

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO SANTOS, ACCUSED-APPELLANT.

G.R. No. 171452. October 17, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is an appeal from the July 26, 2005 Decision[1] of the Court of Appeals (CA), affirming the July 31, 2001 Decision[2] and April 12, 2002 Order[3] of the Regional Trial Court (RTC), Branch 76, Rizal, which convicted Ricardo Santos (appellant) of the crime of qualified rape; and the December 15, 2005 CA Resolution,[4] denying appellant's motion for reconsideration.

Based on the sworn statements[5] executed on February 1, 2000 by private complainant AAA[6] and her mother BBB,[7] an Information was filed with the RTC, charging appellant for rape -- as defined and penalized under Article 266-A, paragraph 1 and Article 266-B, paragraph 2 of the Revised Penal Code, as amended by Republic Act No. 8353, in relation to Republic Act No. 7610 and Section 5 (a) of Republic Act No. 8369 -- allegedly committed as follows:

That on or about the 15[th] day of October 1999 in the Municipality of ZZZ,[8] Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and by means of force, threat or intimidation, with lewd design, with intent to cause or gratify his sexual desire or abuse and maltreat complainant AAA, a minor, thirteen (13) years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with said complainant against her will and consent which debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

CONTRARY TO LAW.[9]

Appellant pleaded "Not Guilty" when arraigned on July 13, 2000,[10] after which trial ensued.

The evidence for the prosecution.

BBB testified that AAA is her daughter with her first husband[11] and submitted a Certificate of Live Birth, Exhibit "E", [12] showing that AAA was born on August 26, 1986 in Quezon Province and was only thirteen (13) years old when she was raped. In 1999, AAA was living with her and her second husband in a house at XXX.[13] Appellant was a neighbor and a drinking buddy of her second husband.[14]

In the evening of January 30, 2000, BBB was awakened by the arrival of a family friend, Bong Bautista (Bautista), who informed her that appellant had molested AAA.[15] The following day, BBB went to see AAA in Caloocan City where the latter had been staying since January 16, 2000, and asked her whether appellant had indeed molested her, but AAA did not answer.[16] BBB then brought AAA back to XXX to be questioned by the Barangay Captain of XXX. Only then did AAA divulge that on October 15, 1999, appellant raped her at gunpoint.[17]

On the following day, BBB accompanied AAA to the XXX Police Station where they filed a complaint for rape

against appellant.[18] As required by the police, AAA underwent physical and genital examination at the PNP Crime Laboratory in Camp Crame.[19]

The Barangay Captain confirmed that on January 31, 2000, BBB and AAA went to see him at the barangay hall and that the latter narrated how she was raped by appellant in October 1999.[20] Her narration is recorded in the barangay logbook,[21] Exhibit "G".[22] The Barangay Captain also confirmed that, at the time of the alleged rape incident in October 1999, appellant was a neighbor of AAA, both being residents of XXX.[23]

On the witness stand, AAA narrated what transpired on October 15, 1999, thus:

Q:

Now, on October 15, 1999, do you remember where were you AAA?

A:

Yes, sir.

Q:

Where were you?

A:

In the house, sir.

Q:

What were you doing in your house?

A:

I was taking care of my brother, sir.

Q:

And while taking care of your brother, do you remember what happened next AAA?

A:

Yes, sir.

Q:

What happened?

A:

Ricardo Santos went to our house, sir.

Q:

If this Ricardo Santos is present inside this courtroom, will you be able to identify him AAA?

A:

Yes, sir.

Q:

Will you kindly look around this courtroom and point to Ricardo Santos?

A:

That man wearing a yellow t-shirt, sir.

Interpreter:

Witness pointing to a certain person who when asked answered by the name of RICARDO SANTOS.

Q:

What happened next when Ricardo Santos went to your house on October 15, 1999?

A:

He told me to go to their house, sir.

Q:

For what purpose, if any?

A:

He told that he was going to give me something, sir.

Q:

And did you go to his house?

A:

Yes, sir.

Q:

Upon reaching his house, AAA, what happened?

A:

When I entered their door, he suddenly closed the door of the house, sir.

Q:

What else happened?

A:

He poked a gun at me, sir.

Q:

In what particular part of your body did he poke his gun at you?

A:

At my right temple (sintido), sir.

Q:

Did you know what kind of gun Ricardo Santos used in poking at you?

A:

I cannot remember, sir.

Q:

And what did you feel when Mr. Ricardo Santos poked a gun at your right temple?

A:

I was frightened, sir.

Q:

And what did Ricardo Santos do, if any, after poking that gun at you?

A:

We went to a room.

Q:

And then what else transpired?

A:

He asked me to undress, sir.

Q:

Did you undress?

A:

No, sir.

Q:

And when you did not remove your dress, what did Ricardo Santos do, if any?

A:

He undressed me, sir.

Q:

When you said he undressed you, he removed all of your clothing, including your undergarments?

A:

Yes, sir.

Q:

And what did you do, if any, AAA, when Ricardo Santos undressed you?

A:

I cried and begged him and told him "Huwag po, huwag po", sir.

Q:

And did Ricardo Santos accede to your plea?

A:

No, sir.

Q:

After undressing you, what did Ricardo Santos do next, if any?

A:

He kissed the different parts of my body, sir.

Q:

What else?

A:

He started kissing my lips going down, sir.

Q:

What else?

A:

He sucked my nipple, sir.

