

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUNIOR BANG-AYAN, APPELLANT.*G.R. NO. 172870. September 22, 2006*

Ponente: YNARES-SANTIAGO, J.

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For review is the Court of Appeals' decision[1] in CA-G.R. CR.-H.C. No. 01566, which affirmed the joint judgment[2] rendered by the Regional Trial Court (RTC) of La Trinidad, Benguet, Branch 62, in Crim. Case Nos. 98- CR-3053, 98-CR-3054, and 98-CR-3055, convicting appellant Junior Bang-ayan, a.k.a. Hipngaton Namolngo Bang-ayan, Jr., of three counts of rape committed against XYZ,[3] sentencing him to suffer the penalty of reclusion perpetua for each count, and ordering him to pay XYZ the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages for each count plus costs.

In three separate Informations,[4] similarly worded except for the date of commission, appellant was charged with rape committed as follows:

That on or about the 3rd day of January 1998, at x x x Benguet Province, Philippines,[5] and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge of one XYZ, a minor being fourteen (14) years of age, against her will and consent.

CONTRARY TO LAW.

Appellant pleaded not guilty to the crimes charged. The three cases were consolidated and jointly tried.

The evidence shows that 14-year old XYZ was born on September 9, 1983 to AAA[6] and BBB.[7] When her parents separated, she lived with her mother who cohabited with CCC.[8] She studied first and second year high school at x x x Benguet[9] and stayed during school days at the dormitory of said school together with the family of her cousin, DDD.[10] On her third year, she transferred to another school in xxx City but continued to live at the dormitory in Benguet until January 1998 when she transferred to the newly constructed house of her relatives in xxx City.[11] Appellant, on the other hand, was an acquaintance of XYZ's family and a former conductor of her uncle's vehicle.[12]

During the 1997 Christmas vacation, XYZ went home to Ifugao.[13] As classes was to resume on January 5, 1998, her mother convinced her to hitch a ride on the jeepney of appellant who was then bound for xxx City. Hence, at around 6 a.m. of January 3, 1998, XYZ together with several others, rode the jeepney of appellant.[14]

Upon reaching xxx, xxx City around 4:30 p.m. of the same day, several passengers alighted the jeepney. It was only XYZ and her former classmate who were left when they finally reached xxx Road, xxx City. She was about to alight after her former classmate got off the jeepney but appellant told her that he would drive her to the dormitory at Benguet. Before XYZ could refuse the offer, appellant sped off and reached the place at around 7:00 p.m.[15] She did not feel alarmed because appellant told her not to be afraid nor embarrassed because he is her

uncle anyway.

At the dormitory, XYZ bought a bottled water from the school's librarian who was occupying the first door on the second floor of the building, while the appellant went to the sala. At that night, it was only XYZ, the school's librarian and appellant who were in the dormitory. After giving the bottled water to appellant, XYZ went inside the room but appellant surreptitiously followed her and locked the door behind them.[16] He pushed her to bed and held both her hands above her head with his left hand and then used his right hand to remove her pants, t-shirt and underwear. She resisted by kicking his legs but he was strong and was holding her hands tightly. He lowered his pants and underwear, placed himself on top of her and used his knees to spread her legs. Appellant inserted his penis into XYZ's vagina causing her to experience tremendous pain. After satisfying his lust, appellant lay down beside her,[17] and locked her in a tight embrace to prevent her from escaping.

The two subsequent rapes were carried out in the same manner as the first, only that the third one happened at dawn the following day. XYZ cried, struggled, kicked and pinched appellant during and even after each rape when appellant kept her locked in his arms and legs, but her efforts were useless.[18] At around 5:00 a.m. of the following day, appellant left with a warning not to tell anyone, especially her uncle.[19]

XYZ kept her ordeal to herself until after the regular classes were over in March 1998 when her mother confronted her about appellant's marriage proposal. At this point, XYZ disclosed that she was raped by appellant prompting her mother to report the matter to the National Bureau of Investigation-Cordillera Administrative Region (NBI-CAR).[20] Thereafter, Dr. Ronald R. Bandonill, a Medico-Legal Officer of the NBI conducted the physical and genital examination on XYZ, which yielded the following results:

GENITAL EXAMINATION

* PUBIC HAIR: fully grown, sparsely distributed. LABIA MAJORA and MINORA: both slightly gaping. FOURCHETTE: moderately lax. VESTIBULAR MUCOSA: pinkish.

