

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NAPOLEON BENSURTO, JR. Y BOLOHABO, ACCUSED-APPELLANT.

Ponente: DICDICAN, J.

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DICDICAN, J.:

The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case[1]. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth[2].

Since the private complainant in this rape case is a minor, her real name and the names of her immediate relatives are withheld and, instead, fictitious initials are used pursuant to Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act", and Republic Act No. 9262, also known as the "Anti-Violence Against Women and Their Children Act of 2004".[3]

This is an appeal from the Joint Decision[5] rendered by Judge Arturo Clemente B. Revil, Presiding Judge of Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City ("trial court"), on November 28, 2011 in Criminal Cases Nos. 10225-26 convicting herein accused-appellant Napoleon Bensurto, Jr. ("accused-appellant") of the crime of rape punishable under paragraph 1 of Article 266-A of the Revised Penal Code in relation to Republic Act No. 7610.

The two Informations[5] read as follows:

Crim. Case No. 10225

"That sometime in the month of February, 1999 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his 9-year old daughter, "AAA", against her will.

"CONTRARY TO LAW."

Crim. Case No. 10226

"That sometime in the month of June 2000 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his 9-year old daughter, "AAA", against her will.

"CONTRARY TO LAW."

On July 29, 2004, upon being arraigned of the crime of rape on two counts, the accused-appellant entered a plea

of not guilty thereto[6]. Subsequently, a pre-trial was conducted. Then trial on the merits ensued thereafter.

The prosecution adduced the testimonies of the following witnesses: (1) Dr. Napoleon Villasis (“Dr. Villasis”), the Chief of Mandaon Medicare Community Hospital who examined the victim; (2) Edna Romano (“Edna”), a midwife at the Masbate Rural Health Center who assisted the victim during the examination conducted by Dr. Villasis; (3) “BBB”, the mother of “AAA”; and (4) the private complainant, “AAA” herself.

For the defense, the accused-appellant adduced in evidence his testimony as well as those of “CCC” and “DDD”, the alleged biological father and mother of the victim. The victim “AAA” was likewise presented by the defense as a hostile witness.

Based on the record of the case, the prosecution’s recital of facts is summarized as follows:

Private complainant “AAA” was born on July 10, 1991[7]. According to her birth certificate, her parents are “BBB” (mother) and the accused-appellant (father). “AAA”, however, testified that BBB and the accused-appellant are not her biological parents, as she was only adopted by them when she was very young.

Sometime in February 1999, “AAA”, who was then only nine (9) years old, was left alone by her mother in their house, together with her father, herein accused-appellant.

While she was sleeping in her room, her father, (the accused-appellant) entered thereat with a rope in his hand. She was awakened by the presence of her father who proceeded to tie her feet. The accused-appellant then pulled the victim's underwear to her feet and immediately laid on top of her. Subsequently, the accused-appellant undressed himself and thereafter forced his penis into the victim's vagina. After the accused-appellant satisfied his carnal desires, he threatened the victim not to tell anyone about the incident or else he would kill her and her mother.

For fear of her life as well as of her mother's safety, “AAA” never told anyone about what was done to her by the accused-appellant. However, the incident was repeated sometime in June 2000.

After the accused-appellant ordered their househelper to go home, he instructed the victim to sleep in his room. Left alone with only her father as companion, she was forced to accede to her father's demand. While in the accused-appellant's room, the latter pulled down the underwear of “AAA” and again sexually abused her despite her pleas. Helpless in such state, all that “AAA” could do was to cry. The accused-appellant again told her not to tell anyone under the threat of death upon her and her mother.

The private complainant was able to relate the incident to her mother, the accused-appellant's wife, only in November 2000.

Together with her mother, “AAA” went to Edna Romano, the rural health midwife at Cabitan, Mandaon, Masbate to seek for assistance. Edna Romano accompanied “BBB” and “AAA” to the Mandaon Medicare Community Hospital. According to Edna, the victim told her that she had been sexually molested by her father several times.

On November 15, 2000, “AAA” was examined by Dr. Napoleon Villasis, the Chief of Mandaon Medicare Community Hospital.

Based on the examination conducted upon “AAA”, Dr. Villasis found the following injury:

“Hymenal tears, old, at 10 o'clock position.”[8]

At the time when the rape charges were filed against the accused-appellant, he was already incarcerated at the Bureau of Jail Management and Penology in Mandaon, Masbate but for a different crime which was qualified theft .

To exculpate himself from liability, the accused-appellant offered denial, alibi and ill motive as his defenses. He denied raping the private complainant. He likewise testified that “AAA” was not his daughter.

Contrary to “AAA’s” allegations, the accused-appellant averred that all the accusations against him were mere fabrications of his wife, “BBB”, who only forced “AAA” to file the two criminal cases and testify against him. Since “AAA” was allegedly afraid of her mother, she purportedly concocted these stories against the accused-appellant to send the latter to jail. Furthermore, the accused-appellant narrated that, since he already knew about the illicit affairs of “BBB” with Relino Retudo, “BBB” was only trying to escape from him for fear that he would kill her together with her paramour.

