

CLEMENT JOHN FERDINAND M. NAVARRETE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 147913. January 31, 2007

Ponente: CORONA, J.

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CORONA, J.

This petition for review on certiorari[1] assails the September 29, 2000 decision[2] and May 4, 2001 resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 20531 which affirmed the January 16, 1997 decision of the Regional Trial Court (RTC), Branch 171, Valenzuela,[4] Metro Manila in Criminal Case No. 5302-V-96.[5]

Petitioner Clement John Ferdinand M. Navarrete was charged with the crime of statutory rape of BBB[6] under the following information:

That on or about October 30, 1995 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, did then and there [willfully], unlawfully and feloniously have sexual intercourse with one [BBB], age[d] 5 years old.

CONTRARY TO LAW.[7]

On arraignment, petitioner pleaded not guilty.

The facts show that BBB, who was at that time five years old, and petitioner were neighbors, their houses being adjacent to each other.[8] On October 30, 1995, at around past 9:00 in the evening, BBB went to petitioner's house to watch television, which was something she often did.[9] Only petitioner and BBB were there that night.[10] BBB testified that it was on this occasion that petitioner sexually abused her, "placed his penis [in her] vagina" twice, poked her vagina with a "stick with cotton"[11] and boxed her on the right side of her eye.[12] Then, petitioner brought her to the comfort room and pointed a knife to her throat.[13] Afterwards, she and petitioner watched a pornographic movie[14] together.[15]

AAA, BBB's mother, testified that around 10:30 p.m., BBB went out of petitioner's house. While trembling and crying, BBB embraced her mother and told her that "Kuya Ferdie sinundot ako." [16]

The next day, on October 31, 1995, Dr. Noel Minay, medico-legal officer of the National Bureau of Investigation, examined BBB. He found that her maidenhead was short, intact and had a narrow opening at 0.3 cm. in diameter. He concluded that these findings precluded complete penetration by an average-sized Filipino male organ in full erection.[17]

Testifying in his own behalf, petitioner denied the accusation against him and claimed that AAA merely concocted the charge against him. He alleged that she had ill feelings against his mother who she thought had something to do with the separation of her (AAA's) son from the Philippine Postal Corporation. He also posited that she resented the Navarretes' refusal to allow her to place a "jumper" on their electrical connection.[18]

In a decision dated January 16, 1997, the RTC absolved petitioner of statutory rape as there was no clear and positive proof of the entry of petitioner's penis into the labia of the victim's vagina. However, it convicted petitioner for acts of lasciviousness under Article 336 of the Revised Penal Code (RPC) in relation to Section 5(b), Article III of RA 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act):

WHEREFORE, [petitioner] Clement John Ferdinand Navarrete is sentenced to suffer an indeterminate imprisonment of TWELVE (12) YEARS and ONE (1) DAY of RECLUSION TEMPORAL, as minimum to [SIXTEEN] (16) YEARS of RECLUSION TEMPORAL, as maximum with the accessory penalties prescribed by the law and to pay the costs.

The accused is hereby ordered to indemnify the victim the amount of P20,000.00 as moral damages and the amount of P10,000.00 pursuant to Section 31 of the [Act].[19]

On appeal, the CA affirmed the decision of the RTC. Thus, this petition.

Petitioner asserts that he cannot be convicted of acts of lasciviousness in relation to Section 5(b), Article III of RA 7610, a crime not specifically alleged in the information which charged him with statutory rape. Otherwise, his constitutional right to be informed of the nature and cause of the accusation against him would be violated. He likewise contends that his guilt for the said offense was not proven beyond reasonable doubt.

There is no merit in the petition.

The Constitution mandates that the accused, in all criminal prosecutions, shall enjoy the right to be informed of the nature and cause of the accusation against him.[20] From this fundamental precept proceeds the rule that the accused may be convicted only of the crime with which he is charged.[21]

An exception to this rule is the rule on variance in Section 4, Rule 120 of the Rules of Court:[22]

Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information, and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in that which is proved.