Q:

What else?

A:

No more, sir.

Q:

And what did you do, if any, while Ricardo Santos was doing those things to you?

A:

I did not do anything because I was afraid during that time, sir.

Q:

What else did Ricardo Santos do to you if any?

A:

He inserted his private part into mine, sir.

Q:

I presumed that Mr. Ricardo Santos was wearing clothes then?

A:

Yes, sir.

Q:

At what point in time did Mr. Ricardo Santos remove his clothing from his body?

A:

After undressing me, he removed his shorts, sir.

Q:

And after removing the shorts from his body, what followed next?

A:

He inserted his private part into mine, sir.

Q:

What was your position when Ricardo Santos inserted his penis to your vagina, AAA? Were you standing, lying or what?

A:

I was lying down, sir.

Q:

Where did Ricardo Santos lay you down?

A:

On a bed, sir.

Q:

How did Ricardo Santos insert his penis into your vagina?

A:

He also laid down and inserted his private part, sir.

Q:

How did Ricardo Santos lay or lie to [sic] you?

A:

He was lying face down on top of me, he laid down on top of me, sir.

Q:

After laying [sic] on top of you, what did Ricardo Santos do?

A:

He inserted his private part into mine and made an up and down motion, sir.

Q:

What did you feel when his penis entered your vagina?

A:

I was hurt, sir.

Q:

And what did you do, if any, while Mr. Ricardo Santos was lying on top of you inserting his penis to your vagina and making an up and down movement?

A:

I was trying to push him but he still continued, sir.

Q:

Aside from that, what did he do, if any?

A:

I was crying and trembling with fear, sir.

Q:

Aside from being hurt or feeling pain when Ricardo Santos succeeded in inserting his penis to your vagina, what did you feel, if any?

A:

Something hot came out of him, sir.

Q:

What else transpired?

A:

He stood up and asked me to dress, sir.

Q:

And where was Ricardo Santos, after doing that to you, ordered you to stand up and dress?

A:

At my front, sir.

Q:

Aside from ordering you to dress up, what else did Ricardo Santos do, if any?

A:

No more, sir.

Q:

Did you see the gun after Ricardo Santos was through with his acts, AAA?

A:

Yes, sir.

Q:

Where did you see it?

A:

He was holding it, sir.

Q:

And while dressing up, AAA, what did you do, if any?

A:

I was crying, sir.

Q:

And you claimed that Ricardo Santos was still holding that gun after, what did he do with that gun?

A:

He kept it, sir.

Q:

How many times did Ricardo Santos molest you after the afternoon of October 15, 1999?

A:

Only one, sir.

Q:

After dressing up, AAA, where did you go?

A:

In our house, sir.[24]

AAA explained that she did not immediately report the incident to BBB nor to anyone else because she was afraid that appellant will carry out his threat against her and her family.[25]

AAA further testified that appellant is no stranger to her family because he lives a few houses down their street and he is often invited by her step-father for drinking sessions in their house.[26]

Dr. Reynaldo Dave (Dr. Dave), Medico-Legal Officer, Philippine National Police Crime Laboratory, testified on the result of the physical and genital examination he conducted on AAA, as contained in his Medico-Legal Report, dated February 1, 2000, Exhibit "C", viz.:

Physical injuries:

No external signs of application of any form of trauma

x x x x

Labia Majora:

Full, convex and coaptated.

Labia Minora:

Dark brown and non-hypertrophied.

Hymen:

Presence of shallow healed laceration at 3 o'clock and deep healed lacerations at 7 and 9 o'clock positions.

Posterior Fourchette:

Abraded and rounded.

External Vaginal Orifice:

Offers moderate resistance to examining index finger.

Vaginal canal:

Narrow with prominent rugosities.

x x x x

Conclusion:

Subject is in a non-virgin state physically. There are no external signs of application of any form of trauma.[27]

Dr. Dave explained the significance of his findings, thus:

Q:

Now, let's go to your medico-legal report in the portion "genital, subportion hymen: Presence of shallow healed laceration at 3 o'clock and deep healed lacerations at 7 and 9 o'clock positions," will you kindly explain in layman's language your findings?

A:

That shallow healed laceration at 3:00 o'clock means that there is a hymenal tear which is healed and shallow, meaning not more than one-half of the hymenal width was lacerated, 3:00 o'clock pertains to the 3:00 o'clock position in the clock, and deep healed laceration at 7:00 and 9:00 o'clock positions, it is deep because it lacerated more than half of the hymenal width and it is healed, sir.

Q:

When you said "healed laceration", can you determine how old is this laceration?

A:

Yes, sir, it is more than seven (7) days.

Q:

Now, in your interview, did you come to know from the victim where (sic) was she molested?

A:

The victim allegedly said that she was molested at 3:00 p.m. on October 15, 1999, sir.

Q:

And if this deep healed laceration is already more than seven (7) days old, it necessarily jives [sic] with that incident which happened on October 15, 1999 considering that you examined her on February 1, 2000?

A:

Yes, sir.

Q:

Now, what could have caused this laceration in her hymen?

A:

It is caused by the penetration of a blunt object, sir.

Q:

Is it possible that the same could have been caused by an erected male penis for that matter?

A:

Yes, sir.[28]

The evidence for the defense.

Appellant took the witness stand. He denied that he raped AAA. Although he admitted that he was in XXX on October 15, 1999, he claims that his activities that day were limited to washing his taxi and drinking beer with his neighbors. He recounted:

Q:

Will you state again before this Hon. Court your occupation, Mr. Witness?