* HYMEN: originally annular, thick, fleshy, with old-healed, complete lacerations at 6:00 o'clock and 8:00 o'clock positions and an old-healed incomplete laceration at 3:00 o'clock position, corresponding to the face of a watch, edges rounded, with coaptible borders.

HYMENAL ORIFICE: admits a tube 2.5 cms. in diameter with slight difficulty.

* VAGINAL WALLS: tight. VAGINAL RUGOSITIES: prominent.

CONCLUSIONS:

1) No extragenital physical injuries noted on the body of the subject at the time of the examination.

2) Old-healed, complete and incomplete hymenal lacerations noted.[21]

For his defense, appellant denied the accusations against him. During the trial, he testified that on January 1, 1998, he was invited by CCC to celebrate the New Year in their house in xxx. Appellant had been married for 8 years but remained childless. He proposed marriage to XYZ because their tradition allows spouses to separate and look for another partner if they remain childless.[22]

On January 3, 1998, appellant offered XYZ a ride to xxx City. Seated behind him, she and several others reached xxx City at around 4:30 p.m. After all the passengers alighted, XYZ transferred to the front seat and asked him to bring her to Benguet so she can deposit her bag at the dormitory. As it was already dark when they reached the place, he heeded XYZ's advice to spend the night at the dormitory. He followed, and saw her got a key from a female teacher. Inside, he was offered water and "skyflakes." They talked for about two hours and nothing

untoward happened between them because he slept in the sala while she stayed in her bedroom. The following day, he dropped her off at xxx Road, xxx City.[23]

On May 6, 2003, the RTC rendered the joint judgment finding appellant guilty beyond reasonable doubt of the crime of rape, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court finds Junior Bang-ayan also known as Hipngaton Nalmongo Bang-ayan, Jr., guilty beyond reasonable of the crime of simple rape in the three (3) Informations, defined and penalized by Article 266-A, paragraph 1 (a) and Article 266-B, paragraph 1 of Republic Act No. 8353, and sentences him to suffer the penalty of Reclusion Perpetua including all accessory penalties imposed by law for each count of rape as charged. He shall indemnify XYZ: the sum of P50,000.00 by way of civil indemnity in each count of rape; the sum of P50,000.00 by way of moral damages in each count of rape; and the sum of P25,000.00 by way of exemplary damages in each count of rape; and to pay the costs.

X X X X

SO ORDERED.[24]

After the denial of his motion for reconsideration, appellant appealed to this Court. Pursuant to our decision in *People v. Mateo*[25] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as direct appeals from the Regional Trial Court to the Supreme Court in cases where the penalty imposed is death, reclusion perpetua or life imprisonment, this case was transferred to the Court of Appeals for appropriate action and disposition.[26]

On February 28, 2006, the Court of Appeals promulgated the assailed Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, we AFFIRM the decision of the trial court finding herein accused-appellant Junior Bang-ayan guilty beyond reasonable doubt of three (3) counts of rape, sentencing him to suffer the penalty of reclusion perpetua for each count of rape and ordering him to indemnify victim XYZ the sum of P50,000.00 by way of civil indemnity for each count of rape, P50,000.00 by way of moral damages for each count of rape, and P25,000.00 by way of exemplary damages for each count of rape.

SO ORDERED.[27]

Hence, this appeal.

The issue for resolution is whether the RTC, as affirmed by the Court of Appeals, erred in finding appellant guilty beyond reasonable doubt of the crime of rape.

In the review of rape cases, the credibility of the private complainant is the single most important factor for consideration. The case of the prosecution stands or falls on the credibility of the victim. This rule is in accordance with the intrinsic nature of the crime of rape where only two parties, namely the victim and the accused, are usually involved. In this regard, the appellate court will generally not disturb the assessment of the trial court on matters of credibility owing to its unique opportunity to observe the deportment and manner of testifying of witnesses firsthand during the trial unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case.[28]

While appellant recognizes the above-settled rules, however, he pleads to this Court to take an exception thereof as XYZ's narration of rape was allegedly riddled with inconsistencies and improbabilities.

Indeed, in the exercise of the Court's review power, it seeks justice not merely for the victim but for the accused as well to guarantee that his constitutional rights are safeguarded.[29] Thus, we painstakingly sifted through the

evidence presented in order to make our own determination as to appellant's guilt or innocence. But, we find no cogent reason to overturn the conclusion of the RTC that the prosecution sufficiently proved appellant's guilt beyond reasonable doubt.

