

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. GIL RAMIREZ Y SUYU, ACCUSED-APPELLANT.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

Accused-appellant, Gil Ramirez y Suyu,[1] appeals from the Judgment[2] dated April 30, 2012 rendered by the Regional Trial Court, Branch 4, Tuguegarao City, Cagayan, in Criminal Case Nos. 11767, 11768 & 11787, for the crime of Rape, Violation of RA 7610 and Attempted Rape, respectively, committed as follows:

CRIMINAL CASE NO. 11767

For: Rape

"That sometime in the year 1989, in the then Municipality of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, the accused GIL RAMIREZ, father of the private complainant AAA,[3] held and let the private complainant inhale a substance causing her to loss (sic) her consciousness and that thereafter, the accused, with lewd design, did then and there willfully, unlawfully and feloniously lie, and succeeded in having sexual intercourse with the private complainant AAA, who was then a minor being only, a seven-year old girl.

Contrary to law."[4]

CRIMINAL CASE NO. 11768

For: Violation of RA 7610

"That sometime in the year 1996, in the then Municipality of Tuguegarao, Province of Cagayan and within the jurisdiction of this Honorable Court, the accused GIL RAMIREZ who is the father of the private complainant AAA, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously pull towards a bed inside their house the private complainant who [was] then a minor, being only a 14-year old girl; that the accused threatened the private complainant to kill her if she will not succumb to his bestial desires but the private complainant was able to free herself from the clutches of the accused, and then ran away; that the act of the accused debased, degraded and demeaned the intrinsic worth and dignity of the private complainant as a human being which is prejudicial to her development as a minor.

Contrary to law."[5]

CRIMINAL CASE NO. 11787

For: Attempted Rape

"That sometime in the year 1996, in the then Municipality of Tuguegarao, Province of Cagayan and within the jurisdiction of the Honorable Court, the accused GIL RAMIREZ, father of the private complainant AAA, with lewd design and by the use of force and intimidation, did then and there willfully, unlawfully and feloniously pull towards a bed inside their house the private complainant who was then a minor, being only a fourteen-year old girl; that the accused threatened the private complainant to kill her if she will not succumb to his bestial desires but the private complainant was able to free herself from the clutches of the accused, and then ran away.

That the accused commenced the commission of the crime of RAPE directly by overt acts but did not perform all the acts of execution which would have produced it by reason of some causes other than his own spontaneous desistance.

Contrary to law."[6]

FACTS OF THE CASE

When arraigned on July 1, 2008, appellant pleaded not guilty.[7] Thereafter, trial on the merits ensued. The facts, according to the plaintiff-appellee, are as follows:

"AAA was born on November 19, 1982. Her mother is BBB, while her father is herein appellant, Gil Ramirez.

Sometime in 1989, when AAA was only seven (7) years old, while BBB was out of their house at Cruz Village, Caggay, Tuguegarao, Cagayan, appellant purposefully made AAA inhale a certain substance which caused AAA to lose her consciousness. Upon regaining awareness, AAA noticed that there was blood on her shorts and that her underwear was no longer worn properly. Also, she felt pain in her sexual organ.

On another occasion, AAA was at home when appellant started touching her breast and tried to insert his penis into her vagina. AAA fought back but appellant was stronger. Eventually, appellant was able to insert his penis into AAA's anus and vagina. Thereafter, appellant threatened AAA not to report to anyone what happened, otherwise, he would kill her and her mother.

Sometime in 1991, while AAA was inside their house, appellant suddenly dragged and then laid AAA on the bed. At that instance, while holding a knife, appellant again threatened AAA that he would kill all the members of their family if she would report anything to the authorities. The intended rape was not consummated as BBB suddenly arrived.

Sometime in 1996, AAA was sleeping in their house when appellant suddenly pulled her out of bed. Appellant's obvious lewd intent was not accomplished as AAA was able to get out of appellant's grip and run away towards BBB who was outside their house at that time.

For several years, AAA just suffered in silence because of fear for her own life as well as her family's life. At one point, AAA even considered committing suicide by attempting to jump off a bridge; fortunately, a concerned citizen was able to prevent her from taking her own life.