Petitioner was found guilty of violating Article 336 of the RPC in relation to Section 5(b), Article III of RA 7610:

Sec. 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:

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: Provided, That when the victim 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, [or] the [RPC], 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.

Under this provision, when the victim is under 12 years old, the accused shall be prosecuted under either Article 335 (for rape) or Article 336 (for acts of lasciviousness) of the RPC. Accordingly, although an accused is charged

in the information with the crime of statutory rape (i.e., carnal knowledge of a woman under twelve years of age[23]), the offender can be convicted of the lesser crime of acts of lasciviousness, which is included in rape.[24]

The case of *People v. Bon*[25] is squarely in point. In that case, the accused was charged with the rape of a six-year old girl. The Court ruled that rape was not proved beyond reasonable doubt. We, however, held that the accused was “liable for the crime of acts of lasciviousness, as defined and penalized under Article 336 of the RPC in relation to RA 7610”[26] since all the elements of this offense were established. Petitioner cannot therefore successfully argue that his constitutionally protected right to be informed of the nature and cause of the accusation against him was violated when he was found guilty under Section 5 of RA 7610.

Petitioner next contends that his guilt was not proven beyond reasonable doubt. We disagree.

In *Amplayo v. People*,[27] we declared that pursuant to Section 5 (b) of RA 7610, before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of RA 7610.[28]

The elements of the crime of acts of lasciviousness under Article 336 of the RPC are the following:

- (1) The offender commits any act of lasciviousness or lewdness;
- (2) It is done under any of the following circumstances:
 - a. By using force or intimidation; or
 - b. When the offended party is deprived of reason or otherwise unconscious; or
 - c. When the offended party is under 12 years of age; and

(3) The offended party is another person of either sex. (emphasis supplied)[29]

The general rule is that the factual findings of the trial court deserve a high degree of respect and will not be disturbed on appeal in the absence of any clear showing that it overlooked, misapprehended or misapplied some facts or circumstances of weight and substance which can alter the result of the case.[30] We uphold the findings of fact of the RTC, as affirmed by the CA.

The RTC and CA did not find evidence of the entrance of petitioner’s penis into the labia of the victim’s female organ. Nevertheless, BBB’s testimony established that petitioner committed lascivious acts on her:

BY ATTY. PRINCIPE: (to witness)

Q: [BBB], do you know accused Ferdinand Navarette?

A: Yes, sir.

Q: Also named Clement John Ferdinand Navarette?

A: Yes, sir.

Q: Why do you know Clement John Ferdinand Navarette?

A: Because he is the one who did something to me.

Q: What do you mean by “umano”?

A. He placed his penis into my vagina. (pekpek)

Q: How many times?

A: Two times, sir.

Q: Then he placed his penis to your vagina, what did you feel?

A: I felt pain, sir.

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Q: What else happened after Ferdinand Navarette put his penis twice on your vagina which you told the Court you felt pain?

A: He locked me inside the [comfort room] and he took a knife.

Q: Now, when you were inside the Comfort Room and you told the Court that he got a knife, what happened next, if any?

A: He stabbed me.

Q: Where?

A: (Witness pointing the throat.)

Q: And when you said “sinaksak” on your throat you mean accused only pointed [to] your throat?

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COURT:

[All right], witness may answer.

(Witness pointing to her throat.)

Q: And what is the meaning that she wants to convey?

ATTY. TENEZA:

Witness holding her throat.

ATTY. PRINCIPE:

Pointing. Very clear.

Q: When you pointed your throat, what do you want to convey [with] the word stab?

ATTY. PRINCIPE:

A. Sinaksak. That is, Your Honor. Because this is her interpretation of pointing the knife.

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ATTY. PRINCIPE:

After the accused locked you in the [comfort room] with the knife, according to you, what happened next, if any?

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Witness:

A: Then I went [out] of the [comfort room] when I heard my mother calling me.

ATTY. PRINCIPE: (to the witness)

Q: And where was your mother at that time?

