

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEO BRAGANZA Y ORANIO, ACCUSED-APPELLANT.

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

The accused-appellant Leo Braganza y Oranio (“accused” for brevity) challenges in this appeal the Decision^[1] dated 30 May 2011 of the Regional Trial Court (RTC) of Las Piñas City, Branch 254 (“court a quo” for brevity) in Criminal Case No. 08-0150, the dispositive portion of which states:

“WHEREFORE, in the light of all the foregoing, the Court finds accused LEO BRAGANZA y ORANIO GUILTY beyond reasonable doubt of the crime of Rape, in relation to RA 7610, and accordingly, sentenced him to suffer imprisonment of RECLUSION PERPETUA, and to pay AAA^[2] the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages, and to pay the costs.

SO ORDERED.”

THE FACTS

On 18 February 2008, accused was charged with the crime of Rape in relation to Republic Act (RA) No. 7610 under the following Information:

“That on or about the 12th day of February, 2008, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a thirteen (13) year old minor, by kissing her whole body, including her vagina and breast, inserting his finger and penis into her vagina through force, or intimidation, and against her will and consent, thereby subjecting her to sexual abuse, an act prejudicial to her physical and psychological development.

CONTRARY TO LAW.”^[3]

Upon arraignment on 22 April 2008, accused pleaded “NOT GUILTY” to the offense charged.^[4] After the completion of the pre-trial conference on 03 June 2008,^[5] trial on the merits ensued.

The Prosecution's version of the events that transpired in this case was narrated in the Brief for the Appellee in this manner:

“At 10:00 a.m. of February 12, 2008, AAA was outside her house helping her mother BBB do the laundry. She asked two pesos from her mother to buy some candies. While AAA was on her way to buy candies, she saw two male individuals who were the “alagad” of appellant Leo Braganza. The two “alagad” approached AAA and told her that the appellant wanted to see her. They threatened AAA that if she refused, the appellant will kill her mother. In reply, AAA said, “I don't want to go.” However, the “alagad” repeated their threat of killing her mother. Frightened, AAA was forced to go with the two “alagad”. They proceeded to the house of the appellant. Upon arrival thereat, one of the “alagads” knocked at the door of the appellant's house. The appellant opened the door and pulled AAA inside. The appellant then ordered his alagad to leave and locked

the door.

Subsequently, the appellant led AAA to the room inside the house. The appellant opened the door of the room and pushed the right shoulder of AAA towards the bed. The appellant started to undress AAA, removed her short pants, and all her other clothing, until AAA was naked. Thereafter, the appellant kissed AAA and threatened to kill her parents if she told her mother about the incident. AAA was frightened but she continued to struggle while the appellant continued kissing her. The appellant succeeded in inserting his two fingers inside the vagina of AAA and later his penis. Afterwards, the appellant told AAA to dress up. After putting on her clothes, AAA started to punch the appellant. The latter only smiled.

Two hours later, the appellant started kissing the neck of AAA again. He inserted his penis in her vagina. Later, he asked AAA to leave the house. Before leaving, AAA borrowed the cellphone of the appellant on the pretext that she would use it to take pictures of her siblings but AAA intended to report the incident to her mother.

AAA went straight home. While at home, BBB noticed something was different about AAA. When asked, AAA, however did not answer. Gina then suspected that something bad happened to AAA.

Later, AAA told her mother and auntie CCC that the appellant raped her. Infuriated, BBB and CCC immediately accompanied AAA to the PNP Women's Desk in Las Piñas City. There, AAA executed an affidavit narrating how she was raped by the appellant.

AAA was also brought to the PNP Crime Laboratory where she was medically examined by Dr. Ruby Grace Sabino-Diangson. Dr. Sabino-Diangson noted a deep healed laceration in the hymen of AAA at the six o' clock position, which could have been caused by the insertion of a finger, a male penis, or any blunt object into her vagina.”[6]

The Prosecution then submitted its formal offer of evidence consisting of the following: 1) Sinumpaang Salaysay of AAA; 2) Sinumpaang Salaysay of BBB; 3) Joint Affidavit of Arrest; 4) Investigation Report; 5) Request for Ano-Genital Examination; 6) Medico-Legal Report R08-339; and 7) Certificate of Baptism of AAA.[7]

On the other hand, the Defense's version is as follows:

“Accused Leo Braganza denied the accusation against him. He came to know of AAA on 7 December 2007. He, together with Daniel, Noel and Dante, were having a drinking spree during that time in his house located at 856 Bagong Lipunan Extension CAA, Las Piñas City, when AAA, a certain Uteng and Agot came to his house. The three (3) chatted with them, exchanged jokes and poured out their bitterness during that time.