On May 23, 2005, Dr. Annabelle Soliman y Lopez conducted the medical examination of AAA. Dr. Soliman described AAA's hymen as anular, thick, wide and estrogenized. Dr. Soliman explained that in cases of estrogenized hymen which are thick and wide, one may have sexual intercourse without sustaining any injury. Dr. Soliman then added that since AAA was found to have a thick and wide hymen, there is a possibility that she could have no injury even after sexual intercourse."[8]

On the other hand, accused-appellant averred that:

"The accused, Gil Ramirez, is the father of AAA. He denied having raped her in 1989. During that year, his family was residing at Cruz Village in Caggay, Tuguegarao, Cagayan, but sometimes he did not go home for ten (10) to fifteen (15) days because he had to stay at his work in CVMC hospital, where he was in charge of freezing cadavers. Because of this and his low salary, he and his wife always had an argument every time he went home.

The accused likewise denied that he attempted to rape AAA in 1996. She was only coached by her mother to file the cases against him, as the latter wanted revenge against him for having a mistress."[9]

On April 30, 2012, the court a quo rendered its assailed Judgment, the decretal portion of which states:

"WHEREFORE, in view of the foregoing circumstances, this Court finds accused GIL RAMIREZ y Suyu,

1) GUILTY beyond reasonable doubt in Criminal Case No. 11767, for crime of RAPE, defined and penalized by Article 335, paragraph 1, Nos. (2) and (3) and paragraph 6 (1) of the Revised Penal Code and imposes upon him the penalty of RECLUSION PERPETUA. He is likewise ordered to pay the private complainant the amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS as civil indemnity, SEVENTY FIVE THOUSAND (P75,000.00) PESOS as moral damages and TWENTY FIVE THOUSAND (P25,000.00) PESOS as exemplary damages due to the presence of the qualifying circumstances of minority and relationship;

2) GUILTY beyond reasonable doubt in Criminal Case 11769 (sic), for VIOLATION OF RA 7610, under Article III Section 5 (b), otherwise known as the 'Special Protection of Children against Child Abuse, Exploitation and Discrimination of (sic) Act,' as amended by Republic Act 7658 in relation to Section 2 (h) of the Rules and Regulations on Reporting & Investigation of Child Abuse and hereby sentences him to suffer the indeterminate penalty of RECLUSION TEMPORAL or imprisonment of FOURTEEN (14) YEARS and EIGHT (8) MONTHS to TWENTY (20) YEARS. He is ordered to pay the private complainant the amount of TWENTY THOUSAND (P20,000.00) PESOS as civil indemnity, FIFTEEN THOUSAND (P15,000.00) PESOS as moral damages; and

3) GUILTY beyond reasonable doubt in Criminal Case No. 11787, for Attempted Rape, defined and penalized under Article 335, paragraph 1 (No. 1) in relation to paragraph (sic) 6 (attempted stage) of the Revised Penal Code, and he is hereby sentenced to suffer an imprisonment of SIX (6) YEARS and ONE (1) DAY to TWELVE (12) YEARS of prision mayor.

Records show that the accused was under the custody of the Bureau of Jail Management and Penology since May 16, 2008. The preventive imprisonment of the accused during the pendency of this case shall be credited in full in his favor if he abided in writing with the disciplinary rules imposed upon convicted prisoners.

SO ORDERED."[10]

Hence, the instant appeal.

ASSIGNMENT OF ERRORS

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE AND IN RELYING HEAVILY ON THE PROSECUTION'S VERSION.

DISCUSSION

Criminal Case No. 11767 (Rape)

The Supreme Court has been consistent in laying down the guiding principles in reviewing rape cases, to wit: (a) 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; (b) 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 (c) 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.[11] Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of complainant's testimony.[12] Thus, the accused may be convicted solely on the testimony of the rape victim if her testimony is credible, natural, convincing and

consistent with human nature and the normal course of things. For, by its very nature, rape is committed with the least possibility of being seen by the public.[13]

Moreover, the Supreme Court has also time and again mentioned that the trial court's findings on the credibility of witnesses are accorded the highest degree of respect. This Court will not disturb on appeal such findings unless the trial court overlooked substantial facts which could have affected the result of the case.[14] For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing.[15]

In this case, the court a quo accorded full faith and credence to the testimony of AAA by unequivocally stating that:

"This Court cannot find any gripping reason why will a child dragged (sic) her very own father in Court most especially when she accuses him of the sordid acts of sexually molesting her.

