

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE TUAZON, APPELLANT.*G.R. No. 168650. October 26, 2007*

Ponente: NACHURA, J.

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AAA is the daughter of BBB by her first marriage. After the death of AAA's father, BBB contracted marriage with the appellant, Jose Tuazon; they then lived together as husband and wife, together with the former's children.

Instead of guarding his stepchildren/children against wrongful acts of strangers, the appellant committed lustful acts against one of them, by repeatedly abusing AAA. The first of this series of acts was committed in 1995 while AAA was still in Grade V.[1] She was at that time 11 years old, having been born on November 14, 1984 as shown in her certificate[2] of live birth.

One night sometime in 1995, AAA was inside their house with the appellant, together with her younger brothers and sisters, while BBB was out as she went to harvest coffee at Calakkad, Tabuk. Appellant then went inside the room where all of the children were sleeping; approached the place where AAA was lying down; removed her panty; kissed her; brought out his male organ; placed his penis inside her vagina; then made the push and pull movement, after which AAA felt that there was liquid coming out of his penis. She was then in pain and her private part bled. She could not offer resistance at that time because the appellant threatened to kill her if she would report the incident. Immediately after satisfying his lustful desire, appellant put on AAA's panty.[3] Unsatisfied, he repeated the incident several times, always when BBB was out. The last incident took place on May 27, 1997.

AAA did not reveal her gruesome experience to anybody – not even to her mother BBB, because of her fear that the appellant would make good his promise of killing her if she would report the incident.

Sometime in May 1997, AAA's grandmother CCC, invited her to sleep in the latter's house but she was prevented by the appellant. The next day, CCC went to the house of the appellant and inquired why AAA did not sleep at her house. Instead of answering CCC, AAA started crying. When CCC asked why, she answered that "she was raped." [4] It was then that she revealed her ordeal at the hands of the appellant.

CCC thereafter reported the matter to AAA's uncle who, in turn, reported it to BBB's brothers. Together, they reported the incident to the Municipal Hall of XXX, Isabela.

On May 29, 1997, AAA submitted herself to medical examination by Dr. Alpha Dulig (Dr. Dulig), Rural Health Physician of XXX, Isabela, who subsequently issued a medical certificate,[5] the pertinent portion of which reads:

GENITALIA

Pubic hairs: few(,) fine, short hair

Labia Majora: reddish and swollen

Labia Minora: reddish and swollen
Fourchette: healed laceration, not coaptated
Vestibules: reddish
Hymen: absent
Orifice: Accepts 2 finger (sic) withease (sic) and without pain
Vagina:

Walls: reddish,
Rugosities: rough

Uteros (sic): palpable; small
Cervix: soft close, reddish
Discharge: none

Thereafter, AAA and CCC executed their respective sworn statements[6] before the XXX police. Subsequently, AAA filed a complaint[7] dated May 30, 1997, with the 12[th] Municipal Circuit Trial Court (MCTC) of XXX, Province of Isabela.

After the requisite preliminary investigation, on January 28, 1998, two separate Informations for rape were filed against the appellant before the Regional Trial Court of Roxas (RTC). The cases were docketed as Criminal Cases Nos. 23-829 and 23-830. The respective accusatory portions of the foregoing informations are as follows:

That on or about the 27[th] day of May, 1997, in the municipality of XXX, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with one AAA, a girl of 12 years of age, against her will and consent.

CONTRARY TO LAW.[8]

That on or about the year 1995, in in (sic) the municipality of XXX, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, intimidation and with lewd design, did then and there, willfully, unlawfully and feloniously, lay with and have carnal knowledge with one AAA, a girl below 12 years of age, against her will and consent.

CONTRARY TO LAW.[9]

Appellant pleaded “Not Guilty” to both charges. Accordingly, joint trial ensued.