A : She was outside and waiting for my Kuya [XXX].

Q: When you were called by your mother, according to you, did you approach your mother when hearing that she was calling you?

ATTY. TENEZA:

It was already answered, Your Honor.

ATTY. PRINCIPE :

No.

COURT:

Witness may answer.

ATTY. PRINCIPE: (to the witness)

Q: And what did you tell your mother, if any?

A: I embraced her.

Q: After embracing your mother, did you tell [her] something if any?

A: She [asked] me [why] I was still watching T.V. when the people of the house were already sleeping.

Q: What was your reply to your mama?

A: Because I used to watch T.V. [in] that place.

Q: Did you report to your mother what Ferdinand Navarette did to you?

A: Yes, sir.

Q: How did you tell your mother?

A. I told my mama “Binastos ako ni Ferdie.”

Q: How did you relate that you were “binastos ni Ferdie”?

A: I told my mama: Mama, Ferdie [placed] his penis on my vagina and then he placed a stick with cotton on my vagina and then he boxed me, on my right side of my eye.

Q: How many times were you boxed by Ferdie, the accused?

A: Two (2) times, sir.[31]

The foregoing shows that all the elements of acts of lasciviousness were proved. That BBB was less than twelve years old at the time of the commission of the offense was not disputed. The prosecution established that petitioner intentionally “placed his penis” in BBB’s vagina but without any indication that he was able to penetrate her:

Victim [BBB] testified that the accused “placed his penis into my vagina” and “[placed] a stick with cotton [in] my vagina” but the [specific] part of her vagina where the penis was placed was not indicated.

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The Court cannot [assume] without doing violence to the precious jural yardstick but the prosecution must prove and present clear, positive and conclusive evidence of the act complained of particularly that the penis of the accused gained entrance [in] the labia majora of the organ of the victim. Not even in the medical findings and testimony of the NBI Medico-Legal Officer Dr. Noel Minay who conducted physical/genital examinations on the victim could [we] find support to justify an inference that there was entrance of the male organ of the accused within the labia of pudendum.[32]

Both lower courts also found that petitioner poked victim's vagina with a stick with cotton and watched a pornographic movie with her.[33] These acts are undoubtedly acts of lasciviousness or lewdness.[34]

The elements of sexual abuse under Section 5 (b) of RA 7610 that must be proven in addition to the elements of acts of lasciviousness are as follows:

- The accused commits the act of sexual intercourse or lascivious conduct.
- The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.
- The child, whether male or female, is below 18 years of age. (Emphasis supplied)[35]

"Lascivious conduct" is defined under Section 2 (h) of the rules and regulations[36] of RA 7610 as:

[T]he 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.

The aforestated acts of petitioner undeniably amounted to lascivious conduct under this law.

Petitioner insists that Section 5 (b) of RA 7610 refers only to those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution and argues that this does not apply in this case since the victim is not a child exploited in prostitution.[37]

Petitioner's argument is untenable. In *People v. Larin* (and reiterated in several subsequent cases),[38] we emphasized that the law covers not only a situation in which a child is abused for profit but also one in which a child, through coercion or intimidation, engages in any lascivious conduct.[39] The very title of Section 5, Article III (Child Prostitution and Other Sexual Abuse) of RA 7610 shows that it applies not only to a child subjected to prostitution but also to a child subjected to other sexual abuse. A child is deemed subjected to "other sexual abuse" when he or she indulges in lascivious conduct under the coercion or influence of any adult.[40] Here, BBB was sexually abused because she was coerced or intimidated by petitioner (who poked her neck with a knife)[41] to indulge in lascivious conduct.

