[25] p. 31, Ibid.

[26] pp. 35, 36, Ibid.

[27] pp. 46-48, Ibid.

[28] TSN dated January 24, 2008

[29] TSN dated June 26, 2008

[30] TSN dated February 21, 2008

[31] TSN dated February 19, 2009

[32] TSN dated November 6, 2008

[33] TSN dated September 23, 2010

[34] pp. 47-67, Rollo

[35] p. 67, Ibid.

[36] p. 80, Ibid.

[37] p. 84, Ibid.

[38] p. 85, Ibid.

[39] pp. 3-7, TSN dated January 24, 2008

[40] pp. 14-15, TSN dated February 19, 2008

[41] p. 9, Original Records

[42] p. 46, Ibid.

[43] People of the Philippines vs. Nelson Dela Cruz, 338 SCRA 582, August 23, 2000

[44] p. 15, TSN dated February 19, 2008

[45] People of the Philippines vs. Clodualdo Cabillan, 267 SCRA 258, January 30, 1997

[46] People of the Philippines vs. Bang-ayan, 502 SCRA 658, September 22, 2006

[47] p. 84, Rollo

[48] p. 85, Ibid.

[49] People of the Philippines vs. Marcelino A. Bugarin, 273 SCRA 384, June 13, 1997

[50] People vs. Teofilo Taneo, 284 SCRA 251, January 16, 1998

[51] p. 11, Original Records

[52] p. 12, Ibid.

[53] pp. 63-64, Rollo

[54] p. 85, Rollo

[55] p. 3, TSN dated January 24, 2008; p. 15, TSN dated February 19, 2008

[56] People of the Philippines vs. Alfredo Bon, 506 SCRA 168, October 30, 2006

[57] p. 85, Rollo

[58] People of the Philippines vs. Joselito Pascua, 416 SCRA 548, November 27, 2003

[59] People of the Philippines vs. Anselmo Butron, 272 SCRA 352, May 7, 1997

[60] ART. 266-B. Penalties. -- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

xxx

(5) When the victim is a child below seven (7) years old.

[61] People of the Philippines vs. Nilo Rocabo, 644 SCRA 508, March 2, 2011

[62] People of the Philippines vs. Junior Bang-ayan, 502 SCRA 658, September 22, 2006

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