Finding XYZ's testimony of the sexual assaults perpetrated by the appellant against her worthy of belief, the RTC held:

On the witness stand, she did not hesitate nor waver in her answers which were candid, plain and spontaneous. At one point in the course of her testimony, on questions about what Junior Bang-ayan did to her, she stiffened, her eyes became misty, and a teardrop fell on her cheek. Her demeanor added poignancy to verity born out of human nature and experience. She went through a long and rigorous cross-examination interspersed with subtle questions designed to trap her into inconsistencies and contradictories.

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The Court reviewed the testimony of XYZ, not on any particular segment but in its entirety to ascertain whether it has overlooked facts and circumstances of weight, influence and significance, or has misapprehended, or misunderstood or misapplied certain facts and circumstances which could be resolved in favor of the accused. The Court found none. XYZ is a credible witness, and her testimony is worthy of belief. Her sole testimony indeed bears the hallmarks of truth. It is sufficient to hold Junior Bang-ayan responsible for the three counts of rape charged against him.[30]

A rape victim, who testifies in a categorical, straightforward, spontaneous and frank manner, and remains consistent, is a credible witness.[31] Her genuine cries of anguish for several times[32] while recounting the sexual assault is evidence of the truth of the rape charges.[33] Besides, it being instinctive for a very young, unmarried woman to protect her honor, it is difficult to believe that she would fabricate a tale of defloration, allow the examination of her private parts, reveal her shame to the small town where she grew up and permit herself to be the subject of gossip and public trial if she had not really been ravished.[34]

Appellant cannot successfully impugn XYZ's credibility on account of her alleged behavior prior, during or after the sexual assaults. He claims that it was XYZ who invited him to Benguet as he did not know that she lived in a dormitory during school days. Further, he argues that if it was true that they had been inside the room for seven hours, practically naked, it is incredible why XYZ neither tried to escape nor shout for help knowing that the school's librarian and her family were just few doors away. He contended that she did not exert the kind of resistance expected from a rape victim, hence, he concluded that the rape charges against him were mere fabrications.

We are not persuaded.

The factual question raised by appellant as to whether it was XYZ herself who invited him to the dormitory is an inconsequential matter that does not bear upon the elements of the crime. What is decisive in a prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged.[35] As the inconsistencies alleged by appellant had nothing to do with the elements of the crime of rape, they cannot be used as grounds for his acquittal.

As regards the lack of resistance, or attempt to escape and shout for help when the sexual transgressions were being committed against her or immediately thereafter, XYZ can hardly be faulted for behaving as she did because reaction to a given situation or type of situation differ from one person to another and there is no standard form of behavioral response when one is confronted with a strange or startling experience.[36] Being in her early teens, she was obviously cowed into silence by her fear and confusion. As disclosed by XYZ, she was raped by

her stepfather when she was 9 years old and the trauma and fright she experienced then, recurred when appellant ravished her.[37]

We do not agree with appellant's contention that the old healed laceration in the genitalia of XYZ could not have been attributed to him, but to XYZ's stepfather who raped her when she was 9 years old. Appellant alleged that it would take at least three months for lacerations to completely heal, thus, having been examined on March 10, 1998, the old-healed lacerations could not have been caused by him. Suffice it to state in the crime of rape, the testimony of the victim, and not the findings of the medico-legal officer, is the most important element to prove that the felony had been committed. Even without a medical report, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone if credible is sufficient to convict the accused of the crime.[38] Moreover, Dr. Bandonill admitted that there are individuals, only few they may be, whose lacerations heal faster than others.[39]

Appellant could only offer denial in his defense. It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a negative self-serving assertion that deserves no weight in law. Between the positive assertions of the prosecution witnesses and the negative averments of the accused, the former indisputably deserve more credence and are entitled to greater evidentiary weight.[40]

Lastly, we quote with approval the ruling of the Court of Appeals regarding the affidavit of desistance executed by XYZ, thus:

Finally, the subsequent execution by the victim of an affidavit of desistance is not fatal to the prosecution's cause. As held by the Supreme Court in the case of *People v. Bation*:

"We have consistently ruled, however, that this Court looks with disfavor on affidavits of desistance because they can easily be secured from poor and ignorant witnesses, usually for monetary considerations and because it is quite incredible that after going through the process of having the accused apprehended by the police, positively identifying him as his rapist, and enduring the humiliation and examination of her private parts, the victim would suddenly declare that the wrongful act of the accused does not merit prosecution."

