

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GODOFREDO COMBOY Y CRONICO, ACCUSED-APPELLANT.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Well-established is the rule that testimonies of rape victims, especially child victims, are given full weight and credit[1]. In a litany of cases, the Supreme Court had applied the well-settled rule that, when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed[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]

For adjudication by this Court is an appeal from the Joint Decision[4] rendered by Judge William B. Volante of Branch 16 of the Regional Trial Court of the Fifth Judicial Region in Tabaco City (“trial court”), Albay on February 22, 2013 in Criminal Cases Nos. T-5006, T-5007, T-5008, T-5009 and T-5010 convicting herein accused-appellant Godofredo Comboy y Cronico (“accused-appellant”) of two (2) counts of rape and attempted rape punishable under Article 266-A paragraph 1 of the Revised Penal Code in relation to Republic Act No. 7610.

The separate Informations[5] wherein the accused-appellant was convicted of the charges against him read as follows:

Criminal Case No. T-5006

“That at about 11 o'clock in the evening for the first time in the year 2006, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of “AAA”, with lewd and unchaste design, exercising moral ascendancy upon said private offended party, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter “AAA”, a 11-year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”

Criminal Case No. T-5009

“That sometime in the month of February 2008, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of “AAA”, with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter “AAA”, a 12-year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”

Criminal Case No. T-5010

“That on or about 2 o'clock in the morning of May 17, 2009, in Barangay Bolo, Municipality of Tiwi, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of “AAA”, with lewd and unchaste design, exercising moral ascendancy upon said private offended party, and with the use of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with his own daughter “AAA”, a 11-year old minor girl, while she is asleep or is otherwise unconscious, against her will and consent, to her damage and prejudice.

“ACTS CONTRARY TO LAW.”

On October 23, 2009, upon being arraigned of the charges against him, the accused-appellant entered a plea of not guilty[6] thereto. Subsequently, a pre-trial was conducted on November 13, 2009[7]. A trial on the merits ensued thereafter.

During the trial, the prosecution adduced in evidence the testimonies of the following: (1) “AAA”, the private complainant herein; (2) Dr. Sotera Copino (“Dr. Copino”), Municipal Health Officer of Tiwi, Albay, who examined the victim and issued a medico-legal certificate relative thereto; (3) “BBB”, the brother of the private complainant; and (4) Police Officer 3 Asuncion San Juan (“PO3 San Juan”), a member of the Philippine National Police (“PNP”) assigned at the Women and Children Protection Desk of the Tiwi Municipal Police Station in Albay, who prepared the blotter report with respect to the incident involved herein.

On the other hand, the accused-appellant adduced in evidence his own testimony. The testimony of Juan Comboy (“Juan”), brother of the accused-appellant was likewise presented.

The prosecution’s recital of established facts is summarized as follows:

Sometime in the year 2006, at around 11 o'clock in the evening, the accused-appellant entered the room of “AAA” who was then asleep beside her brother “BBB”. “AAA” was suddenly awakened and saw his father already on top of her. She then felt that the penis of herein accused-appellant was already inside her vagina. Startled by the pain that she was feeling, she pushed the accused-appellant and scampered away from him. She then moved closer to his sleeping brother which left the accused-appellant with no choice but to leave the room.

At the time of the incident, “AAA” was only a minor as evidenced by her birth certificate which indicated that she was born on May 8, 1995[8].

The incident was repeated sometime in February 2008. While “AAA” was sleeping beside her brother, “BBB”, she was again awakened by the presence of her father on top of her with the latter's penis already inside her vagina. The accused-appellant told her not to make any noise so as not to disrupt the sleep of the other members of their family who were also inside the house.

Since her mother abandoned them when she was only 6 years old and she was left in the care of her father and grandmother, “AAA” never spoke to anyone about the first incident. She informed her stepmother about the misdeeds of her father in 2008 but the latter did nothing.

On May 17, 2009, at around 2:00 o'clock in the morning, the same thing happened while “AAA” was fast asleep. But this time, “BBB” already reported the incident to their stepmother.

