

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELAÑO MIER Y URBANO, ACCUSED-APPELLANT.

Ponente: PAREDES, J.

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**PAREDES, J.:**

### THE CASE

THIS APPEAL[1], filed by accused-appellant Melano Urbano Mier (appellant), seeks to reverse and set aside the Decision[2] dated April 26, 2012, issued by the Regional Trial Court, Branch 5, Manila, in the consolidated cases of Criminal Case Nos. 02-207694 and 02-207695 which found appellant guilty beyond reasonable doubt of the crime of rape.

### THE ANTECEDENTS

On November 5, 2002, AAA[3] a ten year old minor[4] intimated to her uncle UUU[5] that appellant and Benjamin Urbano, uncle of appellant, raped her. UUU then brought AAA to Police Station I in Balut, Tondo, Manila. They both executed a Sinumpaang Salaysay[6]. AAA was referred to undergo a physical examination at the Child Protection Unit of the Philippine General Hospital. The resultant examination showed the impressions[7]: "disclosure of sexual abuse, genital findings show clear evidence of blunt force or penetrating trauma and T/C Post trauma stress disorder".

An information dated November 6, 2002 charged appellant with the crime of rape in relation to Section 5 (b) Article III of R.A. 7610, the accusatory portion of which reads, as follows:

That on or about November 01, 2002, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and knowingly commit abusive acts and lascivious conduct upon the person of AAA, a minor, 9 years of age, by then and there removing the panty of the latter, and inserting his penis inside the annus (sic) of said minor, and in the process, the penis of said accused touched the labia of the vagina of said minor, against her will and without her consent, thereby gravely endangering the normal growth and development of the said child to her damage and prejudice.

CONTRARY TO LAW.[8]

An information[9] against Benjamin Urbano y Rivera (Urbano) was also filed and the case against him docketed as Crim. Case No. 02-207695 but was later on ordered dismissed when Urbano died[10] on February 13, 2006.

Appellant pleaded[11] not guilty to the charges against him. Thereafter, trial ensued.

The prosecution presented the testimonies of AAA[12]; Social Worker Jane Gabriel[13] who testified that AAA has a delayed mental functioning for, although she is already 17 years old in 2010, she is still in Grade II; and Dr. Merle Tan[14] who testified on the results of the medical examination conducted on AAA.

AAA narrated that she was raped by appellant, whom she calls Tito Boy, being the husband of her mother. AAA

does not know her father. She was eating lunch with her mother, sisters and appellant, when she went to the toilet. While inside the toilet, somebody knocked and she opened the door. Appellant entered the toilet. AAA went out but appellant called her as she was about to climb the stairs. She went back to the comfort room and when she went inside, appellant applied "mantika" in her anus and while she was seated on the toilet bowl, appellant unzipped his shorts and she saw his penis as "matigas". Appellant then inserted his penis in her anus[15].

On the same day, while she was upstairs in their room, appellant went in and laid down beside her. Appellant removed her panty and put "mantika" in her vagina. Appellant touched her vagina and inserted his middle finger; she felt pain where he touched her, but she did not shout. Then, appellant inserted his penis in her vagina. After that, appellant drank water.

Four (4) days after she was raped by appellant, Benjamin Urbano also raped her inside the room he was occupying in their house. AAA related that Urbano called her to his room. When she went inside, he told her not to tell anybody and then pulled her to lie down on the floor. He removed her shorts and panty and inserted his penis in her vagina. He made a push-and-pull movement thrice. Her vagina bled and she felt pain.

AAA reported the rape incidents to her mother but she did not do anything. It was her uncle, UUU, who accompanied her to the police. After she reported the incidents, she was housed at the Kanlungan Pacita Complex in San Pedro, Laguna.

Appellant[16] denied the charges and proffered the defense of alibi claiming that as a fisherman, he is always at sea, where he was at the time of the incidents. He insinuated that it was Urbano who raped AAA. UUU implicated him because there is bad blood between them.

After trial, the RTC issued the assailed decision, resolving the case as follows:

WHEREFORE, premises considered, the Court ruled (sic) as follows:

(1) In Crim. Case No. 02-207694, accused Melaño Mier y Urbano is GUILTY beyond reasonable doubt of the crime charged and is hereby sentenced to suffer the penalty of Reclusion Perpetua, to pay moral damages in the amount of P50,000.00 and to pay the costs.

(2) In Crim. Case No. 02-207695, the case against accused Benjamin Urbano was DISMISSED per Order dated July 20, 2007.

SO ORDERED.[17]

From the Decision, appellant filed a timely appeal.

#### THE ISSUE

The issue to be resolved in this case is whether or not appellant is guilty of the crime of rape under Section 5(b), Article III of R.A. No. 7610.

#### THE COURT'S RULING

The appeal is denied.

After a careful review of the records of this case, We see no reason to reverse the findings of the RTC, but with modification with regard to the award of damages.