When the victim testified in court, she admitted having executed the affidavit of desistance. We stress however that despite the execution of the affidavit, the victim did not disprove her previous statements on the commission by the accused-appellant of the crime of rape against her. Moreover, she admitted that she was merely pressured, although not forced, to sign the affidavit.[41]

Rape committed by using force and intimidation is punishable by reclusion perpetua, pursuant to Article 226-B of the Revised Penal Code. The RTC correctly convicted appellant of three counts of rape and sentenced him to suffer the penalty of reclusion perpetua for each count.

Anent the award of damages, the RTC correctly awarded P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape. Civil indemnity is in the nature of actual and compensatory damages, and is obligatory upon conviction for rape. As to moral damages, it is automatically awarded to rape victims without the necessity of proof, for it is assumed that she suffered moral injuries entitling her to such award. Such award is separate and distinct from civil indemnity.[42] However, we delete the award of P25,000.00 as exemplary damages for each count of rape. Article 2230 of the Civil Code provides that "(i)n criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances." The records show that no aggravating circumstance attended the commission of the crime rape; hence the award of exemplary damages has no factual and legal basis.[43]

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01566, which affirmed the joint judgment of the Regional Trial Court of La Trinidad, Benguet, Branch 62, in Crim. Case

Nos. 98-CR-3053, 98-CR-3054, and 98-CR-3055, convicting appellant Junior Bang-ayan, a.k.a. Hipngaton Namolngo Bang-ayan, Jr., of three counts of rape committed against XYZ, sentencing him to suffer the penalty of reclusion perpetua for each count, and ordering him to pay the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages for each count of rape, is AFFIRMED with the MODIFICATION that the award of P25,000.00 as exemplary damages for each count is DELETED for lack of factual and legal basis.

SO ORDERED.

Panganiban, C. J., (Chairperson), Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 3-11. Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[2] CA rollo, pp. 29-50. Penned by Judge Fernando P. Cabato.

[3] Pursuant to Section 44 of Republic Act (R.A.) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[4] Id. at 10-15.

[5] Complete address is withheld to protect the victim's privacy.

[6] Mother's name is withheld to protect her and the victim's privacy.

[7] Father's name is withheld to protect him and the victim's privacy.

[8] Real name is withheld to protect the victim's privacy.

[9] Name and complete address of school is withheld to protect the victim's privacy.

[10] Real name is withheld to protect the victim's privacy.

[11] TSN, October 29, 1998, pp. 4-11.

[12] Id. at 13-15.

[13] Complete address is withheld to protect the victim's privacy.

[14] Id. at 16-18.

[15] Id. at 19-24.

[16] TSN, November 11, 1998, pp. 3-6.

[17] Id. at 7-12; November 26, 1998, p. 6.

[18] TSN, November 11, 1998, pp. 3-6; TSN, November 26, 1998, pp. 6-16.

[19] TSN, December 10, 1998, pp. 6-7.

[20] Id. at 15-18.

- [21] Records, p. 10.
- [22] TSN, June 14, 2000, pp. 5-7.
- [23] Id. at 8-9; TSN, June 26, 2000, pp. 2-8.
- [24] CA rollo, pp. 49-50.
- [25] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [26] Rollo, p. 183.
- [27] Id. at 220.
- [28] *People v. Villanueva, Jr.*, 442 Phil. 293, 301 (2002).
- [29] *People v. Bascuguin*, 418 Phil. 209, 212 (2001).
- [30] Rollo, pp. 48-49.
- [31] *People v. Lou*, G.R. No. 146803, January 14, 2004, 419 SCRA 345, 351-352.
- [32] TSN, October 29, 1998, p. 22; TSN, December 10, 1998, p. 5; TSN, February 2, 1999, pp. 6, 11 & 31.
- [33] *People v. Ancheta*, G.R. No. 142431, January 14, 2004, 419 SCRA 307, 314.
- [34] *People v. Buates*, 455 Phil. 688, 697 (2003).
- [35] *People v. Masapol*, G.R. No. 121997, December 10, 2003, 417 SCRA 371, 377.
- [36] *People v. Aspuria*, 440 Phil. 41, 50 (2002).
- [37] TSN, November 26, 1998, p. 7, 13.
- [38] *People v. Logmao*, 414 Phil. 378, 387 (2001).
- [39] TSN, September 24, 1998, p. 16.
- [40] *People v. Baroy*, 431 Phil. 638, 655 (2002).
- [41] Rollo, p. 219; See also TSN, April 16, 2000, pp. 4-6.
- [42] *People v. Candaza*, G.R. No. 170474, June 16, 2006, SC e- Library.
- [43] *People v. Calongui*, G.R. No. 170566, March 3, 2006, SC e- Library.

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