Hence, the prosecution was able to prove beyond reasonable doubt that petitioner committed acts of sexual abuse against BBB. The RTC found BBB's testimony to be clear, candid, and straightforward. Her testimony was worthy of belief since she was young and had no ill-motive to falsely testify and impute a serious crime against the accused.[42] In cases of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[43]

Moreover, courts are inclined to lend credence to the testimony of children of tender years. The revelation of an innocent child whose chastity has been abused deserves full credit, as her willingness to undergo the trouble and the humiliation of a public trial is an eloquent testament to the truth of her complaint.[44] In so testifying, she could have only been impelled to tell the truth.[45]

The trial court's evaluation of the testimonies of witnesses is given great respect by the appellate court in the absence of proof that it was arrived at arbitrarily or that the trial court overlooked material facts.[46] The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the direct opportunity to observe the candor and demeanor of the witnesses at the witness stand and detect if they are telling the truth or not.[47] We will not interfere with the trial court's assessment of the credibility of witnesses.

In the face of the serious accusation against him, petitioner could only interpose denial as defense. Denial is an inherently weak defense and cannot prevail over the positive and categorical identification provided by the complainant. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law.[48] As between the positive declaration of the prosecution witness and the negative statement of the accused, the former deserves more credence.[49] The lower courts also correctly disbelieved the corroborating testimonies of petitioner's aunt and sister.[50]

Petitioner asserts that the RTC should not have given evidentiary weight to the inconsistent and contradictory testimonies of the prosecution witnesses. He urges this Court to apply the Latin maxim *falsus in unus, falsus in omnibus* (false in part, false in everything).

We disagree. We have stated that:

[T]he maxim or rule "*falsus in [unus], falsus in omnibus*" does not lay down a categorical test of credibility. It is not a positive rule of law or of universal application. It should not be applied to portions of the testimony corroborated by other evidence, particularly where the false portions could be innocent mistakes. Moreover, the rule is not mandatory but merely sanctions a disregard of the testimony of a witness if the circumstances so warrant. To completely disregard all the testimony of a witness on this ground, his testimony must have been false as to a material point, and the witness must have a conscious and deliberate intention to falsify a material point.[51]

Furthermore, it should be borne in mind that even the most candid witness oftentimes makes mistakes and confused statements. Instead of eroding the effectiveness of the evidence, such imperfections and discrepancies in the testimony can in fact be considered as signs of veracity.[52] Aside from the fact that it is very difficult to give a mechanical and accurate account of a traumatic and horrifying experience,[53] the victim here was a mere five-year old girl when she was put on the witness stand. We should not expect a five-year old child to explain with exact precision the nature of the acts done to her, given her naiveté and still undeveloped vocabulary and command of language.[54] Despite this limitation, however, the victim never wavered in her claim that petitioner molested her.

In sum, we find petitioner guilty beyond reasonable doubt of acts of lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of RA 7610.

WHEREFORE, the petition is hereby DENIED. The September 29, 2000 decision of the Court of Appeals affirming the decision of the Regional Trial Court of Valenzuela, Branch 171, in Criminal Case No. 5302-V-96 finding petitioner guilty beyond reasonable doubt of acts of lasciviousness and sentencing him to suffer imprisonment of twelve years and one day of reclusion temporal, as minimum, to sixteen years of reclusion temporal, as maximum, as well as to pay P20,000 moral damages and P10,000 fine is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno C.J., (Chairperson), Sandoval-Guitierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Ramon Mabutas, Jr. (now retired) and concurred in by Associate Justices Roberto A. Barrios and Andres B. Reyes of the Special Eighth Division of the Court of Appeals; rollo, pp. 141-168.

[3] *Id.*, p. 169.

[4] Now, Valenzuela City.

[5] Penned by Presiding Judge Adriano R. Osorio; *id.*, pp. 183-203.

[6] “The Court shall withhold the real name of victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well [as] those of their immediate family or household members, shall not be disclosed.” (*People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.)

[7] *Id.*, p. 204.

[8] In XXX Subdivision, Marulas, Valenzuela; *id.*, pp. 184, 186, 199.

[9] *Id.*, p. 184.

[10] *Id.*, p. 186.

[11] The words used were “tingting na may bulak;” *id.*, p. 209.

