

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN SALAVER Y LUZON, ACCUSED-APPELLANT.

Ponente: BUESER, J.

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BUESER, J.:

Incestuous rape, especially one committed by a father against her own daughter, is a dastardly and repulsive crime, that has no place in our society, and time and again, has been condemned by this Court.[1]

Before this Court on appeal is the Joint Decision dated August 24, 2011, of the Regional Trial Court, Branch 40 of Calapan City (“trial court”) finding accused-appellant Benjamin Salaver (“appellant”) guilty beyond reasonable doubt of the crime of Rape, the dispositive portion of which reads -

“ACCORDINGLY, finding herein accused Benjamin Salaver y Luzon in the instant cases guilty beyond reasonable doubt of three (3) counts of rape, said accused is hereby sentenced to suffer the THREE (3) penalties of RECLUSION PERPETUA without eligibility for parole and with all the accessory penalties as provided for by law. The accused is hereby directed to indemnify the private complainant civil indemnity ex-delicto in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case or a total amount of Two Hundred Twenty -Five Thousand Pesos (Php225,000.00); moral damages in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case or a total amount of Two Hundred Twenty-Five Thousand Pesos (Php225,000.00) and exemplary damages of Twenty-Five Thousand Pesos (php25,000.00) for each case or a total amount of Seventy-Five Thousand Pesos (Php75,000.00).

SO ORDERED.”

The Facts

The above judgment of conviction arose from three Informations filed against appellant as follows -

Criminal Case No. CR - 06-8596:

“That on or about the 19th day of July 2006, at around 5:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Criminal Case No. CR - 06-8597:

That on or about the 23rd day of August 2006, at around 5:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully,

unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Criminal Case No. CR – 06-8598:

That on or about the 8th day of September 2006, at around 7:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Appellant pleaded not guilty to the charges against him and trial on the merits ensued.

The prosecution's evidence consisted of the testimonies of AAA,[2] the private complainant; Dr. Angelita Legaspi; and BBB, AAA's younger brother.

AAA was fifteen (15) years old when her ordeal started. The first one happened on July 19, 2006. She was alone in the house with appellant, her father, when the latter suddenly held her hand and pulled her inside the bedroom. Afraid, she cried. Appellant ordered her to take off her clothes but she refused making the appellant angry. Appellant suddenly pulled down her shorts, removed her panty and made her lie down on the bed. Then, appellant removed his own shorts and ordered her to spread her legs. Thereafter, appellant inserted his penis inside her vagina and she felt pain. She begged him to stop but appellant kept on making an up and down motion. She was scared to shout because the appellant told her that something bad would happen if she did so. After the incident, she told her brother, CCC, about what the appellant did but CCC just ignored her.

The dastardly incident happened again in the afternoon of August 23, 2006. Her father called her into his room, on the pretense that he would tell her something. Thinking that the rape would not be repeated, she obeyed and went in. Once inside, he ordered her to undress. She refused. However, the appellant removed her shorts and panty and raped her once again. This time she informed her mother about what happened but the latter simply told her not to sleep in their house anymore.

Not satisfied with his lustful behavior, the appellant raped AAA, a third time on September 8, 2006. AAA was washing the dishes when the appellant suddenly pulled her inside the bedroom. This time he was drunk. Appellant forcibly removed her clothes, made her lie on bed and held her hands while he inserted his penis inside her vagina. She felt pain while he was making an up and down movement but she could not do anything because he threatened to kill all of them. Meanwhile, BBB, who was asked by the appellant to buy a can of sardines, returned home and was shocked to find their father, the appellant, half – naked lying on top of his sister, AAA. Frightened, he ran away crying and went to the house of their uncle, Gerry Makiplanta (“Gerry”). After the revelations made by AAA and BBB, they were accompanied by DDD to a barangay tanod and AAA was taken to the Tibag Health Center for a medical examination.

On the same date, September 8, 2006, AAA was examined by Dr. Angelita Legaspi (“Dr. Legaspi”), Rural Health Doctor of the Calapan City Health and Sanitation Department. Dr. Legaspi found old healed, complete hymenal

lacerations at 1, 4, 6, 9 and 11 o'clock positions with no hymenal nor vaginal bleeding. Dr. Legaspi said that these lacerations could have been caused by the insertion of a male sex organ into AAA's private organ and it was possible that AAA had been molested three or more times. She did not find any bruises or injuries on the body of AAA.