For his part, appellant denied the charges imputed against him. He testified that they were fabricated by AAA’s paternal grandmother, CCC, who was angry at him because of his marriage to BBB.[10]

The defense likewise presented BBB who testified that she did not know of anyone who opposed her relationship with the accused but she did not answer when asked if her in-laws opposed such marriage.[11] She likewise testified that she did not have personal knowledge that the appellant abused her daughter AAA.[12]

After trial, the RTC rendered a Joint Decision[13]dated December 6, 2000, finding the appellant guilty of the offenses charged. The fallo reads:

WHEREFORE, finding the accused guilty beyond any iota of doubt, of the offenses as charged in both informations above-quoted, the court hereby sentences the accused to RECLUSION PERPETUA for each count of rape and to pay the sum of Fifty Thousand (P50,000.00) Pesos as damages for each offense and additional Seventy-five (sic) (P75,000.00) Pesos as civil damages or a total of One Hundred Twenty-five Thousand (P25,000.00) Pesos for each count following prevailing jurisprudence, with all the necessary

penalties provided for by law, and to pay the costs.

SO ORDERED.[14]

The records of this case were originally forwarded to this Court by the RTC in view of the notice of appeal filed by the appellant. After the parties submitted their respective briefs, conformably with our Decision in *People v. Mateo*,^[15] we transferred this case and its records to the Court of Appeals (CA) in a Resolution^[16] dated August 30, 2004 for appropriate action and disposition.

In his Brief,^[17] appellant raised the following as errors of the RTC:

I.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNBELIEVABLE AND INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT, AAA.

II

THE COURT A QUO COMMITTED A REVERSIBLE ERROR IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF RAPE IN CRIMINAL CASE NO. 23-829.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT IN CRIMINAL CASE NO. 23(-)830 HAS BEEN PROVEN BEYOND REASONABLE DOUBT.^[18]

On April 21, 2005, the CA rendered the assailed Decision:^[19]

WHEREFORE, premises considered, the appeal is hereby DENIED. The assailed decision of the Regional Trial Court, Branch 23, Roxas, Isabela dated December 6, 2000 is hereby AFFIRMED.

SO ORDERED.^[20]

Hence, the present appeal.

The Court stresses that conviction or acquittal in a rape case more often than not depends almost entirely on the credibility of the complainant's testimony because of the very nature of this crime. It is usually the victim who alone can testify as to its occurrence. In rape cases, the accused may be convicted solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.^[21] The credibility given by the trial court to the rape victim is an important aspect of evidence which appellate courts can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during direct and cross-examination by counsel. Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts and circumstances of weight which would affect the result of the case, his assessment of credibility deserves the appellate court's highest respect.^[22]

We agree with the conclusion of the RTC, as affirmed by the CA, that the testimony of AAA was direct, unequivocal and consistent, and thus deserves full faith and credit. She testified:

1[st] Incident of Rape

Sometime in 1995

(Criminal Case No. 23-830)

Q:

If that is the case tell all what happened to you that first night?

A:

That night he went to our room, he make (sic) me naked then he raped me, sir.

Q:

Did he kiss you?

A:

Yes, sir.

Q:

When he kissed you, did he bring (sic) his male organ?

A:

Yes, sir.[23]

x x x x

Q:

When he brought out his penis, what did he do?

A:

He had sexual intercourse with me, sir.

Q:

Did he place his penis into your vagina?

A:

Yes, sir.

Q:

Will you tell the Court if his penis penetrated in your private parts?

A:

Yes, sir.

Q:

After the insertion of his penis into your vagina, what did he do?

A:

He told me that whenever I will report the matter he would kill me, sir.

Q:

When his penis was inside your vagina, did you ever feel any liquid coming out from his penis?

Atty. Lamorena:

Objection, Your Honor.

A:

There was, sir.[24]

x x x x

Q:

Did you notice if he made the push and pull movement?

A:

Yes, sir.

Q:

And did he kiss you while he was making that movement?

A:

Yes, sir.

Q:

After you have feel (sic) that there was a liquid coming out from his penis, what else happened?