From the evidence adduced, this Court finds more convincing the version of the private complainant. When she testified in open court, she unbearably recalled how her father subjected her to sexual abuse. Due to her father's threats and fear for her and her mother's life she chose to keep her ordeal to herself. Yet, as she longed to find justice on the unpardonable thing done to her person, she bravely reported these incidents that led to the filing of the same in Court." [16]

Absent any evidence that the court a quo's assessment of AAA's credibility was tainted with arbitrariness or oversight of a fact of consequence, We find no cogent reason to reverse the same. To reiterate, the manner of assigning values to declarations of witnesses at the witness stand is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility. In essence, when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial court is generally given the highest degree of respect, if not finality.[17]

Besides, it is against human nature for a young girl to fabricate a story that would expose herself as well as her family to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her father.[18]

For his defense, accused-appellant contends that AAA's testimony does not establish that he had carnal knowledge of her. By definition, rape is committed by having carnal knowledge of a woman with the use of force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under twelve (12) years of age or is demented. Although full penetration is not required to sustain a conviction of rape, there must at least be proof beyond reasonable doubt of the entrance of the male organ within the labia of the pudendum of the female organ.[19]

Indeed, no direct evidence exists showing the required penetration. However, in rape cases, carnal knowledge of the victim by the accused may be proven not only by direct evidence but also by circumstantial evidence, provided that there is more than one circumstance; the facts from which the inferences are derived are proven; and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[20]

In the case at bar, the prosecution has successfully established the following circumstances and facts that, when taken together, very well constitute evidence of guilt beyond reasonable doubt, to wit: (1) AAA was sleeping in their house; (2) AAA was awakened when accused-appellant forced AAA to smell a substance that caused her to

lose consciousness; (3) AAA positively identified accused-appellant as the only person she saw before she lost consciousness; (4) upon regaining consciousness, there was blood on AAA's shorts; (5) AAA's panty was also reversed; and (6) AAA felt pain in her vagina. Given the foregoing circumstances, there is no other conclusion that We can make with moral certainty other than that accused-appellant raped the victim.

Accused-appellant further claims that AAA was just coached by BBB to testify falsely against him.[21] According to him, criminal cases were filed against him as an act of revenge by BBB who caught him with a mistress.[22] Ill-motives, however, become inconsequential if the rape victim gave an affirmative and credible declaration, which clearly established the liability of the accused.[23] In this regard, the court a quo correctly mentioned that the "[c]lear, straight forward testimony, and consistent positive identification of the accused by the private complainant stands over the defense of denial and imputation of illmotive on the part of the private complainant." [24]

Unsurprisingly, accused-appellant also proffers the defense of denial. His bare denial of the crime charged, however, is insufficient to exculpate him. Suffice it to say that aside from the fact that it is the weakest defense an accused could avail of, denial cannot prevail over the clear and positive identification of the accused-appellant as the perpetrator of the crime.[25]

Neither are We impressed with accused-appellant's assertion that AAA's failure to immediately report the incident to the proper authorities affected her credibility. Delay in reporting an incident of rape is not necessarily an indication that the charge is fabricated. It could be attributed to the private complainant's tender age and the appellant's threats. Indeed, a rape victim's actions are oftentimes influenced by fear, rather than reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[26]

Anent the penalty and civil liabilities to be imposed upon the accused-appellant, *People vs. Fragante*[27] is instructive:

"For appellant's guilt for the crime of rape committed against his own minor daughter AAA, we sustain the penalty of reclusion perpetua imposed on appellant. While the Court of Appeals correctly reduced the penalty of death to reclusion perpetua, the Court of Appeals failed to indicate that the reduction of the penalty to reclusion perpetua is without eligibility for parole in accordance with Sections 2 and 3 of Republic Act No. 9346.