Appellant denied the accusations. He claimed the charges against him were fabricated by his brother-in-law, Gerry who harbored a grudge against him because Gerry suspects him of having an affair with the former's wife. When asked about the contents of the sworn statement executed by his son BBB, he admitted having been surprised by his son BBB but what BBB saw was appellant putting on his work clothes. However, BBB upon seeing this immediately proceeded to the house of his uncle Gerry.

After due proceedings, the trial court rendered the assailed Joint Decision and found appellant guilty beyond reasonable doubt of three (3) counts of rape. It held -

“The Court believes and so holds, that private complainant [AAA] would not accuse her own father Benjamin Salaver who is the accused in these cases, of so serious a crime like rape, if she has not in truth been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child victims like [AAA] are normally given full weight and credit, since when a woman, more so if she is still a minor, says that she has been raped, she in all effect that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity. (People of the Philippines vs. Alfredo Bon, G.R. No. 166401, October 20, 2006)

In sum, after a judicious evaluation of the totality of evidence adduced by both the prosecution and the defense, this Court finds nothing which would destroy the moral certainty of the accused's guilt.”

Hence, this appeal.

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE, INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANT AND HER WITNESSES.

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE MEDICO-LEGAL FINDINGS THAT NEGATE THE COMMISSION OF THE ALLEGED RAPE.

This Court's Ruling

Appellant argues that the trial court failed to correctly appreciate the testimony of AAA. First, AAA claims that she was raped three times by her father, the appellant, and yet she continued to stay at the same house with him. Assuming that appellant did invite AAA to go with him to the bedroom she always obliged. Second, AAA's statements are inconsistent. She said she told her mother about what happened the first time appellant raped her and on cross-examination she changed her answer. Third, the medical examination showed no signs of force and physical injuries. Fourth, AAA's conduct after the alleged incident, raises grave suspicion as to whether she was raped or not. AAA, resumed her usual routine of school as if nothing horrifying happened. If it is true that she was raped, AAA should have reported the matter to the authorities. Lastly, AAA's testimony shows that she did not scream for help or even attempt to put up any resistance. The evidence alarmingly suggest that she willingly consented to the copulation. Her testimony, that she obeyed the appellant out of fear, is self-serving. There is not a

single testimony that would show that appellant was armed and dangerous. All these, taken together, shows that AAA was never raped by the appellant.

The appeal fails.

Upon evaluation of the evidence, we found credence in AAA's version of events. The prosecution has sufficiently demonstrated that there is ample evidence to prove that appellant had carnal knowledge of the minor victim. The testimony of AAA pertaining to the rape incident shows in detail her horrific experience at the hands of her own father, the appellant. The pertinent portion of her testimony is quoted here -

xxx xxx xxx

“Q

How many times did your father allegedly rape you?

A

Three times, sir.

Q

The first time that he raped you. When was that?

A

In the month of July, sir.

Q

And what year was that?

A

July 2006, sir.

Q

In what particular place wherein your father allegedly raped you?

A

In our house, sir.

Q

The second time that your father allegedly raped you, when was that?

A

In August 2006, sir.

Q

And where was the particular place that your father allegedly raped you for the second time?

A

Also in our house, sir.

Q

And the third time that your father allegedly raped you, when was that?

A

September 8, 2006, sir.

Q

And in what particular place your father allegedly raped you for the third time?

A

In our house, sir.

xxx xxx xxx

Q

According to you, the first time that you were allegedly raped by your father or on July 19, 2006 at around 5:00 o'clock in the afternoon, will you please tell us how the accused was able to rape you?

A

He held me and pulled me.

xxx xxx xxx

Q

And according to you, on July 19, 2006 at around 5:00 o'clock in the afternoon, your father held you in your hand. Is that nor correct?

A

Yes, sir.

xxx xxx xxx

Q

After your father held you in your hand, what else did he do?

A

He brought me in the bedroom, sir.

Q

You did not ask your father why he brought you to that room?

A

I just cried, sir.

Q

Why did you cry?

A

Because I was afraid of what my father would do to me, sir.

Q

After your father brought you in that room while he was holding you in your hand, what else did he do?

A

He told me to remove my short, sir.

Q

And did you comply with his request?

A

I did not, sir.

Q

So, what was his reaction when you refused to remove your short?

A

He got mad.