Afraid that her father might impregnate her, “AAA” went to the house of Donald Andes Briobo (“Briobo”), a Barangay Kagawad, on May 28, 2009 to seek for the latter's assistance. On the following day, Briobo brought “AAA” to the Tiwi Municipal Police Station to report the rape incidents. Police Blotter Entry No. 000-006 was

then issued by Chief of Police, Chief Inspector Rommel de la Rama.

Thereafter, “AAA” went to Dr. Copino for medical examination.

Dr. Copino, the Municipal Health Officer who attended to the private complainant, testified that “AAA” sustained hymenal lacerations at 3 and 9 o'clock positions, which could possibly have been caused by the penetration of a hard object, such as an erect penis, into the vagina of the victim. According to Dr. Copino, the hymenal lacerations sustained by the victim was already healed when he examined the latter on June 1, 2009.

PO3 San Juan testified that she made Police Blotter Entry No. 000-006 which was signed in her presence by the private complainant herein and Briobo.

“BBB” corroborated the testimony of his sister. According to “BBB”, on May 17, 2009 at 2:00 o'clock in the early morning, he saw the accused-appellant on top of “AAA”. At that time, he was already asleep but he was awakened by the crying of his sister, “AAA”. He then saw the accused-appellant remove the underwear of her sister who was still crying. “BBB” then proceeded to call out to her sister and uttered, “Ate!”. Upon seeing that he was already awake, the accused-appellant immediately left the room.

“AAA” then admitted to “BBB” that she had been molested by their father for a number of times already.

In an attempt to absolve himself from criminal liability, the accused-appellant denied the accusations hurled against him and raised the defense of denial and alibi.

The accused-appellant denied that he raped the private complainant on February 2006 as well as on February 2008 on account of the fact that he was purportedly in Manila while the private complainant was in the house of her mother in Bolo, Tiwi, Albay. His children purportedly stayed in his mother's house because they did not like his live-in partner. On cross examination, the accused-appellant clarified that he was working in Olongapo City at the time of the afore-mentioned rape incidents.

With respect to the rape that took place on May 17, 2009, the accused-appellant admitted that he was already in Bicol but he claimed that his children were staying in her mother's house while he was in his own house, together with his live-in partner.

The accused-appellant further testified that his daughter was merely fabricating the stories against him because “AAA” was allegedly not in good terms with his common law spouse. Allegedly, they have scolded “AAA” on several occasions since the latter was always out of the house. In the same manner, Barangay Kagawad Briobo likewise held a grudge against him because of the altercation that he previously had with Briobo's wife.

The testimony of the accused-appellant seemed to be corroborated by his brother, Juan Comboy, who testified that his brother was allegedly working in Manila at the time of the rape incidents. He narrated that he was staying in the house of the accused-appellant to look after the latter's children. He also claimed that their mother's house was at a close distance to the accused-appellant's house.

Juan however admitted that the accused-appellant still visited Bolo, Tiwi, Albay from Manila from time to time to check on his children and that he would sometimes stay therein for a week or two. He likewise testified that the accused-appellant and the private complainant was in their house on the eve of May 17, 2009.

Finding the testimony of the private complainant more credible, the court a quo rendered a Decision on February 22, 2013, the dispositive portion of which reads:

“WHEREFORE, foregoing premises considered, the Court hereby renders joint judgment as follows, to wit:

1) In Crim. Case No. T-5006, accused GODOFREDO COMBOY y CRONICO is found guilty beyond

reasonable doubt of the crime of Rape, defined and penalized under paragraph 1(d), Article 266-A and Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as “The Anti-Rape Law of 1997” and is hereby sentenced to suffer the penalty of reclusion perpetua.

“He is also ordered to pay private complainant “AAA” the sums of P50,000.00, as civil indemnity; P50,000.00 as moral damages; and P30,000.00, as exemplary damages. Costs against the accused;

2) In Crim. Case No. T-5009, accused GODOFREDO COMBOY y CRONICO is also found guilty beyond reasonable doubt of the crime of Rape, defined and penalized under paragraph 1(d), Article 266-A and Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as “The Anti-Rape Law of 1997” and is hereby sentenced to suffer the penalty of reclusion perpetua.