[12] *Id.* The RTC also found that petitioner put his penis in the complainant’s mouth (*id.*, p. 203). But this was not discussed in the CA decision.

[13] *Id.*, p. 165.

[14] BBB described the actors in the movie as “naghubad;” TSN, May 29, 1996, p. 16.

[15] Rollo, p. 200.

[16] *Id.*, p. 184.

[17] *Id.*, p. 201.

[18] *Id.*, pp. 194-195, 199.

[19] *Id.*, p. 203. Sec. 31 of RA 7610 states:

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(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

We have imposed a similar fine in *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 299-300.

[20] Article III, Section 14 (2).

[21] *Parungao v. Sandiganbayan*, G.R. No. 96025, 15 May 1991, 197 SCRA 173, 178.

[22] *Id.*

[23] *People v. Lazaro*, 319 Phil. 352, 363 (1995).

[24] *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 298, citing *People v. Mariño*, G.R. No. 132550, 19 February 2001, 352 SCRA 127, 147; *People v. Castillo*, G.R. No. 131200, 15 February 2002, 377 SCRA 99, 114; *People v. Esperanza*, G.R. Nos. 139217-24, 27 June 2003, 405 SCRA 175, 189.

[25] G.R. No. 149199, 28 January 2003, 396 SCRA 506.

[26] *Id.*, p. 515.

[27] *Supra* note 24.

[28] *Id.*, p. 291.

[29] *Id.*, pp. 291-292.

[30] *People v. Bon*, *supra* note 25, at 511, citing *People v. Barrias*, 412 Phil. 578, 585 (2001).

[31] TSN, May 8, 1996, pp. 5-13.

[32] *Rollo*, p. 201.

[33] *Id.*, pp. 165, 203.

[34] Under Sec. 266-A, paragraph 2 of RA 8353 or “The Anti-Rape Law of 1997” which took effect on October 22, 1997, the insertion of any instrument or object into the genitals of another person constitutes rape through sexual assault; *People v. Soriano*, G.R. Nos. 142779-95, 436 Phil. 719 (2002). This law, however, finds no application here considering that the acts were committed on October 30, 1995; *People v. Bon*, *supra* note 25, at 514.

[35] *People v. Jalosjos*, 421 Phil. 43,90 (2001), citing *People v. Optana*, G.R. No. 133922, 12 February 2001, 351 SCRA 485, 514-515, in turn citing *People v. Larin*, G.R. No. 128777, 7 October 1998, 297 SCRA 309, 318.

[36] On the Reporting and Investigation of Child Abuse Cases (adopted on October 11, 1993).

[37] *Rollo*, p. 291.

[38] *People v. Optana*, *supra* note 35; *Olivarez v. Court of Appeals*, G.R. No. 163866, 29 July 2005, 465 SCRA 465, 475-476.

[39] *People v. Larin*, *supra* note 35, at 319.

[40] *Olivarez v. Court of Appeals*, *supra* note 38, at 475.

[41] *Rollo*, p. 165.

[42] Both lower courts also refused to give weight to petitioner’s attempts to impute ill-motive against the victim’s mother. This imputation deserves scant consideration.

[43] *People v. Bon*, *supra* note 25, at 515.

[44] *People v. Cachapero*, G.R. No. 153008, 20 May 2004, 428 SCRA 744, 753, citations omitted.

[45] *Id.*

[46] *People v. Balgos*, 380 Phil. 343, 351 (2000), citations omitted.

[47] *Id.*

[48] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 100, citation omitted.

[49] *Id.*

[50] *Rollo*, pp. 167, 200.

[51] *People v. Pacapac*, G.R. No. 90623, 7 September 1995, 248 SCRA 77, 89, citations omitted.

[52] *People v. Jalosjos*, *supra* note 35, at 70, citation omitted.

[53] *People v. Perez*, 377 Phil. 656, 676 (1999), citations omitted.

[54] See *People v. Sambrano*, 446 Phil. 145, 156 (2003).

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