A:

After he finished, sir, he put on my panty.[25]

2[nd] Incident of Rape

May 27, 1997

(Criminal Case No. 23-829)

Q:

On May 27, 1997, will you describe how he raped you for the last time? What did he do?

A:

He went again in our room where we were lying down, then he made me naked, and told me that if I will report the matter he will kill me, sir.

Q:

After removing your clothes, and you were already naked, what did he do?

A:

He abused me again, sir.

Q:

How did he abuse you?

A:

When I was already naked he had sexual intercourse with me, sir.

Q:

Did he go on top of you after he made you naked?

A:

Yes, sir.

Q:

Did he kiss you before he place (sic) his penis inside your vagina?

A:

Yes, sir.

Q:

Did he kiss your breast?

A:

No, sir.

Q:

When his penis entered into your private parts, did you feel anything?

A:

There was, sir.

Q:

Did you still feel pain while according to you you had so many sexual intercourse with him?

A:

Yes, sir, I felt pain because it was long time ago already. We went to Dagupan to earn for a living there for harvesting palay then Jose Tuazon came and fetched me, sir.

Q:

And you did not protest when he placed his penis inside your vagina?

A:

No, sir, because he told me that he will kill me, sir.

Q:

And did he make the same movement as he made before?

A:

Yes, sir.

Q:

Did he go on top of you?

A:

Yes, sir.

Q:

Did he spread your legs?

A:

Yes, sir.

Q:

He did not put pillow under your buttocks?

A:

No, sir.[26]

x x x x

Q:

How about Jose Tuazon whenever he commits or makes sexual intercourse with you, did he also remove his clothes?

A:

He removed only his brief, sir.

Q:

Can you tell the Honorable Court how long did Jose Tuazon make that sexual intercourse with you?

A:

A little bit long, sir.

Q:

Around three (3) minutes or five (5) minutes?

A:

Around five (5) minutes, sir.[27]

The above testimony of AAA says everything. Jurisprudence has recognized the inbred modesty of a Filipina, especially a young child, who would be unwilling to allow examination of her private parts, suffer the humiliation of a public trial, endure the ordeal of recounting the details of an assault on her dignity unless her purpose is to bring the perpetrator to the bar of justice and avenge her honor. Testimonies of rape victims who are young and immature demand full credence.[28]

Moreover, the testimony of AAA was corroborated by Dr. Dulig's medical report[29] and testimony that when she conducted the medical examination on the person of AAA, her orifice accepted two fingers with ease and without pain which means that there had been multiple penetration on the vaginal orifice. She likewise claimed that there was no more hymen at the time she conducted the examination. She further testified that the labia minora in AAA's vagina were still swollen which means that she was sexually abused one or two days prior to the examination. The Court held that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of

carnal knowledge has thereby been established.[30]

We now come to the specific defenses set forth by appellant in his brief in his attempt to seek the reversal of his conviction.

First, he avers that rape could not have been committed inside a room where AAA and her younger brothers and sisters were sleeping, otherwise, it would have aroused their attention.[31]

We do not agree.

We have held in a number of cases that lust is no respecter of time and place. Rape can be committed even in places where people congregate, in parks along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many, would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.[32] This is especially true in the present case as the brothers and sisters of AAA who were with them inside the room were even younger than her. They did not have the slightest idea of what was happening nor even had a suspicion that appellant was committing a crime against their sister because of their innocence brought about by their young age.

Second, appellant claims that the evidence for the prosecution failed to show that the room where the rape was committed was properly illuminated considering that the incident took place at nighttime. Otherwise, it would have been impossible for AAA to properly identify the assailant.[33]

During rape incidents, the offender and the victim are as close to each other as is physically possible. In truth, a man and a woman cannot be physically closer to each other than during a sexual act.[34] Moreover, per testimony of AAA, while appellant was performing the lustful act, he threatened to kill her. As such, she heard the voice of her assailant. Identification of an accused by his voice has also been accepted particularly in cases where, such as in this case, the witnesses have known the malefactor personally for so long and so intimately.[35] Considering that appellant and AAA lived together in one house, and the former repeatedly abused her, she is undoubtedly familiar not only with his physical features but also with his voice. Not surprisingly therefore, she readily and positively identified appellant in court during the trial as the man who raped her.