“He is likewise ordered to pay private complainant “AAA” the sums of P50,000.00, as civil indemnity; P50,000.00 as moral damages; and P30,000.00, as exemplary damages. Costs against the accused;

3) In Crim. Case No. T-5010, accused GODOFREDO COMBOY y CRONICO is also found guilty beyond reasonable doubt of the crime of Attempted Rape, defined under Article 266-A and penalized under Article 51, of the Revised Penal Code, as amended, instead of the crime of Rape as charged in the Information. Accordingly, there being no modifying circumstance and applying the provisions of the Indeterminate Sentence Law, as amended, he is hereby sentenced to an indeterminate prison term ranging from two (2) years and four (4) months of prision correccional as minimum to eight (8) years and one (1) day of prision mayor, as maximum.

“He is further ordered to pay private complainant “AAA” the sum of P30,000.00 by way of moral damages. Costs against the accused;

4) In Crim. Case No. T-5007, accused GODOFREDO COMBOY y CRONICO is hereby ACQUITTED for insufficiency of evidence; and

5) In Crim. Case No. T-5008, accused GODOFREDO COMBOY y CRONICO is likewise ACQUITTED for insufficiency of evidence.

xxx xxx xxx

“SO ORDERED.”

The trial court ruled that the private complainant's testimony and positive identification of the accused-appellant were sufficiently borne and established by the evidence on record. According to the trial court, the accused-appellant's denial and alibi were unavailing in the face of the positive identification of the accused-appellant and the credible testimony of the private complainant.

Not satisfied with the foregoing decision, herein accused-appellant interposed the instant appeal raising as errors the following acts that were purportedly committed by the trial court, to wit:

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 IMPROBABLE AND INCREDIBLE TESTIMONY.

III.

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE PRIVATE COMPLAINANT'S APPARENT ULTERIOR MOTIVE IN FABRICATING CHARGES OF RAPE AGAINST THE ACCUSED-APPELLANT.

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 two counts of rape and one count of attempted rape.

After a careful and thorough review of the facts, law and issues of this case, we affirm the trial court's conviction of the accused-appellant of the crimes with which he was charged.

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 defense[12].

The accused-appellant asserted that from the evidence adduced during the trial of the case, the prosecution failed to prove all the elements of rape as defined in Article 266-A of the Revised Penal Code, particularly on the presence of force, threat or intimidation.

The accused-appellant alleged that, there was neither force or intimidation that was employed by him against "AAA". No less than the testimony of "AAA" averred that the accused-appellant merely told her to not make any noise.

The accused-appellant likewise tried to establish that no rape was committed due to the apparent absence of resistance on the part of the private complainant. It was established that, throughout the sexual assault against her, private complainant "AAA" never shouted for help nor created any noise, despite the presence of her brother inside the room and the other members of their family in the house, as if she willingly submitted to the whim of the accused-appellant. For the accused-appellant, these circumstances created serious doubts on "AAA's" credibility.

The Supreme Court has, time and again, ruled that the force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible[13]. That it enables the offender to consummate his purpose is enough[14]. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape[15]. The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age[16].

In the case at bench, the accused-appellant employed that amount of force sufficient to consummate the rape. It must be stressed that, at the time of the first incident, "AAA" was only 11 years old. Considering the tender years of the offended party as compared to the accused-appellant who was in the prime of his life, any form of resistance from her suffices. Force or intimidation is not limited to physical force[17]. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point[18].

Moreover, 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[19]. 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[20].

Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused[21]. Rape victims show no uniform reaction[22]. Some may offer strong resistance while others may be too intimidated to offer any resistance at all[23]. 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.

Furthermore, the Supreme Court held in another case[24] that the force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other[25]. In the instant case, the accused-appellant is the father of the private complainant “AAA”. The accused-appellant clearly employed not only moral ascendancy but also undue influence over her.