As regards appellant's civil liability, we affirm the award of moral damages and civil indemnity, which are automatically granted without need of proof or pleading, each in the sum of P75,000. However, we increase the award of exemplary damages from P25,000 to P30,000 consistent with prevailing jurisprudence."

In view of the foregoing, We modify the court a quo's ruling and hereby sentences the accused-appellant to suffer the penalty of reclusion perpetua without eligibility for parole; and to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages.

Criminal Case No. 11787 (Attempted Rape)

Attempted rape is committed when the offender commences the commission of rape directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[28] In the crime of rape, penetration, however slight, is an essential act of execution that produces such felony.[29] Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.[30]

Hence, the gauge in determining whether the crime of attempted rape had been committed is the commencement of the act of sexual intercourse, i.e., penetration of the penis into the vagina, before the interruption.[31]

In the case at bar, the accusation and conviction of accusedappellant for attempted rape were based on the following testimony of AAA:

DIRECT EXAMINATION

"Q:

You also charged your father for attempted rape committed against you in the year 1996, is that correct?

A:

Yes, sir.

Q:

Where?

A:

At home, sir.

Q:

What were you doing before your father attempted to rape you in 1996?

A:

: I was lying down sleeping and I suddenly woke up.

Q:

Why were you woke (sic) up?

A:

Because he pulled me, sir.

Q:

He pulled you where?

A:

He pulled me at my bed where I was sleeping, sir.

Q:

After pulling you at your bed, what did you do?

A:

He pulled me but I was able to ram (sic) away from him, sir.

Q:

Where did you proceed?

A:

Outside our house to where my mother was at that time.

Q:

What did you tell your mother?

A:

I was not able to tell my mother what he did to me because I was afraid, sir."[32]

CROSS-EXAMINATION

"Q:

By the way, in the year 1996, what did Gil Ramirez do to you if you can still recall?

A:

He did something to me sir. He pulled me from my bed but he was not able to commit sexual abuse because I ran sir.

Q:

And you ran to your mother, is that correct?

A:

Yes sir.

Q:

But you never told to (sic) your mother?

A:

Yes sir."[33]

Clearly, the prosecution utterly failed to prove that accused-appellant started to rape AAA and had commenced the performance of acts of carnal knowledge. He did not even force her to lie down or forcibly remove her clothes. On the contrary, accused-appellant pulled AAA from her bed, which is not totally indicative of an intent to rape the victim. For what reason accused-appellant pulled AAA from her bed is anybody's guess.

It would be stretching to the extreme our credulity if We were to conclude that pulling someone from a bed is attempted rape. Hence, We conclude that accused-appellant's conviction of attempted rape in Criminal Case No. 11787 is unsupported by evidence. Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt.[34]

Criminal Case No. 11768 (Violation of RA 7610)

Based on the same set of evidence used by the prosecution on the charge of attempted rape, accused-appellant was also charged with violation of Section 5(b), Article III of Republic Act 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act," in relation to Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

Section 5(b), Article III of Republic Act 7610 provides:

"Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge

in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

x x x"

The essential elements of sexual abuse under the afore-quoted provision are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child whether male or female, is below 18 years of age.[35]

Meanwhile, under Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, lascivious conduct is defined as the "intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."

Here, it is undisputed that no sexual intercourse took place because AAA's testimony resolutely point to the fact that she was able to run away from accused-appellant after the latter pulled her from the bed where she was sleeping. Neither is there any doubt to Us that the presence of lascivious conduct on the part of accused-appellant was not firmly established by the prosecution, for there is no evidence to the effect that accused-appellant touched AAA's genitalia, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass or degrade AAA or to gratify his sexual desires.

Evidently, the first element of sexual abuse under Section 5(b), Article III of Republic Act 7610 is not obtaining in this case, thus, We cannot also hold accused-appellant liable for the offense of sexual abuse under the said law.