A:

A taxi driver, sir.

x x x x

Q:

And in connection with your occupation, Mr. Witness, do you go out everyday?

A:

Yes, sir, except Fridays because it is my color coding.

Q:

On the day of October 15, 1999, did you go out, Mr. Witness?

A:

No, sir.

Q:

And what did you do the whole day on that day, Mr. Witness?

A:

In the morning, I cleaned the taxi and in the afternoon, we gambled, sir.

Q:

You said you washed your taxi. Where did you wash this taxi of yours?

A:

In front of our house, sir.

Q:

So that while you were washing this taxi of yours, the entire neighborhood could see you there?

A:

Yes, sir.

Q:

Up to what time on that day did you wash this taxi of yours?

A:

In the morning up to noontime, sir.

Q:

And how about in the afternoon, what did you do the whole afternoon?

A:

I rested and while resting, my kumpare arrived and invited me to have a drink, sir.

Q:

And what time was that, Mr. Witness?

A:

More or less 1:00 o'clock to 6:00 o'clock, sir.

Q:

Can you state the name of this friend of yours who invited you?

A:

Yes, sir, Renato Fuentes.

Q:

And how far is the house of this friend of yours from your house?

A:

In front of our house only, sir.

Q:

Were you the only two, this Renato Fuentes and you were the only ones?

A:

Yes, sir.

Q:

You did not have any other companion?

A:

There was, sir.

Q:

Can you state before this Hon. Court your companion that afternoon?

A: Richard Fuentes, Danilo Panaligan, Eduardo Jumalon, sir.

Q:

Did you not, at any time during the afternoon, leave your group and went somewhere, Mr. Witness?

A:

None, sir, even a single moment.

Q:

You mean that after 1:00 o'clock up to 6:00 o'clock in the afternoon, you were in the house of Mr. Renato Fuentes drinking with your friends?

A:

Yes, sir.[.29]]

Appellant claimed that AAA and her mother filed the case to extort P1,000,000.00.[30]

Corroborating the testimony of appellant, Renato Fuentes (Fuentes) affirmed that from 1:30 to 7:00 o'clock in the afternoon of October 15, 1999, appellant was with him in his house. They drank wine the entire time, although appellant occasionally went out to urinate, but always immediately returned to their drinking session.[31]

The ruling of the RTC.

The RTC rendered a Decision dated July 31, 2001, finding appellant guilty as charged, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Ricardo Santos GUILTY beyond reasonable doubt of the crime of Rape as defined and penalized under Art. 266-A par. 1 and Art. 266-B, par. 2 of the Revised Penal Code as amended by R.A. 8353 in relation to R.A. 7610 and Sec. 5 (a) of R.A. 8369, or Family Court Law, and sentencing him to suffer the penalty fo Reclusion Perpetua, and to indemnify private complainant AAA the amount of P50,000.00 as civil indemnity in addition to the amount of P50,000.00 as moral damages and to pay the costs.

SO ORDERED.[32]

The RTC found that AAA positively identified the appellant as the person who raped her, and candidly recounted that appellant lured her into his house by saying that there is something he needs to give her, and once she stepped inside, pointed a gun at her temple and succeeded in molesting her;[33] that the testimony of AAA, as corroborated by the medico-legal report, is highly credible for she would not have borne the humiliation of a public trial for rape had she not been motivated solely by the desire to obtain justice against the appellant.

The trial court saw no indication that AAA or BBB was impelled by improper motives in bringing appellant to

trial for rape.[34]

On the other hand, the trial court found the defenses of denial and alibi interposed by the appellant too weak, thus:

The defense of alibi and denial posted by the accused must necessarily fail. For alibi to prosper, it must be proved that it was physically impossible for the accused to go to the place of the incident. In the case at bar, the house of Renato Fuentes where he was allegedly present having a drinking spree is only in front of his (Ricardo's) house where the rape incident happened. He can easily go to his house coming from Renato's house without anyone noticing it or under the guise of answering the call of nature because it would not take a lot of time to do the same. The claim of denial likewise cannot stand. The accused testified that the reason why a complaint was filed against him was because the private complainant and her relatives were asking one million from him. This is highly improbable considering that he is a mere taxi driver even though his immediate family is in Canada.[35]

After his motion for reconsideration was denied by the RTC,[36] appellant appealed[37] to this Court.

Conformably with *People v. Mateo*,[38] the Court, in a Resolution[39] dated October 18, 2004, transferred the appeal to the CA for appropriate action and disposition.

The ruling of the CA.

On July 26, 2005, the CA rendered the Decision assailed herein, dismissing the appeal, to wit:

WHEREFORE, the Decision dated July 31, 2001 of the Regional Trial Court, Branch 76, San Mateo, Rizal in Criminal Case No. 4930-00, finding Ricardo Santos guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of Reclusion Perpetua, is AFFIRMED.

SO ORDERED.[40]

Appellant's motion for reconsideration was likewise denied by the CA in its Resolution dated December 15, 2005.[41]

Hence, appellant elevated his appeal to this Court on the following issues:

A.

Whether a testimony marked by coaching, leading & misleading questions, fatal inconsistencies, absurd, illogical and general allegations, is entitled to faith and credit.

B.

Whether the absence of physical evidence should have been material in the consideration and decision of the trial court.

C.