The trio stayed with them for about fifteen (15) to twenty (20) minutes. During their conversation, he (accused) asked AAA if she has a boyfriend and she answered that she has. He again asked her who the lucky guy is and she identified him as the friend of her sister. After which, the trio asked permission to leave.

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When AAA returned to the house of the accused sometime in January 2008, she again wanted to borrow money from him to pay their electric bill. She told him that as soon as her sister arrives from Boracay, she will pay him together with the Two Hundred Pesos (Php200.00) she first borrowed. Again, he lent AAA money and gave Five Hundred Pesos (Php500.00).

On 12 February 2008, AAA went to his house again and asked if he can lend her Eight hundred Pesos (Php800.00) to be used for the birthday of her brother and the business of her mother. He refused to lend her any more money until she pays back her previous loans. He, however, gave her One Hundred Pesos (Php100.00) for her brother who is celebrating his birthday. AAA also borrowed his cellphone and promised to return it after thirty (30) minutes.

After thirty (30) minutes or approximately at 11:30 o' clock in the morning, when his cellphone was not yet returned, he went to Daniel Castro who accompanied him to the house of AAA to get the same. When they arrived at the house of AAA, the accused talked to BBB and told her about the cellphone. BBB told them that AAA was not around as the latter was in school. BBB told him that it was the second time AAA did that kind of thing. Upon hearing this, he just told BBB to remind her daughter to just return the cellphone, and that he will back later in the afternoon.

When the accused returned, he talked to the father of AAA and told him about his cellphone. The latter told him that his wife is already looking for AAA in Cavite.

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Daniel De Castro, former helper of the accused, testified that on 12 February 2008, at around 11:00 o' clock in the morning, he was in his house when the accused came to see him. The latter asked him if he can accompany him (accused) to the house of AAA to get his cellphone. Upon arrival thereat, BBB told them that her daughter is not around.“[8]

For its part, the Defense formally submitted the following evidence: 1) Kontra Salaysay of accused; 2) Invoice of Mega Exchange Telecoms; 3) Certification of police blotter; and 4) De Castro Salaysay.[9]

On 30 May 2011, the court a quo rendered the challenged Decision dated 30 May 2011 convicting accused for the crime of rape in Relation to R.A. No. 7610.

ASSIGNMENT OF ERRORS

Accused-appellant seeks his acquittal based on the following grounds, viz:

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.[10]

OUR RULING

He alleges that the court a quo gravely erred in convicting him for the crime of Rape considering that the Prosecution failed to prove his guilt beyond reasonable doubt. He further insists that he did not rape the victim. He also argues that the court a quo merely relied on the victim and her witnesses' "unbelievable testimonies" in convicting him for the crime charged.[11]

We dismiss the appeal.

Article 266-A of the Revised Penal Code defines the crime of rape by sexual intercourse as follows:

ART. 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:

- Through force, threat or intimidation;
- When the offended party is deprived of reason or is otherwise unconscious;

- By means of fraudulent machination or grave abuse of authority;
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Based on the foregoing provision, the elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under 12 years of age.[12]

After a meticulous review of the records of the instant case, We find that the totality of the evidence adduced by the Prosecution proved the guilt of the accused-appellant beyond reasonable doubt.

In establishing that accused had carnal knowledge of AAA through the use of force and intimidation, the Prosecution presented AAA herself who, while recounting her unfortunate ordeal, positively and unwaveringly identified accused as the perpetrator of the crime of rape. To directly quote from the records:

“Q: What is his name?

A: Braganza [herein accused], Ma'am.

Q: What is his first name, do you know?

A: No, Ma'am.

Q: But if you see him, will you be able to identify him?

A: Yes, Ma'am.

Q: Can you see him in Court?

A: Yes, Ma'am.

Q: Can you point to him?

A: That one, Ma'am. (Witness pointing to a person who answered by the name Leo Braganza.)

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Q: So, when this “alagad” of Braganza saw you on February 12, what happened next?

A: That I was summoned by Bossing and if I refuse, my parents will be killed, Ma'am.

Q: What was your answer when they informed you that?

A: I replied to them saying, “I don't want to go.” But they said that if I refuse to come, they will kill my mother, Ma'am.

Q: What did you do when they tell you that if you fail to come they will kill your mother?

A: I went along with them because they might kill my mother, Ma'am.

Q: And where did they bring you?

A: To the house of Leo Braganza, Ma'am.