WHEREFORE, premises considered, We find accusedappellant GIL RAMIREZ y SUYU GUILTY of Rape in Criminal Case No. 11767. The assailed Judgment of the court a quo in Criminal Case No. 11767 is MODIFIED to the effect that accused-appellant is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole; and ordered to pay AAA P75,000 as civil indemnity, P75,000 as moral damages, and P30,000 as exemplary damages.

In Criminal Case No. 11768, We find accused-appellant GIL RAMIREZ y SUYU NOT GUILTY of Violation of RA 7610, particularly Sexual Abuse, on the ground of reasonable doubt and accordingly ACQUITS him of the said charge; and

In Criminal Case No. 11787, We likewise find accusedappellant GIL RAMIREZ y SUYU NOT GUILTY of Attempted Rape on the ground of reasonable doubt and accordingly ACQUITS him of said offense.

SO ORDERED.

Tijam and Baltazar-Padilla, JJ., concur.

[1] Hereinafter accused-appellant

[2] Original Records, Criminal Case No. 11767, pp. 186-195; Criminal Case No. 11768, pp. 161-170; Criminal Case No. 11787, pp. 164-173, penned by Judge Lyliha L. Abella-Aquino

[3] Pursuant to Republic Act No. 9262, otherwise known as the Anti-Violence against Women and their Children Act of 2004, and its implementing rules, the real names of the victims, as well as those of their immediate family or household members, are withheld and fictitious initials instead are used to represent them, to protect their privacy.

[4] Original Records, Criminal Case No. 11767, p. 1

[5] Original Records, Criminal Case No. 11768, p. 1

[6] Original Records, Criminal Case No. 11787, p. 1

[7] Original Records, Criminal Case No. 11767, p. 64; Criminal Case No. 11768, p. 59; Criminal Case No. 11787, p. 64

[8] Rollo, pp. 114-115

[9] Rollo, p. 57

[10] Original records, Criminal Case No. 11767, p. 195; Criminal Case No. 11768, p. 170; Criminal Case No. 11787, p. 173

[11] People vs. Serrano, G.R. No. 137480, February 28, 2001

[12] People vs. Turco, Jr., G.R. No. 137757, August 14, 2000

[13] People vs. Sanchez, G.R. No. 124393, January 31, 2002

[14] People vs. Li Yin Chu, G.R. No. 143793, February 17, 2004

[15] People vs. Sapigao, Jr., G.R. No. 178485, September 4, 2009

[16] Original Records, Criminal Case No. 11767, p. 191; Criminal Case No. 11768, p. 166; Criminal Case No. 11787, p. 169

[17] People vs. Subesa, G.R. No. 193660, November 16, 2011

[18] People vs. Vidana, G.R. No. 199210, October 23, 2013

[19] Peoples vs. Poras, G.R. No. 177747, February 16, 2010

[20] People vs. Sabardan, G.R. No. 132135, May 21, 2004

[21] TSN of Gil Ramirez, October 5, 2011, p. 2

[22] TSN of Gil Ramirez, October 5, 2011, p. 3

[23] People vs. Opong, G.R. No. 177822, June 17, 2008

- [24] Original Records, Criminal Case No. 11767, p. 193; Criminal Case No. 11768, p. 168; Criminal Case No. 11787, p. 171
- [25] People vs. Lozano, G.R. No. 125080, September 25, 1998
- [26] People vs. Maglente, G.R. No. 179712, June 27, 2008
- [27] G.R. No. 182521, February 9, 2011
- [28] People vs. Contreras, G.R. Nos. 137123-34, August 23, 2000
- [29] People vs. Banzuela, G.R. No. 202060, December 11, 2013
- [30] Perez vs. Court of Appeals, G.R. No. 143838, May 9, 2002
- [31] People vs. Dominguez, Jr., G.R. No. 180914, November 24, 2010
- [32] TSN of AAA, March 10, 2010, p. 3
- [33] TSN of AAA, May 19, 2010, p. 3
- [34] People vs. Canlas, G.R. No. 141633, December 14, 2001
- [35] People vs. Abello, G.R. No. 151952, March 25, 2009

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