Whether the conviction was improper for being based on the weakness of defense evidence rather than the strength of prosecution's evidence.

D.

Whether the trial court, taking into consideration all the foregoing points, failed to appreciate the existence of reasonable doubt.[42]

The ruling of the Court.

The first error appellant ascribes to the lower courts is that both permitted the rehearsed testimony of AAA who

was coached by the public prosecutor throughout her direct examination. He claims that AAA's testimony was mapped out for her by the public prosecutor who made an inordinately detailed offer of testimony that all AAA was left to do was parrot what was mentioned in the offer. Also, at critical points in AAA's narration, the public prosecutor virtually rearranged the chronology of events, pointedly reminding AAA that appellant must have undressed himself at one point, or that the latter must have also removed AAA's undergarments before consummating the rape.[43]

Appellant further criticizes the public prosecutor for posing general questions to AAA, thereby supplying details to her testimony.[44]

The CA correctly observed that the offer made by the public prosecutor of the testimony of AAA was delivered in English and directed at the trial court; hence, the offer could not have been understood by a person like AAA who reached up to Grade 3 only, nor could it have influenced her testimony.[45] For the same reason, the leading questions propounded by the public prosecutor were necessary because AAA was found to be uneducated, ignorant, timid and easily confused. Besides, as noted by the CA, the questions were not objected to by appellant, hence these were allowed to be answered. [46]

The Court fully agrees with the CA.

It is too late in the day for appellant to object to the formulation of the offer and the manner of questioning adopted by the public prosecutor. Appellant should have interposed his objections in the course of the oral examination of AAA, as soon as the grounds therefor became reasonably apparent.[47] As it were, he raised not a whimper of protest as the public prosecutor recited his offer or propounded questions to AAA. Worse, appellant subjected AAA to cross-examination on the very matters covered by the questions being objected to;[48] therefore, he is barred from challenging the propriety thereof or the admissibility of the answers given.[49]

While the rule is that leading questions are not allowed in direct examination, Section 10 (c)[50] of Rule 132 allows leading questions to be asked of a witness who is a child of tender years, especially when said witness has difficulty giving an intelligible answer, as when the latter has not reached that level of education necessary to grasp the simple meaning of a question, moreso its underlying gravity.[51] This exception is now embodied in Section 20[52] of the Rule on Examination of a Child Witness, which took effect on December 15, 2000. Under Section 4 thereof, a "child witness" is any person who at the time of giving testimony is below the age of 18 years.

In the present case, when AAA testified on direct examination on December 6, 2000, she was only 14 years old and her level of education was that of a third grader. Moreover, she was being made to relive a harrowing experience where she lost her youth in the hands of a family friend and neighbor. Certainly, AAA was a witness of tender age of whom leading questions were properly asked.[53]

Next, appellant argues that, while Dr. Dave testified that AAA is in a non-virgin state, said witness did not categorically state that AAA was raped. In fact, Dr. Dave confirmed that when he examined AAA, he found no external signs of trauma.[54] Appellant further points out that while AAA testified that she bled after the incident, her soiled clothing or undergarments were not presented by the prosecution; it could not even explain what became of this piece of evidence;[55] and that the failure of the prosecution to present the gun that was allegedly used on AAA casts doubt not only on the existence of said weapon but also on whether one was actually used by appellant to threaten AAA.[56]

Unconvinced by the arguments of appellant, the CA held that there is sufficient physical evidence of rape consisting of the medico-legal report and testimony of Dr. Dave, which corroborate the testimony of AAA on two crucial points: first, that the hymenal lacerations on the vagina of AAA signify that a blunt object, such as an erect

male penis, had been inserted into her vagina; and second, that the healed state of these lacerations indicate that the insertion took place more than seven days prior to February 1, 2000, the date of the medical and physical examination. [57]

The Court subscribes to the view of the CA. The report and testimony of a medico-legal officer that there are hymenal lacerations found on the vagina of a complainant is the best evidence that an object, such as an erect penis, has been inserted into it.[58] Such medical report and testimony, when weighed along with the positive testimony of the complainant that her assailant, armed with a gun, inserted his penis into her vagina, sufficiently establish the essential element of rape which is carnal knowledge against her will.[59] Thus, the RTC and the CA had basis to conclude that the element of carnal knowledge in rape was duly established based on the testimony of AAA that on October 15, 1999, appellant inserted his penis into her vagina and on the medical report and testimony of Dr. Dave that there are hymenal lacerations on the vagina of AAA which had already healed for more than seven days.[60]

The Court notes that the CA merely glossed over the contention of appellant that the prosecution failed to present the gun and the soiled undergarment, and on the absence of physical signs of trauma on AAA. While the CA may have been remiss thereon, it hardly affects the result of the case.

The non-presentation of the gun is of no consequence for it is a settled rule that the weapon used in the commission of rape is not essential to the conviction of the accused under Article 266-B.[61] It suffices that the rape victim truthfully testified that the accused was armed with a deadly weapon when he committed the crime.[62] In the present case, AAA categorically and repeatedly stated that appellant poked a gun at her at the time of the rape incident. Her testimony establishes the qualifying circumstance of use of a deadly weapon in the commission of rape under Article

266-B of the Revised Penal Code.[63]

Neither is the soiled undergarment or clothing material to the case for it is not the presence or absence of blood thereon that determines the fact of rape.[64] Thus, the absence of this piece of evidence casts no doubt on the testimony of AAA that appellant raped her.