Q

When he got mad, what else transpired?

A

He was the one who removed my shorts, sir.

Q

And after he removed your shorts, what next transpired?

A

He raped me, sir.

Q

According to you, it was your own father who eventually removed your short, do you remember if you were wearing panty during that time?

A

Yes, sir.

Q

And who removed your panty?

A

My father.

Q

And how about your bra? By the way, were you wearing any brassiere during that time?

A

Yes, sir.

Q

Do you remember if your upper garments were also removed by your father?

A

He did not.

Q

So, you want to tell us that it was your short and panty that were removed by your father?

A

Yes, sir.

Q

After your father successfully removed your short and panty, what did he do?

A

He laid me at the bed and thereafter removed his own shorts, sir.

Q

You want to tell us that the room wherein your father brought you has a bed?

A

Yes, sir.

Q

And while your father was allegedly removing his shorts, you were lying facing him while you were naked from waist down?

A

Yes, sir.

Q

To be particular. At that time that your father removed his short, did you have the opportunity to at least take a look at his penis?

A

Yes, sir.

Q

What does it look like?

A

It was an erect penis.

Q

So, after your father removed his short with an allegedly erect penis, what else did he do?

A

He inserted his erect penis into my vagina, sir.

Q

In short, will you tell us how did the accused insert his penis into your vagina?

A

He instructed me to spread my legs then he inserted his penis.

Q

And what did you feel at that time that your father was successful in inserting his penis into your vagina?

A

I felt pain, sir.

Q

And at that time that your father inserted his penis inside your private part, how did he make the alleged rape? What kind of movement your father did?

A

While holding my hands, my father made an up and down bodily motion, sir.

Q

And at that time that your father was making the up and down bodily motion while holding you in your hands, did you have the opportunity to at least shout or whatever manifestation to show to your father that you did not like what he was doing?

A

I struggled and begged my father not to do that to me, sir.

Q

You want to tell us that it was only physical struggle that you did?

A

Because he warned me that he would do something bad if ever I shout, sir.

Q

So, after that up and down bodily movement made by [y]our own father against you, what else did he do?

A

No more, sir.

xxx xxx xxx

Q

And according to you, the second time that your father sexually abused you was on August 23, 2006 at around 5:00 o'clock again in the afternoon?

A

Yes, sir.

xxx xxx xxx

Q

And the third time, according to you, you were sexually molested by your father was on September 8, 2006 at around 7:00 o'clock in the morning. Who were inside that house during that time, if you could still remember?

A

My brother, sir.

xxx xxx xxx

Q

And tell us the third incident. How was your own father able to rape you?

A

He was drunk at that time and told me to remove my shorts, sir.

Q

And you actually removed your own shorts and panty or was it your own father who again removed your shorts and panty?

A

It was father, sir.

Q

And similar to the first and second incidents, your father made you to lie on that same bed?

A

Yes, sir.

Q

And similar to the July 19 and August 23 incidents, your father again held you in your hands while he was making the upward and downward bodily movements?

A

Yes, sir.

Q

And similar to the first and second incidents, according to you, you were struggling to be freed from your father?

A

Yes, sir.

Q

But similar to those two incidents, you were not successful?

A

Yes, sir.

COURT:

Q

And on the third incident, according to you, you were raped by your father. Was your father successful in inserting his penis into your vagina?

A

Yes, Your Honor.

Q

What did you feel when your father again raped you?

A

I felt pain in my sexual organ, Your Honor.”[3]

It is a settled doctrine in our jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[4] It is likewise elementary that the issue of credibility of witnesses is resolved primarily by the trial court since it is in a better position to decide the same after having heard the witnesses and observed their conduct, deportment and manner of testifying; accordingly, the findings of the trial court are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that it over looked, misunderstood, or misapplied some facts or circumstances of weight or substance which would otherwise affect the result of the case.[5] Appellant's postulation's regarding AAA's inconsistencies fail to impress us.

We find AAA's testimony clear and straightforward, thus the same is worthy of the belief that was bestowed upon it by the trial court.