Third, appellant questions the act of AAA in belatedly reporting the incident. He goes on by saying that the period from 1995 until 1997 is so long such that she had the chance to report it as there were times when appellant was not by her side.[36] He likewise questions the failure of AAA to report the incident to her mother. He avers that it is contrary to human experience that an adolescent could actually keep to herself such a traumatic experience for a long time.[37]

The Court has acknowledged in several cases that the hesitance of the victim in reporting the crime to the authorities is not necessarily an indication of a fabricated charge. This is especially true where the delay can be attributed to the pattern of fear instilled by the threats of bodily harm made by a person who exercises moral ascendancy over the victim.[38] Neither can appellant find refuge in AAA's failure to promptly report the sexual assault to her relatives especially her mother.[39] This applies with greater force in the present case where the offended party was barely 11 years old at the time of the first rape incident and more or less 13 years old at the time of the last incident, and was therefore susceptible to intimidation and threats to physical harm.

Fourth, appellant insists that he should be acquitted because the prosecution failed to prove that he employed force in fulfilling his lustful act and because of the admission made by AAA that she did not resist the sexual assault.

Physical resistance need not be established in rape when intimidation is exercised upon the victim who submits against her will to the rapist's lust because of fear for her life or personal safety. The force, violence or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. A woman of such young age like AAA can only cower in fear and yield into submission. Rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not impossible for a victim of rape not to make an outcry against an unarmed assailant.[40] Because of AAA's youthfulness, coupled with the fact that the assailant is her stepfather, it was easy for her to believe that appellant would make good his threat to kill her should she resist.

Lastly, in his attempt to impute ill motive on the part of AAA, appellant claims that the case was filed due to the malicious instruction of her grandmother CCC who strongly opposed his marriage to BBB.

It is unnatural for a parent (or grandparent) to use her offspring as an instrument of malice, especially if it will subject a daughter (or granddaughter) to embarrassment and even stigma. It is highly inconceivable that a mother (grandmother) would willfully and deliberately corrupt the innocent mind of her young daughter (granddaughter) and put into her lips the lewd description of a carnal act to justify a personal grudge or anger against the appellant.[41] This Court cannot give weight to the bare assertion of appellant without sufficient evidence to prove the same.

In view of the foregoing, we find appellant's defense of denial to be unavailing in the face of the positive and credible testimony of the prosecution witnesses. His guilt has been proved beyond reasonable doubt.

The trial court correctly convicted appellant of statutory rape for the crime committed in 1995 and simple rape for that committed on May 27, 1997. Private complainant was born on November 14, 1984. She was, accordingly, eleven years old in 1995 when the first incident of rape took place. However, in 1997, she was already more than 12 years old, thus appellant is liable for simple rape. Appellant was, therefore, correctly meted the penalty of reclusion perpetua for each count of rape pursuant to Article 335 of the Revised Penal Code, as amended by Section 11, Republic Act (R.A.) No. 7659 which provides:

Article 335. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- x x x
- When the woman is under 12 years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

Moreover, appellant shall not be eligible for parole pursuant to the Indeterminate Sentence Law. Section 2 thereof provides that the law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of reclusion perpetua such as the appellant herein, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to reclusion perpetua.[42]

As to the civil liability of appellant, we modify the same. The RTC awarded P50,000.00 as damages and P75,000.00 as civil damages. This Court affirms the award of P50,000.00 for each count of rape as moral damages instead of "damages," and reduces the amount of P75,000.00 to P50,000.00 for each count as civil indemnity instead of "civil damages." This is pursuant to the prevailing doctrine enunciated in the cases of *People v. Bascugin*,[43] *People v. Tolentino*,[44] *People v. Espinosa*,[45] and *People v. Rote*. [46] Furthermore, as held in

People v. Malones,[47] this is not the first time that a child has been snatched from the cradle of innocence by some beast to sate its deviant sexual appetite. To curb this disturbing trend, appellant should, likewise, be made to pay exemplary damages which is pegged at P25,000.00 for each count of rape.