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Q: So, what happened after you reached that house of Leo Braganza?

A: His “alagad” knocked, Ma'am.

Q: After knocking, what happened?

A: Leo Braganza suddenly pulled me inside the room and they locked the door, Ma'am.

Q: Who locked the door?

A: Leo Braganza, Ma'am.

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Q: What happened when you were inside the house of Leo Braganza?

A: He opened another door and pushed me by my right shoulder, Ma'am.

Q: Are you saying that you entered the room?

A: Yes, Ma'am.

Q: So after he pushed you by your right shoulder to a bed, what happened next?

A: He undressed me and removed my shortpants, Ma'am.

Q: How about the upper garment, did he also remove?

A: Yes, Ma'am. Everything.

Q: Including your underwear?

A: Yes, Ma'am.

Q: How about Leo Braganza, did he also remove his clothes?

A: Yes, Ma'am.

Q: After he undressed you, what happened next?

A: He kissed me all over my body, Ma'am.

Q: What did you do while he was doing that?

A: I was struggling, Ma'am.

Q: Do you remember if he said anything while he was kissing you?

A: He told me not to report to my mother, Ma'am.

Q: What else?

A: That if I report, they will have my parents killed, Ma'am.

Q: How did you feel when he said that threat to you?

A: I was frightened, Ma'am.

Q: What else did he do aside from kissing your body?

A: He inserted his two fingers inside my vagina, Ma'am.

Q: What else happened?

A: He inserted his penis to my vagina, Ma'am.

Q: After he inserted his penis into your vagina, what happened next?

A: I felt something came out which was sticky, Ma'am.”[13] (Emphasis Ours)

It should be emphasized that AAA was just thirteen (13) years old at the time the incident happened and was still a minor when she testified in open court.[14] Jurisprudence teaches us that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[15]

AAA's claim that accused had carnal knowledge of her is further reinforced by other evidence. In the Medico Legal Report R08-339, the result of the anal-genital examination conducted on AAA reveals that her hymen was found to have “deep healed laceration at 6:00 o' clock position” and that the “[m]edical evaluation shows clear evidence of blunt penetrating trauma”. The Prosecution presented Dr. Ruby Grace Sabino-Diangson, the Medico-Legal Officer who prepared the aforementioned Report, who explained her findings as follows:

“Q: I would like also to mark your Honor, the conclusion, it be bracketed and marked as Exh. “F-2”.

As a medical practitioner, Madam Witness, can you tell us the reason or cause of that blunt penetrating trauma who is seen on the genital of the victim?

A: The blunt penetrating trauma as was seen in the genitalia of the alleged victim could be caused by insertion of a male penis, or insertion of any object into the vagina of the alleged victim, Ma'am.

Q: Can you also say that the allegation of the complainant [herein AAA] is consistent, or your findings is consistent to the allegation of the complainant?

A: Yes, Ma'am.”[16] (Emphasis Ours)

It is well-recognized in this jurisdiction that hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[17] Furthermore, when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.[18]

On the other hand, the defense of accused that he did not rape AAA does not impress belief. As often stressed, mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[19] Here, accused's denial of the incident was not substantiated by any clear and convincing evidence; while AAA was able to positively and categorically identify him as the perpetrator. Rudimentary is the principle that the victim's positive identification of the accused, when categorical and consistent, should prevail over the denial of the accused whose testimony is not substantiated by clear and convincing evidence.[20]

In view of the foregoing, We are convinced that the Prosecution was able to establish that accused had carnal knowledge of AAA.

As regards the second element, the Prosecution likewise proved that accused was able to deflower AAA through the use of force and intimidation.

Based on the straightforward testimony of AAA above-mentioned, accused threatened to kill her parents if she

will not accede to his desire. It is settled that force or intimidation is not limited to physical force. 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. The force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. 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. 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.[21]

We emphasize that at the time of the incident, accused was in his early fifties[22] and AAA was only 13 years old. Clearly, AAA was not in the possession and exercise of sufficient mental capacity to make an intelligent decision of whether to submit herself to sexual intercourse that will bring dishonor to herself and her family. At that age, the victim was still not in the right mind to balance, with deliberation, the good or evil effect of submitting to such sexual act,[23] more especially that accused is way older than the victim. Hence, the accused's threat of killing AAA's parents if she will not give in to his bestial desire was enough intimidation to make her succumb to the will of accused.