The inconsistencies being alluded to refer to trivial matters that do not alter the essential fact of the commission of the rape. AAA never wavered in her allegations of rape against appellant. Furthermore, jurisprudence dictates that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor; and that no young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[6] It is difficult to believe appellant's assertion that AAA's story is merely fabricated and if it indeed happened, she willingly submitted to the sexual intercourse. Why would AAA, a minor, make up such a story against the man from whom she depended upon for material and emotional support. Moreover, the crime was witnessed by AAA's brother who narrated in detail what he saw, viz -

“Na ngayon ika-8 ng Setyembre 2006 humigit-kumulang sa ika-7:00 ng umaga ako po ay inutusan ng aking amang si Benjamin na bumili ng sardinas sa tindahan na hindi kalayuan sa aming bahay at pagbalik ko po doon sa amin bahay ay nakita kung naka hubo ang brief nito at walang salawal at ito ay nakapatong sa aking kapatid na si Ate Rona at sa aking pong takot sa aking nakita ako po ay nagtatakbong papalayo at ako po ay nagpunta doon kina Tiyo Jerry Makiplanta kapatid po ng aking ina;

Na nagiiyak pa pa po ng ako ay dumating sa kanila at doon po aking isinumbong ang aking nakita na kung saan po ay nakapatong iyong aking ama dito sa aking kapatid na si Ate Rona at hindi po nagtagal ay dumating na rin po itong si Ate Rona doon sa bahay po ni Tiyo Jerry at nagiiyak at isinumbong nga po iyong ginawang pangagahasa sa kanya;

Na kaagad din pong humingi ng tulong si Tiyo Jerry para mahuli po itong aking ama dahilan po sa ginawang pangagahasa nito sa Ate at akin pong nalaman na itong aking ama ay nahuli na mga pulis at nakakulong na po ito sa kampo sa 409th PMG;”[7]

xxx xxx xxx

Perhaps, AAA would continue to suffer, in total despair, the abuse of her young body and the beastly acts of the appellant, if BBB did not witness the act.

Appellant's assertion that AAA - (a) continued to live with him in their house after the alleged first rape incident; (b) did not immediately report the rape to authorities; and (d) did not have any fresh hymenal lacerations and bruises on her body, give rise to doubt as to the veracity of the rape, deserves scant consideration. First, where did appellant expect AAA to go. She was a minor, only fifteen (15) years of age, when appellant raped her. Second, It is not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant, specially when the assailant is her father. Third, well-settled is the rule that in rape cases, the absence of fresh lacerations in complainant's hymen does not prove that she was not

raped. A freshly broken hymen is not an essential element of rape. Healed lacerations do not negate rape.[8] Lastly, settled is the ruled that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation. The ascendancy or influence necessarily flows from the father's parental authority, which the constitution and the laws recognize, support and enhance, as well as from the children's duty to obey and observe reverence and respect towards their parents. Such reverence and respect are deeply ingrained in the minds of Filipino children and are recognized by law. Abuse of both by a father can subjugate his daughter's will, thereby forcing her to do whatever he wants.[9]

All told, appellant's denial and alibi cannot prevail over the positive testimony of AAA.

WHEREFORE, the Decision dated August 24, 2011 is AFFIRMED in toto.

SO ORDERED.

Zalameda[*] (Acting Chairperson) and Sempio Diy,[**] JJ., concur.

[*] Vice Justice De Guia-Salvador per Office Order No. 184-14-ABR dated May 5, 2014.

[**] Acting Junior Member per Office Order No. 187-14-ABR dated May 6, 2014.

[1] People vs. Dimanawa, G.R. No. 184600, March 9, 2010 citing People vs. Bawang, 396 Phil 311, 314 (2000).

[2] In line with the ruling in People vs. Cabalquinto, 502 SCRA 419 [2006], the real name of the rape victim in this case is withheld and instead fictitious initials are used to represent her. Consistent with the appellant's brief, the initials AAA represents the private complainant, BBB as private complainant's younger brother, CCC as private complainant's older brother, and DDD as private complainant's mother.

[3] TSN, pp. 9-11; 13, 15, 17-24, 30-31, 33-35, August 15, 2007.

[4] People vs. Vicente Candellada, G.R. No. 189293, July 10, 2013.

[5] Supra, Note 3.

[6] People vs. Carlito Espenilla, G.R. No. 192253, September 18, 2013.

[7] Sinumpaang Salaysay of Romnick Salaver y Makiplanta, September 8, 2006.

[8] People vs. Anacito Dimanawa, G.R. No. 184600, March 9, 2010.

[9] People vs. Lusito Baun, G.R. No. 167503, August 20, 2008.

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