Accused-appellant was convicted of rape under Section 5 (b), Article III of RA 7610, which provides, as follows:

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.

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected 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; and

x x x

Article 335 of the Revised Penal Code has been repealed by Section 4 of RA 8353, making rape a crime against person; rape under Article 266-A, is committed, as follows:

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; 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.

2. By any person who, under any of the circumstances mentioned in paragraph 1 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.

In *People of the Philippines vs. Ben Rubio y Acosta*[18], the Supreme Court repeated the guiding principle in deciding rape cases, as follows:

- (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and
- (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.

As a result of these guiding principles, the credibility of the victim becomes the single most important issue.

Appellant argues that his guilt was not established beyond reasonable doubt because AAA's testimony is tainted with material and substantial discrepancies. Specifically, he avers that:

In her initial testimony, AAA categorically and particularly claimed that she was first sexually abused by the accused-appellant in the comfort room. She never mentioned any other incidents of sexual abuse. However, in her succeeding testimonies, she insisted that she was first raped by the accused-appellant in the morning of 01 November 2002 in one of the upstairs bedroom and then again in the comfort room.

Further, AAA averred the first time she testified that her mother was present at the time of the abuse. But in the subsequent hearings, she maintained that her mother was not at home with only her, the accused-appellant and her siblings.

Finally, when the private complainant recounted the time when she told her mother of what happened to her the latter purportedly did not say anything and was just crying. On cross-examination, however, AAA admitted that her mother did not believe her when she informed the latter that the accused-appellant raped her for she knew it was accused Urbano who sexually abused private complainant.[19]

We affirm the RTC's findings that AAA's testimony is credible and that appellant's alibi that he was out fishing at the time of the incident deserves scant consideration. As pointed out by the People, the inconsistencies in AAA's testimony, raised by appellant, are trivial and cannot overcome the positive testimony of AAA[20]. It is noteworthy that at the time of the incidents, AAA was only ten years old and found to have moderate mental retardation[21]. Moreover, the circumstances present in the case at bar reveal no reason for AAA to charge appellant falsely. It is settled that testimonies of child-victims are normally given full weight and credit since, 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. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also 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 and sincerity. Considering her tender age, AAA could not have invented a horrible story[22].

The pertinent portions of AAA's testimony show such candidness and positive manner:

Q: We have been talking about Melaño Mier who is (sic) to be (sic) your uncle, the husband of your mother. Where is he?

A: Yes, ma'am.

Q: Where is he? Could you point to him?

Court (to witness):

Q: But you saw him?

A: Yes, your honor.

FISCAL IGNACIO (to witness):

Q: You do not want to look at them?

A: I do not like.

Q: Point to them.

INTERPRETER:

Witness pointing to a person(s) who identified themselves as Melaño Urbano (sic) and Benjamin Urbano.

FISCAL IGNACIO (to witness):

Q: During the last scheduled hearing of this case, you testified that Melaño Mier put some oil in [y]our vagina and anus. While he was putting the oil in your vagina, what was your position then?

A: I was lying down.

Q: Where were you lying down?

A: Upstairs.

x x x

Q: Were you dressed or were you naked?

A: I was dressed.

Q: How did he pour the oil? Was your panty removed or not?

A: He removed my panty.

x x xQ: So, which happened first, the one that happened at the comfort room or the one that happened upstairs in the bedroom?

A:Upstairs.

Q: While you were there, after he poured oil into your vagina, he did not do anything aside from putting oil in

your vagina?

A: Nothing.

Q: While he was pouring oil in your vagina, was he saying anything?

A: Nothing.

Q: Did he try to insert his penis in that room?

A: Yes, ma'am.

Q: While you were lying down?

A: Yes, ma'am.

Q: How about Melaño Mier, was he lying down also.

A: No, ma'am.

COURT (to witness):

Q: Before you got your panty and went outside, he has already raped you upstairs?

FISCAL IGNACIO (to witness):

Q: Before you got your panty and went out of that room, were you already raped in that room?

A: Yes, ma'am.

Q: You said that you were raped and he inserted his penis inside your vagina. How did he do it? What was his position relative to yours?

A: I was lying down.

Q: How about Melaño Mier, what was his position?

A: He was also lying down.

x x x

Q: Other than inserting his penis inside your vagina, did he kiss you?

A: No, ma'am.

Q: Did he touch your vagina?

A: Yes, ma'am.

Q: And what did he do while touching your vagina? How did he touch your vagina?

A: He touched my vagina.

Q: You said you were touched. For how long did he touch your vagina?

A: Just a while.

Q: Was it painful?

A: Yes, ma'am.

Q: Did he insert any of his fingers inside your vagina?

A: Yes, ma'am.

Q: Which of these fingers did he insert?

A: The middle finger.

Q: And what did you feel when he inserted his middle finger inside your vagina?

A: It was painful.

Q: Did you shout?