On the lack of signs of extragenital physical trauma on AAA, the same is easily explained by the fact that AAA was examined only on February 1, 2000, or four months after she was raped on October 15, 1999, by which time whatever traces of force appellant applied on her would have already disappeared.[65]

What remains to be resolved now may be capsulized as follows: whether appellant's conviction can be sustained on the sole basis of the testimony of AAA which he claims is riddled with material inconsistencies and improbabilities, to wit:

First, on direct examination, AAA testified that on October 15, 1999, appellant came to her house and told her to go to his house because he has something to give her, and that she went to appellant's house and was raped there. However, on cross-examination, AAA testified:

ATTY. BRAGA:

Q:

Is it not a fact that on that date, you did not really go out of that house on that day and the accused did not come to your house?

COURT:

You divide your question.

ATTY. BRAGA:

Q:

Did you go out?

A:

Yes, sir.

Q:

Where did you go?

ATTY. BRAGA:

May we call the attention of this Hon. Court that she cannot even answer immediately, your Honor, whereas before, she said that she went to the house of the accused but now she cannot answer immediately.

A:

I did not go out, sir.

Q:

So, you did not go out of that house on that day and at that time?

A:

I did not, sir.[66]

Appellant contends that AAA's testimony that she did not leave her house on October 15, 1999 scuttles the charge that he raped her in his house.[67]

Second, in her statements before the Barangay Captain[68] and the XXX Police Station,[69] AAA claimed that appellant threatened to kill her should she report the incident. But in her testimony on direct-examination and cross-examination, AAA claimed that the threat was directed not only at her but also at the rest of her family.

Third, in her sworn statements, AAA stated that it was only when they were inside the appellant's room that the latter whipped out his gun and threatened her with it. Yet, in her testimony, AAA narrated that right after she stepped inside appellant's house, the latter poked a gun at her.[70]

Fourth, in her sworn statements, AAA said that while appellant was molesting her, she could not do anything because she was too afraid at that time. However, she later testified that she tried to push away appellant but the latter still persisted in molesting her.[71]

Fifth, on direct-examination, AAA testified that she saw appellant still holding the gun after he consummated the rape. On cross-examination, AAA testified that she did not notice where the gun was at the time appellant was forcing her legs apart.[72]

Sixth, AAA testified that she bled and felt pain when appellant molested her, but after the assault, she stood up, put her clothes back on, and walked home. Appellant finds this actuation of AAA unnatural.[73]

Seventh, appellant also questions AAA's recollection of the exact date of the alleged assault. AAA reckoned the date from the fact that she was invited to a friend's birthday party on October 14, 1999 but was unable to go

because she had to take care of her younger sibling. However, when asked to identify her friend, AAA could not recall her full name.[74]

And eighth, AAA testified that although her grandmother was around when appellant told her to go to his house, the former did not see nor hear appellant. Appellant argues that if this were true, then the prosecution should have presented AAA's grandmother to testify.[75]

Appellant likewise assails, for not being credible, the testimony of BBB that she came to know about AAA's ordeal only when Bautista informed her that appellant had been spreading rumor around the neighborhood that he had molested AAA.[76] Appellant contends that if this testimony of BBB that he bragged about molesting AAA were true, then the testimony of AAA that appellant threatened to kill her if she reports the molestation is false -- it is unnatural that he should spread word around that he molested AAA after having just threatened to kill her if she exposes him.[77]

Moreover, appellant imputes ill-motives to BBB and AAA in that they are accusing him of rape just to extort P1,000,000.00.[78]

Appellant finally contends that with the foregoing inconsistencies and improbabilities in the testimony of AAA, the evidence of the prosecution failed to establish his guilt beyond reasonable doubt.

Relying on the first-hand observation of the trial court that AAA is a credible witness, the CA rightly held that none of the inconsistencies or absurdities identified by appellant in the testimony of AAA is of any consequence, to wit:

x x x Affidavits are usually subordinated in importance to open court declarations because they [affidavits] are generally incomplete and inaccurate being executed oftentimes when a person's mental faculties are not in such a state as to afford fair opportunity of narrating the incident in full or in recalling connected collateral circumstances. Also, the discrepancy between the victim's testimony in court does not detract from the truthfulness of her allegation. They are minor inconsistencies that may be considered a badge of truthfulness that erases suspicions of a rehearsed testimony.

The alleged inconsistencies do not negate the fact that the accused-appellant succeeded in sexually violating the victim at gunpoint and impressed upon her young mind a great fear not just for her life but for her loved ones as well. Throughout her cross-examination, the victim remained firm and consistent in her testimony that the accused pointed a gun at her, undressed her against her will, and forced her into submission despite her attempts to fight him off. Now, the question as to whether the accused poked the victim with a gun as soon as she entered the house or when she was already inside the bedroom is a trivial one and does not point to any inconsistency at all. For either way it shows that the accused had held the victim at gunpoint inside the house. It must be emphasized that inconsistencies are of no consequence when they refer to minor details that have nothing to do with the essential fact of the commission of the rape.[79]

The Court finds no compelling reason to disturb the findings of fact of the lower courts.