“CCC” and “DDD” both testified that they are the biological parents of “AAA”. “BBB” allegedly borrowed “AAA” from them when the latter was only three or four months old. “DDD” also testified that she was the one who processed the registration of the birth of “AAA”.

In a sudden turn of events, more than seven years after she testified in open court for the prosecution, “AAA” retracted her previous testimony that she was raped by her father, the accused-appellant. Testifying for the defense, “AAA” narrated that she was not raped by her adoptive father, herein accused-appellant. According to “AAA”, she was merely being dictated by “BBB” to fabricate the rape charges against the accused-appellant so as to allow “BBB” to live freely together with her paramour, Relino Retudo.

On November 28, 2011, the court a quo rendered a Decision, the dispositive portion of which reads:

“WHEREFORE, premises considered, the Court finds, accused Napoleon Bensurto y Bolohabo GUILTY of:

- Qualified Rape in Criminal Case No. 10225, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay “AAA” P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

- Qualified Rape in Criminal Case No. 10226, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole and ordered to pay “AAA” P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

“The period of detention of accused Napoleon Bensurto, Jr., y Bolohabo shall be

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“SO ORDERED.”

Notwithstanding the recantation of “AAA”, the RTC gave credence to her earlier testimony wherein she clearly narrated how the accused-appellant raped her.

Aggrieved by the foregoing judgment of conviction, herein accused-appellant interposed the instant appeal raising as lone error the following act purportedly committed by the trial court, to wit:

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

In sum, the primordial issue brought before this Court for resolution is whether the court a quo erred in convicting

herein accused-appellant beyond reasonable doubt of the crime of rape on two counts against him.

After a careful and thorough review of the facts, law and issues of this case, we sustain the accused-appellant's conviction.

Rape is a serious transgression with severe consequences for both the accused and the complainant.[9]

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[10] Rape is committed when the accused has carnal knowledge of the victim by force or intimidation and without consent.[11]

In reviewing rape cases, courts are guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the accused.[12]

The accused-appellant asserted that the totality of evidence for the prosecution would reveal that the guilt of the accused-appellant was tainted with reasonable doubt.

According to the accused-appellant, the medical evidence with respect to the lacerations on the hymen of "AAA" failed to convincingly corroborate the crime of rape as the cause of the same was not determined with possibility.

We are not persuaded by such a contention.

Dr. Villasis' report revealed that "AAA" suffered old hymenal lacerations, at 10 o'clock position. It should be noted that the examination was made in November 2000, months after the incidents of rape occurred in February 1999 and June 2000. The presence of such healed lacerations is consistent with and corroborative of "AAA's" testimony that she had indeed been raped by the accused-appellant months before the date of the examination. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration[13]. When the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established[14].

The accused-appellant likewise claimed that the private complainant does not deserve full faith and credence since on the basis of her recantation, she was merely fabricating the stories out of fear from her mother. He went on to claim that it could be deduced from her testimony that she was not under any threat, coercion or intimidation from the accused-appellant.

It is a settled principle that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand and the manner in which they gave their testimony[15]. Unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected[16].

As the Supreme Court ratiocinated in *People v. Ponsica*[17]:

"It bears emphasis that when the offended parties are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by court trial if the matter about which they testified is not true. It is instinctive for a young, unmarried woman to protect her honor and it is thus difficult to believe that she would fabricate a tale of defloration, allow the examination of

her private parts, reveal her shame to the small town where she grew up, and permit herself to be subject of a public trial had she not really been ravished.”

Ultimately, the issue boils down to the credibility of the private complainant as a witness. Time and again, the Supreme Court has repeatedly ruled that matters affecting credibility are best left to the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the silent records of the case[18].

In the case at bench, it was not adequately and convincingly shown that the court a quo had overlooked or disregarded significant facts and circumstances which, when considered, would have affected the outcome of the case[19] or justify a departure from the assessments and findings of the court a quo.

Besides, the tender age of the private complainant further lends to her credibility[20]. “AAA” was only 9 years old at the time that she was raped by the accused-appellant. No young and decent Filipina would publicly admit that she was ravished and her honor tainted unless the same was true, for it would be instinctive on her part to protect her honor and obtain justice for the wicked acts committed upon her[21].

Thus, we do not find any cogent reason to divert from the findings and conclusions of the trial court as we find them in accord with the law and the evidence on record.

Moreover, as a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration[22]. Indubitably, there is always the probability that it would later on be repudiated[23] and criminal prosecution would thus be interminable[24].

In *People v. Bulagao*[25], the Supreme Court reiterated the rationale for upholding a rape victim's original testimony over that of her subsequent recantation in this wise:

“In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.”