WHEREFORE, the Decision of the Court of Appeals dated April 21, 2005 in CA-G.R. CR-HC No. 00002, is AFFIRMED with MODIFICATIONS. The appellant is sentenced to suffer the penalty of Reclusion Perpetua for each count of rape without eligibility for parole. He is likewise ordered to pay private complainant P100,000.00 as civil indemnity; P100,000.00 as moral damages; and P50,000.00 as exemplary damages.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] TSN, December 2, 1998, p. 5.

[2] Records, p. 2.

[3] TSN, December 2, 1998, pp. 5-11.

[4] TSN, January 21, 1999, pp. 3-5.

[5] Exhibit "B"; Records, pp. 3-4.

[6] Records, pp. 6-7.

[7] Id. at 1.

[8] Id. at 23.

[9] Records (Criminal Case No. 23-830), p.1.

[10] TSN, June 22, 1999, pp. 6-7.

[11] TSN, October 12, 1999, p. 8.

[12] Id. at 10.

[13] Penned by Judge Teodulo E. Mirasol; records, pp. 133-137.

[14] Records, pp. 136-137.

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[16] CA rollo, pp. 102-103.

[17] Id. at 44-58.

[18] Id. at 46-47.

[19] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Portia Aliño-Hormachuelos and Vicente Q. Roxas, concurring; CA rollo, pp. 100-123.

[20] CA rollo, p. 122.

[21] People v. Malones, 469 Phil. 301, 318 (2004).

[22] People v. Dimaano, G.R. No. 168168, September 14, 2005, 469 SCRA 647, 658; People v. Cayabyab, G.R.

No. 167147, August 3, 2005, 465 SCRA 681, 686; *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 512.

[23] TSN, December 2, 1998, p. 9.

[24] *Id.* at 10-11.

[25] *Id.* at 11.

[26] *Id.* at 12-13.

[27] *Id.* at 14.

[28] *People v. Malones*, *supra* note 21, at 323-324; see also *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 448; *People v. Guambor*, 465 Phil. 671, 678 (2004); *People v. Aspuria*, 440 Phil. 41, 52 (2002).

[29] Exhibit "B."

[30] *People v. Mahinay*, 462 Phil. 53, 66 (2003).

[31] CA rollo, p. 51.

[32] *People v. Ortizuela*, G. R. No. 135675, June 23, 2004, 432 SCRA 574, 582-583; *People v. Malones*, *supra* note 21, at 326; *People v. Evina*, 453 Phil. 25, 41 (2003).

[33] CA rollo, p. 52.

[34] *People v. Evina*, *supra*, at 40.

[35] *People v. Intong*, 466 Phil. 733, 742 (2004).

[36] CA rollo, p. 52.

[37] *Id.* at 53.

[38] *People v. Manlod*, 434 Phil. 330, 350 (2002).

[39] *People v. Ballester*, 465 Phil. 314, 321 (2004).

[40] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 554; *People v. Gutierrez*, 451 Phil. 227, 239 (2003).

[41] *People v. Malones*, *supra* note 21, at 327, citing *People v. Zabala*, 409 SCRA 51 (2003).

[42] See *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; *People v. Tan*, G.R. Nos. 116200-02, June 21, 2001, 359 SCRA 283, 307; and *People v. Lampaza*, G.R. No. 138876, November 24, 1999, 319 SCRA 112, 130.

[43] G.R. No. 144195, May 25, 2004, 429 SCRA 140, 151-152.

[44] 467 Phil. 937, 960 (2004).

[45] G.R. No. 138742, June 15, 2004, 432 SCRA 86, 102-103.

[46] 463 Phil. 662, 675 (2003).

[47] *Supra* note 21, at 333.

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