Thus, the moral ascendancy and influence that the accused-appellant had over the private complainant sufficiently substituted for the force and intimidation required in rape[26]. Verily, the custodial control and domination over “AAA” of the accused-appellant rendered the former so meek and subservient to the lecherous advances of the latter.

This moral and physical ascendancy as well as influence which the accused-appellant had over “AAA” likewise compelled the latter to conceal her dishonor, hence, her failure to promptly report the abuses committed against her.

With regard to the accused-appellant's assertion that the private complainant could not have possibly identified him as the culprit merely on the basis of his scent and voice is likewise untenable. As ruled in *People v. Nuevo*[27], once a person had gained familiarity with another, identification becomes quite an easy task even from a distance. The sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years[28].

Ultimately, the issue, as raised by the accused-appellant herein, boils down to credibility of a witness. 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[29].

Besides, the tender age of the private complainant further lends to her credibility[30]. “AAA” was only eleven 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[31].

In conformity with the foregoing, it is worth stressing that, in his hopeless attempt to exculpate himself from liability, the accused-appellant imputed ill motives and resentment on the part of “AAA” in charging him with rape. We give scant consideration to the accused-appellant's assertion that “AAA” only charged him with rape because she was mad at him for being too strict. Such a reason is too flimsy and insignificant for a daughter to falsely charge her father with so serious a crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial.

Indubitably, the accused-appellant's imputations of ill motive and resentment on the part of “AAA” for his being strict was a categorical admission that he had moral ascendancy and influence over the private complainant which

sufficiently substituted for the force and intimidation required in rape[32]. It is a settled rule that, in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation[33].

As the Supreme Court ratiocinated in *People v. Ponsica*[34]:

“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.”

Hence, 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.

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DENIED and, consequently, DISMISSED. The appealed Joint Decision rendered by Branch 16 of the Regional Trial Court of the Fifth Judicial Region in Tabaco City, Albay dated February 22, 2013 in Criminal Cases Nos. T-5006, T-5007, T-5008, T-5009 and T-5010 is hereby AFFIRMED.

SO ORDERED.

Paredes[*] and Galapate-Laguilles,**] JJ., concur.

[*] Acting Senior Member, Office Order No. 258-14-ABR dated June 2, 2014.

[**] Acting Junior Member, Office Order No. 258-14-ABR dated June 2, 2014.

[1] *People v. De Guzman*, G.R. Nos. 140333-34, 11 December 2001.

[2] *Ibid*.

[3] See *People vs. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Record, Criminal Cases Nos. T-5006 to 10, pp. 82-112.

[5] *Ibid*, Criminal Case No. T-5006, pp. 16-17; Criminal Case No. T-5009, pp. 16-17.

[6] *Ibid*, Order, p. 29.

[7] *Ibid*, Order, pp. 33-35.

[8] *Ibid*, p. 8.

[9] *People v. Ogarte*, G.R. No. 182690, May 30, 2011.

[10] *People v. Aagsaoay, 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. Antonio*, G.R. No. 157269, June 3, 2004.

[14] *Ibid*.

- [15] Ibid.
- [16] Ibid.
- [17] People v. San Antonio, Jr., G.R. No. 176633, September 5, 2007.
- [18] Ibid.
- [19] People v. David, G.R. Nos. 121731-33, November 12, 2003.
- [20] Ibid.
- [21] Ibid.
- [22] Ibid.
- [23] Ibid.
- [24] People v. Ubiña, G.R. No. 176349, July 10, 2007.
- [25] Ibid.
- [26] Ibid.
- [27] G.R. No. 132169, October 26, 2001.
- [28] Ibid.
- [29] People v. del Mundo, Sr., G.R. No. 132065, April 3, 2001.
- [30] People v. Tan, Jr., 332 Phil. 465.
- [31] People v. Villamor, G.R. No. 124441, October 7, 1998.
- [32] Supra, Note No. 26.
- [33] People v. Noveras, G.R. No. 171349, April 27, 2007.
- [34] G.R. Nos. 137661-63, July 4, 2002.

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