In the case at bench, the determination by the trial court of the credibility of “AAA's” accusations and recantation is facilitated by the fact that her recantation was made in open court, by testifying for the defense. Unlike in cases where recantations were made in affidavits, the trial court in this case had the opportunity to see the demeanor of “AAA” not only when she narrated the sordid details of the alleged rape by her “adoptive” father, but also when she claimed that she made up her previous rape charges upon the ill advice of her “adoptive” mother.

As such, it is difficult to overlook the fact that the trial court convicted accused-appellant even after examining the young witness as she made a complete turnaround and admitted to perjury. The legal adage that the trial court is in the best position to assess the credibility of witnesses thus finds an entirely new significance in this case where “AAA” was subjected to grueling cross examinations, redirect examinations and re-cross examinations both as a prosecution and defense witness. Still, the trial court found that the private complainant's testimony for the prosecution was the one that was worthy of belief.

Even if we disregard the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, it is clear which of the narrations of "AAA" was sincere and which was concocted. As found by the trial court, "AAA's" testimony for the prosecution was clear, candid, and filled with emotions. It is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when "AAA" was already nineteen (19) years old and, as noted by the trial court, unemployed.

Verily, the trial court gave credence to the testimony of "AAA" when she was presented as witness for the prosecution. The RTC found that her clear narration of how the crime of rape on two counts was committed and her categorical statement that the accused-appellant committed said crime, are sufficient to warrant the conviction of the appellant for two counts of rape.

Lastly, the accused-appellant asserted that, if the private complainant was indeed ravished, she would have put up a significant resistance while the accused-appellant was sexually abusing her, which the latter failed to do. For the accused-appellant, such omission on the part of the private complainant tarnished her testimony with uncertainties.

We are not persuaded by the accused-appellant's insistence that the absence of any resistance on the part of "AAA" raised doubts as to whether the sexual congress was without her consent. The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent[26]. Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to her attackers because of fear[27].

Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused[28]. Rape victims show no uniform reaction[29]. Some may offer strong resistance while others may be too intimidated to offer any resistance at all[30]. After all, resistance is not an element of rape and its absence does not denigrate AAA's claim that the accused-appellant consummated his bestial act.

Incidentally, long silence and delay in reporting the crime of rape also do not indicate that the accusations are false[31]. The principle applies with greater force where, as in this case, "AAA" was only 9 years old and was, in all likelihood, susceptible to intimidation and threats of physical harm especially from a close relative.

In sum, the guilt of the accused-appellant was proven beyond reasonable doubt. This Court therefore affirms his conviction for two (2) counts of rape in Criminal Cases Nos. 10225 and 10226.

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DENIED and, consequently, DISMISSED. The appealed Joint Decision rendered by Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City dated November 28, 2011 in Criminal Cases Nos.10225-26 is hereby AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

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.

Elibinas and Paredes, JJ., concur.

[1] People v. Padilla, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 399.

- [2] People v. Lopez, G.R. No. 179714, October 2, 2009, 602 SCRA 517, 526.
- [3] See People vs. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419.
- [4] Records, Criminal Cases Nos. 10225-26, pp. 132-143.
- [5] Ibid, pp. 1-2.
- [6] Ibid, Order, p. 39.
- [7] Ibid, p. 32.
- [8] Ibid, p. 7.
- [9] People v. Ogarte, G.R. No. 182690, May 30, 2011.
- [10] People v. Agsaoay, Jr., G.R. Nos. 132125-26, June 3, 2004, 430 SCRA 450, 459.
- [11] People vs. Salonga, 385 Phil. 1124 (2000).
- [12] People v. Rapisora, G.R. No. 147855, May 28, 2004, 430 SCRA 237, 248-249.
- [13] People v. Limio, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 610.
- [14] Ibid.
- [15] People v. Serrano, 405 Phil. 615, 627 (2001).
- [16] Ibid.
- [17] G.R. Nos. 137661-63, July 4, 2002.
- [18] People v. del Mundo, Sr., G.R. No. 132065, April 3, 2001.
- [19] People v. Matrimonio, 215 SCRA 613 [1992].
- [20] People v. Tan, Jr., 332 Phil. 465.
- [21] People v. Villamor, G.R. No. 124441, October 7, 1998.
- [22] People v. Bertulfo, 381 SCRA 762, May 7, 2002; People v. Nardo, 353 SCRA 339, March 1, 2001; Alonte v. Savellano Jr., 350 Phil. 700, March 9, 1998; Reano v. Court of Appeals, 165 SCRA 525, September 21, 1988.
- [23] People v. Libo-on, 358 SCRA 152, May 23, 2001.
- [24] People v. Garcia, 351 Phil. 624, March 31, 1998; Gomez v. Intermediate Appellate Court, 220 Phil. 295, April 9, 1985; Ibabao v. People, 217 Phil. 210, September 28, 1984.
- [25] G.R. No. 184757, October 5, 2011, 658 SCRA 746.
- [26] People v. David, G.R. Nos. 121731-33, November 12, 2003.
- [27] Ibid.
- [28] Ibid.
- [29] Ibid.
- [30] Ibid.

[31] People v. Suarez, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 346.

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