A: No ma'am.

Q: This insertion of his middle finger happened before he inserted his penis inside your vagina?

A: Yes, ma'am.

Q: Now, for how long did his middle finger stay inside your vagina?

A: It was long.

Q: Now, after he has inserted his penis inside his (sic) vagina, what did he do next?

A: He drank water.

x x x.[23]

In light of the straightforward and credible testimony of AAA, accused-appellant's denial and alibi must necessarily fail. In order for alibi to prosper, appellant must establish, by clear and convincing evidence that, first, he was in another place at the time of the offense; and, second, it was physically impossible for him to be at the scene of the crime. The appreciation of the defense of alibi is pegged against this standard and nothing else[24]. Appellant's alibi is that he was a fisherman and therefore he was at sea at the time of the alleged incident. However, appellant admitted that he was at sea only until 10 in the morning[25]. Based on appellant's testimony, it is clear that he was not able to establish by convincing evidence that he was in another place at the time of the offense, and that it was physically impossible for him to be at scene of the crime. Instead, appellant pointed to his uncle/co-accused Urbano, as the perpetrator. Conveniently, Urbano can no longer refute the imputation as he is already dead.

In the case at bar, the prosecution has proven beyond reasonable doubt that AAA was under 12 years old when the rape happened, as shown by her birth certificate, and that appellant had carnal knowledge with AAA per her testimony and the medical report submitted; thus, the crime committed is statutory rape. Under Article 266-B, rape under paragraph 1 of Article 266-A shall be punished by reclusion perpetua. Recent jurisprudence instructs that statutory rape, punishable under Article 266-A in connection with Article 266-B of the Revised Penal Code, as amended, the amounts of P75,000.00 as civil indemnity ex delicto, P75,000.00 as moral damages, and P30,000.00 as exemplary damages should be awarded to the victim[26]. The amounts awarded to the victim shall earn interest at the rate of six percent (6%) per annum, from the date of finality of judgment until fully paid[27]. In this case, the RTC only directed accused-appellant to pay AAA moral damages. Consequently, to conform to recent jurisprudence, a modification of the appealed Decision is in order.

WHEREFORE, premises considered, the Appeal is DENIED. The assailed Decision dated April 26, 2012, issued by the Regional Trial Court, Branch 5, Manila in Criminal Case No. 02-207694, is AFFIRMED, finding accused-appellant Melaño Urbano Mier GUILTY beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of Reclusion Perpetua with MODIFICATION that Melaño Urbano Mier is ordered to pay the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages, with legal interest at six percent (6%) per annum reckoned from the date of finality of this judgment until fully paid.

### **SO ORDERED.**

Dicdican, (Chairperson), and [\*\*]Corales, JJ., concur.

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[\*] Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[\*\*] Acting Junior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[1] Rollo, pp. 33-44.

[2] Records of Crim. Case No. 02-207694, pp. 513-21. Unless otherwise stated, the records referred to in this case is that of Crim. Case No. 02-207694.

- [3] The real name and other personal circumstances of the victim are withheld to protect her privacy pursuant to Republic Act No. 7610 and Republic Act No. 9262, held in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006.
- [4] Exhibit "A", records, p. 199.
- [5] See fn 3.
- [6] Records, pp. 13 and 14.
- [7] Records, p. 458.
- [8] *Ibid.*, p. 2.
- [9] Records, Crim. Case No. 02-207695, p. 1.
- [10] *Ibid.*
- [11] Order dated February 11, 2003, *ibid.*, p. 33.
- [12] TSN dated June 10, 2003, September 8, 2003, April 20, 2004, April 27, 2004, May 4, 2004, January 24, 2005, April 5, 2005, November 22, 2006, February 6, 2008, October 3, 2008, and September 24, 2010.
- [13] TSN dated December 6, 2010,
- [14] TSN dated February 1, 2011.
- [15] TSN dated September 8, 2003, pp. 9-10.
- [16] TSN dated September 6, 2011 and October 10, 2011.
- [17] Records, pp. 520-1.
- [18] G.R. No. 195239, March 7, 2012.
- [19] Appellant's brief, rollo, pp. 41-2.
- [20] Appellee's brief, rollo, pp. 70-1.
- [21] Clinical Abstract dated July 2, 2010, records, p. 410.
- [22] *People of the Philippines vs. Rodolfo de Jesus y Mendoza*, G.R. No. 190622, October 7, 2013 citing *People v. Piosang*, G.R. No. 200329, June 5, 2013.
- [23] TSN dated September 8, 2003, pp. 3-7.
- [24] *Edmundo Escamilla y Jugo vs. People of the Philippines*, G.R. No. 188551, February 27, 2013.
- [25] TSN dated October 10, 2011.
- [26] *The People of the Philippines v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.
- [27] *People of the Philippines vs. Florentino Galagar, Jr.*, G.R. No. 202842, October 9, 2013.

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