The basic element of the crime of qualified rape as defined under Article

266-A, paragraph 1,[80] in relation to Article 266-B, paragraph 2,[81] of the Revised Penal Code, as amended by The Anti-Rape Law of 1997, is carnal knowledge by a man of a woman, with the qualifying circumstance that the same was committed with the use of a deadly weapon. Often the only available evidence thereof is the testimony of the woman that the man, armed with a deadly weapon, inserted his penis into her vagina. Thus, to ascertain with moral certainty the existence of this element, every court must abide by three fundamental principles: first, while the accusation can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; second, as the crime of rape usually involves only two persons, the testimony of the

complainant must be scrutinized with extreme caution; and third, the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[82]

It is within the foregoing framework that courts have consistently assigned full weight and credit to the testimony of a child-complainant, for no woman, much less one of tender age, would broadcast a violation of her person, allow an examination of her flesh and endure a public trial of her remaining dignity, unless she is solely impelled by the desire for redress.[83] Thus, when her testimony is plausible, spontaneous, convincing and consistent with human nature and the ordinary course of things, it can indeed beget moral certainty of the guilt of her violator.[84] And what can overcome the weight of her testimony is inconsistency on the fact of carnal knowledge or any credible physical evidence of the lack of it.[85] But for as long as she remains steadfast in her testimony on the essential element of carnal knowledge, inconsistencies or discrepancies on any other detail will not impair, but rather buttress, the veracity of her testimony, for lapses in her recollection of peripheral details are only to be expected for she is made to relive a harrowing experience.[86] This rule holds especially true when the minor inconsistencies are between her sworn statements and testimony in open court for such discrepancies do not necessarily discredit her since ex-parte affidavits are almost always incomplete and therefore inferior to the testimony given in open court.[87]

Further, from its vantage point, a trial court can observe first hand how a complainant carries herself as she testifies -- whether her eyes are shifty, steady or cast down in shame; her voice resolute, hesitant or faltering; her movement natural or affected. It is for this reason that when it finds a complainant credible and her testimony truthful, its factual findings are reviewed only according to the following parameters: first, the reviewing court will not disturb such factual finding of the trial court unless there is a showing that the latter had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; second, the findings of the trial court pertaining to the credibility of the witness is entitled to great weight and respect since it had the opportunity to examine the latter's demeanor when testifying; third, a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness.[88] These parameters are even more stringently applied when the factual findings of the trial court have been affirmed by the appellate court.[89]

Appellant insists that the Court reverse his conviction by the RTC and the CA because both courts overlooked inconsistencies and absurdities in the testimony of AAA that engender reasonable doubt in his guilt.

As correctly observed by the CA, the inconsistencies which appellant claims afflict the testimony of AAA pertain to such collateral matters not directly related to the element of carnal knowledge. The exact date of the incident and the place where it took place are not essential elements of the crime of rape; hence, inconsistencies regarding this detail in the statements of AAA and her testimony do not detract from her categorical testimony on the witness stand that appellant had carnal knowledge of her.[90] Also, at what definite place appellant wielded his gun and against whom he made threats with it are matters too marginal to the fact of carnal knowledge that inconsistencies regarding them have no bearing on the outcome of the case, in the light of the unwavering testimony of AAA that appellant had poked a gun at her at the time of the rape incident.[91] Likewise, the disparity in AAA's statements on the manner and degree of her resistance to the assault is not significant for vigorous physical resistance is not a requisite of the crime of rape carried out with intimidation or threat to the life or personal safety of the victim, especially one as vulnerable as AAA on account of her tender age and humble education .[92]

Moreover, AAA herself clarified that there were some details missed out in her sworn statements only because these details slipped her mind at the time she executed her statements.[93] As to the confusing statements she

made on cross-examination regarding where she was raped and where appellant placed the gun at that time, AAA remained categorical in stating on further cross-examination and on redirect examination that she was lured into the house of appellant and raped there;[94] and that while she saw the latter holding a gun at the beginning of the assault, she could no longer see where the gun was when she was forced to lie down on her back.[95]

The improbabilities which appellants pointed out are just as petty. There is no standard matrix by which to determine what constitutes normal behavior post assault. Different people react differently to trauma.[96] Hence, AAA's testimony that after appellant raped her, she stood up and walked home and hid her shame is not completely improbable.

It is likewise not illogical that appellant should spread the rumor about the incident despite his alleged warning to AAA not to expose him. In reality, it only takes one person to state to another person in confidence his dastardly act for a rumor to spread in the community. Certainly, the circulation of such rumor cannot shield appellant from culpability for otherwise all that an assailant would do to escape punishment would be to spread word about his having raped a woman, and should that woman later on file a complaint for rape, wave his act of spreading the rumor as a banner of his innocence.

As to the failure of the prosecution to name the friend of AAA who celebrated a birthday prior to the date of the rape incident, this omission is minor for it has nothing to do with the fact that appellant had carnal knowledge of AAA without her consent. Neither is the failure of the prosecution to present the testimony of the adult who was in AAA's house when appellant lured her into his house a fatal omission. It should be borne in mind that in criminal cases the prosecution has the discretion to decide on who to call as witness during the trial and its failure to do so does not give rise to the presumption that "evidence willfully suppressed would be adverse if produced" simply because such witness is also at the disposal of the defense which could easily ask that said witness be summoned.[97]

All told, the inconsistencies and improbabilities pointed out by the appellant hardly cast a reasonable doubt on the existing evidence of his guilt.

Not even the defenses raised by appellant can save him.