We, however, note that in the above-quoted Information, the accused was charged with the crime of "rape in relation to Republic Act (RA) No. 7610". It bears stressing that rape cannot be complexed with a violation of R.A. No. 7610 since Section 48 of the Revised Penal Code (on complex crimes) provides that a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. At this juncture, the doctrine enunciated by the Supreme Court in the case of *People v. Dahilig*,[24] as affirmed in the more recent cases of *People vs. Pangilinan*[25] and *People vs. Matias*[26], is instructive and enlightening, thus:

"Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(1)(d) of the Revised Penal Code and penalized with reclusion perpetua. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law."

In this case, the victim was more than 12 years old when the crime was committed against her. The Information against accused stated that AAA was 13 years old at the time of the incident. Therefore, accused may be prosecuted either for violation of Section 5 (b) of RA 7610 or rape under Article 266-A of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the Prosecution's evidence only established that accused had carnal knowledge of AAA through force and intimidation by threatening that he will kill her parents and forcing her to submit to his bestial designs. Thus, the crime of Rape under the Revised Penal Code was established.

In light of the foregoing disquisitions and considering that all the elements of the crime of Rape have been duly established beyond reasonable doubt, We agree with the court a quo in imposing the penalty of reclusion perpetua.[27]

As for the award of damages in AAA's favor, We find it necessary to modify the same in line with the prevailing jurisprudence.[28] Thus, the award of civil indemnity and moral damages both in the amount of Seventy-Five Thousand Pesos (Php75,000.00) should be also be lowered to Fifty Thousand Pesos (Php50,000.00) each; but We

increase from Twenty-Five Thousand Pesos (P25,000.00) to Thirty Thousand Pesos (Php30,000.00) the amount of exemplary damages.

WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision dated 30 May 2011 of the Regional Trial Court (RTC) of Las Piñas City, Branch 254 in Criminal Case No. 08-0150 is AFFIRMED with the following MODIFICATIONS: a) accused-appellant Leo Braganza y Oranio is found guilty beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code; and b) he is ordered to pay AAA the amount of Fifty Thousand Pesos (Php50,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages and Thirty Thousand Pesos (Php30,000.00) as exemplary damages.

SO ORDERED.

Veloso (Chairperson) and Antonio-Valenzuela, JJ., concur.

[1] Penned by Judge Gloria Butay Aglugub; Records, pp. 210-222.

[2] The identity of the private victim is withheld and instead fictitious initials are used to represent her in order to protect her privacy, in accordance with Republic Act No. 9262 (The Anti-Violence Against Women and their Children Act of 2004) and its implementing rules; and Administrative Matter No. 04-10- 11-SC. See also *People vs. Cabalquinto*, G.R. No. 167693, September 19, 2006.

[3] Records, p. 1.

[4] Records, p. 28.

[5] See Pre-Trial Order; Records, pp. 36-38.

[6] Records, pp. 103-104.

[7] Records, pp. 125-126.

[8] Rollo, pp. 65-66.

[9] Records, pp. 160-161.

[10] Records, p. 62.

[11] See Appellant's Brief; Rollo, pp. 60-72.

[12] *People vs. Delos Santos*, [G.R. No. 186499, March 21, 2012.

[13] TSN dated 06 October 2009, pp. 10-19.

[14] See TSN dated 21 April 2009, p. 5 & Records, p. 14.

[15] *People vs. Macafe*, G.R. No. 185616, November 24, 2010; *People vs. Rubio*, G.R. No. 195239, March 7, 2012; *People vs. Manalili*, G.R. No. 191253, August 28, 2013.

[16] TSN dated 08 September 2009, pp. 12-13.

[17] *People vs. Arraz*, G.R. No. 183696, October 24, 2008.

[18] *People vs. Manicat*, G.R. No. 205413, December 2, 2013.

[19] *People vs. Ending*, G.R. No. 183827, November 12, 2012.

[20] *Peopls vs. Laog*, G.R. No. 178321, October 5, 2011.

[21] *People vs. San Antonio*, G.R. No. 176633, September 5, 2007; *People vs. Tuazon*, G.R. No. 168102.. August 22, 2008.

[22] See TSN dated 03 August 2010, p. 3.

[23] Culled from *People vs. San Antonio*, G.R. No. 176633, September 5, 2007.

[24] G.R. No. 187083, June 13, 2011.

[25] G.R. No. 183090, November 14, 2011.

[26] G.R. No. 186469, June 13, 2012.

[27] See *People vs. Pangilinan*, G.R. No. 183090, November 14, 2011.

[28] *People vs. Laurian*, G.R. No. 199868, December 11, 2013; *People vs. Guillen*, G.R. No. 191756, November 25, 2013.

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