The CA was correct in ruling that his defense of denial cannot overcome the categorical and positive testimony of AAA.[98]

His alibi is likewise weak and incredible. For alibi to prosper, the accused must establish, by clear and convincing evidence, (a) his presence at another place at the time of the perpetration of the offense, and (b) the physical impossibility of his presence at the scene of the crime. "Physical impossibility" means that the accused "was at such other place [for] such a length of time that it was impossible for him to have been at the [crime scene], either before or after the time he was at such other place." [99]

Appellant admitted that in the morning of October 15, 1999, he was in his house in XXX and that in the afternoon, he was in the house of Fuentes, which was right in front of his house.[100] Fuentes confirmed that appellant was in his house in the afternoon of October 15, 1999 and that he occasionally went out to urinate.[101] AAA was raped in the house of appellant. It is therefore plain that it was not physically impossible for appellant to have been at the scene of the rape before or after he was at the house of Fuentes or during the intervals when he went out to urinate.

A ppellant further argues that his non-flight is indicative of innocence. Non-flight is not a viable defense[102] for as the Court observed in *People v. Faigano*,[103] some culprits do not flee because they are complacent that there would be no evidence or witness against them.

Appellant claims that all AAA and BBB wanted is to extort P1,000,000.00 from him. This claim is incredible. While it is not denied that some offer and counter-offer of compromise were discussed by both parties,[104] the Court agrees with the CA that the discussion could not have been intended by AAA and BBB to extort money from appellant. It is unlikely that AAA made public the degradation of her honor just to extort money from appellant; if that were her intention, she could have blackmailed appellant right after the incident. Moreover, there could not have been an extortion plot considering that Public Prosecutor Florante Ramolete, an officer of the law, was right in the middle of the discussion between the parties.[105] If it were true that AAA's and BBB's intention was to extort from appellant, they would not have involved Prosecutor Ramolete at all.

Finally, the Court examines the propriety of the monetary awards granted by the RTC and the CA in favor of AAA, consisting of P50,000.00 as civil indemnity and P50,000.00 as moral damages. In *People v. Cacayan*,[106] the Court held that, in addition to the award of P50,000.00 as moral damages, exemplary damages in the amount of P25,000.00 should likewise be granted and that civil indemnity awarded to victims of qualified rape shall not be less than P75,000.00, and P50,000.00 for simple rape.

Applying the foregoing ruling, the Court affirms the award to AAA of P50,000.00 as moral damages, modifies her award of civil indemnity from P50,000.00 to P75,000.00, and grants her P25,000.00 as exemplary damages.

WHEREFORE, the July 26, 2005 Decision and December 15, 2005 Resolution of the Court of Appeals are AFFIRMED with MODIFICATION to the effect that, in addition to the amount of P50,000.00 in moral damages awarded to AAA, she is GRANTED P25,000.00 in exemplary damages and P75,000.00 as civil indemnity.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr.,[*] and Reyes, JJ., concur.

[*] In lieu of Justice Antonio Eduardo B. Nachura, per Raffle dated October 8, 2008.

[1] Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa; CA rollo, p. 339.

[2] Id. at 21.

[3] Id. at 127.

[4] Id. at 359.

[5] Records, pp. 8 and 10.

[6] 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 those of their immediate family or household members, are withheld and fictitious initials instead are used to represent them, to protect their privacy. Likewise, the personal circumstances of the victim 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. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419 and the Supreme Court Resolution dated September 19, 2006.

[7] Records, pp. 8 and 10.

[8] Id.

[9] Id. at 1.

- [10] Id. at 22.
- [11] TSN, October 6, 2000, p. 4.
- [12] Exhibit "E", records, p. 107.
- [13] Id. at 8 and 10.
- [14] TSN, October 6, 2000, pp. 10-11.
- [15] TSN, October 6, 2000, pp. 6-8.
- [16] Id. at 8-9.
- [17] Id. at 10.
- [18] Id. at 16-17.
- [19] Id.
- [20] TSN, November 7, 2000, pp. 4-5.
- [21] Id. at 14-15.
- [22] Records, p. 109.
- [23] TSN, November 7, 2000, pp. 7-8.
- [24] TSN, December 6, 2000, pp. 5-9.
- [25] TSN, December 6, 2000, p. 9.
- [26] Id. at 4-5.
- [27] Records, p. 105.
- [28] TSN, February 20, 2001, pp. 8-9.
- [29] TSN, May 4, 2001, pp. 3-4.
- [30] Id. at 5-6.
- [31] TSN, May 23, 2001, pp. 5-6.
- [32] Records, p. 150.
- [33] RTC Decision, id. at 147.
- [34] Id. at 148-149.
- [35] RTC Decision, records, pp. 148-149.
- [36] Id. at 187.
- [37] CA rollo, p. 201.
- [38] G.R. No. 147678-87, July 7, 2004, 433 SCRA 640.
- [39] CA rollo, p. 313.
- [40] Id. at 355.

[41] Id. at 395.

[42] Amended Appellant's Brief, CA rollo, p. 151.

[43] Id. at 152-165.

[44] Id. at 161-164.

[45] CA Decision, CA rollo, pp. 348-349.

[46] Id. at 349.

[47] *People v. Sanchez*, G.R. No. 118423, June 16, 1999, 308 SCRA 264, 282.

[48] TSN, December 12, 2000, p. 14.

[49] See *People v. Seneris*, No. L-48883, August 6, 1980, 99 SCRA 92, 107.

[50] Sec. 10. Leading and misleading questions. - A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except: x x x (c) When there is difficulty in getting direct and intelligible answers from a witness who is ignorant, or a child of tender years, or is of feeble mind, or a deaf-mute; x x x.

[51] *People v. Dagano*, G.R. No. 137385, January 23, 2002, 374 SCRA 365, 371; *People v. Escutor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 665.

[52] Sec. 20. Leading questions. -The court may allow leading questions in all stages of examination of a child if the same will further the interests of justice.

[53] *People v. Licanda*, G.R. No. 134084, May 4, 2000, 331 SCRA 357, 368.

[54] Amended Brief, CA rollo, pp. 179-180.

[55] Id. at 181-182.

[56] Id. at 181.

[57] CA Decision, id. at 352-353.

[58] *People v. Limio*, G.R. Nos. 148804-06, May 27, 2004, 429 SCRA 597, 610, citing *People v. Luna*, January 22, 2003, 395 SCRA 647, 666 and *People v. Bayona*, G.R. Nos. 133343-44, March 2, 2000, 327 SCRA 190, 199-200.

[59] *People v. Santos*, G.R. No. 137993, April 11, 2002, 380 SCRA 608, 614-615 citing *People v. Bation*, G.R. No. 123160, March 25, 1999, 305 SCRA 253, 269; *People v. Mira*, G.R. No. 175324, October 10, 2007, 535 SCRA 543, 558.

[60] *People v. Padilla*, G.R. No. 142899, March 31, 2004, 426 SCRA 648.

[61] *People v. Degamo*, G.R. No. 121211, April 30, 2003, 402 SCRA 133, citing *People v. Vitancur*, G.R. No. 128872, November 22, 2000, 345 SCRA 414, 424.

[62] See *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620.

[63] In *People v. Dela Peña*, G.R. Nos. 138358-59, November 19, 2001, 369 SCRA 369, citing *People v. Tabugoca*, G.R. No. 125334, 285 SCRA 312 as cited in *People v. Mamac*, G.R. No. 130332, May 31, 2000, 332 SCRA 547, the Court held that rape with the use of a deadly weapon was introduced in Article 335 by Republic

Act No. 4111 on June 20, 1964. Such type of rape is recognized as qualified rape.

[64] *People v. Baltazar*, G.R. No. 130610, October 16, 2000, 343 SCRA 250, 260.

[65] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 387.

[66] TSN, December 12, 2000, p. 4.

[67] Amended Brief, CA rollo, p. 167.

[68] *Supra* note 26.

[69] *Supra* note 6.

[70] Amended Brief, CA rollo, pp. 167-168.

[71] *Id.* at 169-170

[72] Amended Brief, CA rollo, pp. 171-172.

[73] *Id.* at 173-174.

[74] *Id.* at 174-175.

[75] *Id.* at 181.

[76] TSN, October 24, 2000, pp. 2-3.

[77] Amended Brief, CA rollo, p. 174.

[78] Amended Brief, CA rollo, pp. 185-186.

[79] CA Decision, *id.* at 347-348.

[80] Art. 266. 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: a) Through force, threat or intimidation; b)When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d)When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person..

[81] Article 266-B. Penalty. - x x x Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

[82] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 495.

[83] *People v. Robles*, G.R. No. 177770, March 28, 2008; *People v. Pangilinan*, *supra* note 65; *People v. Buban*, G.R. No. 166895, January 24, 2007, 512 SCRA 500.

[84] *People v. Nazareno*, G.R. No. 167756, April 8, 2008; *People v. Montinola*, G.R. No. 178061, January 31, 2008, 543 SCRA 412; *People v. Maglente*, G.R. No. 179712, June 27, 2008.

[85] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

[86] *People v. Robles*, *supra* note 83; *People v. Montinola*, *supra* note 84; *People v. Santos*, *supra* note 59.

- [87] *People v. Dela Cruz*, G.R. No. 177572, February 26, 2008.
- [88] *People v. Reyes*, G.R. No. 168174 (Formerly G.R. Nos. 156174-76), April 13, 2007.
- [89] *People v. Nazareno*, supra note 84, citing *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642.
- [90] *People v. Nazareno*, supra note 84; *People v. Bon*, supra note 85.
- [91] *People v. Calayca*, G.R. No. 121212, January 20, 1999, 301 SCRA 192.
- [92] *People v. Batiancila*, G.R. No. 174280, January 30, 2007, 513 SCRA 434.
- [93] TSN, December 12, 2000, pp. 6 and 8
- [94] *Id.* at 12-13.
- [95] TSN, December 12, 2000, pp. 14 and 16.
- [96] *People v. Ramos*, G.R. No. 172470, April 8, 2008.
- [97] *People v. Torio*, G.R. No. 122109, June 25, 2003, 404 SCRA 623.
- [98] *People v. Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675.
- [99] *People v. Buban*, supra note 83.
- [100] TSN, May 4, 2001, pp. 3-4.
- [101] TSN, May 23, 2001, pp. 5-6.
- [102] *People v. Novio*, G.R. No. 139332, June 20, 2003, 404 SCRA 462; *People v. Napud, Jr.*, G.R. No. 123058, September 26, 2001, 366 SCRA 25.
- [103] G.R. No. 113483, February 22, 1996, 254 SCRA 10.
- [104] TSN, May 4, 2001, pp. 7-8.
- [105] CA Decision, CA rollo, p. 348.
- [106] G.R. No. 180499, July 9, 2008.

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