

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROSAURO ASETRE Y DURAN, APPELLANT.

G.R. No. 175834. June 08, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

On appeal is the September 1, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 00367 which affirmed in its entirety the March 8, 2004 Decision[2] of the Regional Trial Court (RTC) of Santiago City, Branch 21 finding appellant Rosauro Asetre y Duran guilty beyond reasonable doubt of four counts of the crime of rape.

Factual Antecedents

On June 11, 2001, four Informations[3] were filed charging appellant with four counts of rape. Except for the dates of commission, the Informations similarly read as follows:

That on or about (the first week of March 2001,[4] the second week of March 2001,[5] the third week of March 2001,[6] the 23[rd] day of March 2001,[7]) at Barangay "BBB,"[8] "CCC," and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat, and intimidation, willfully, unlawfully, and feloniously did lie, and succeeded in having carnal knowledge of "AAA," a thirteen year-old minor.

CONTRARY TO LAW.

During his arraignment on September 26, 2001, appellant entered the plea of "not guilty".[9] Thereafter, the four cases were jointly tried. During the pre-trial conference, the defense admitted, among others, that "AAA" was born on March 23, 1988 as shown in her birth certificate[10] and was thus only 13-years of age when the alleged rape incidents happened.

Version of the Prosecution

The prosecution established that appellant was the common-law husband of "DDD", who is the aunt of "AAA". According to "AAA", she started living with "DDD" and appellant when she was still small.[11] "AAA" narrated that in March 2001, particularly during her summer vacation at "BBB", appellant raped her four times.[12] The first rape happened during the first week[13] of March 2001 at around noontime.[14] Appellant took off her clothes[15] then inserted his penis into her vagina.[16] "AAA" felt pain in her private parts.[17] "AAA" struggled against the advances of appellant[18] but to no avail. Appellant even threatened "AAA" that she and "DDD" would be killed if she would report the incident. Thereafter, appellant sexually molested "AAA" three more times. The second rape transpired during the second week of March 2001;[19] while the third rape was committed shortly thereafter.[20] The fourth and last rape incident happened on March 23, 2001.[21]

Another witness for the prosecution was Dr. Jeffrey M. Barcena (Dr. Barcena) who testified that on April 25, 2001, he conducted a medical examination on "AAA".[22] He testified that "AAA" had multiple old hymenal lacerations which could have been caused by anything which penetrated her vagina.[23] He also noted a recent

abrasion on the labia minora.[24]

Version of the Defense

The first witness for the defense was Rosita Clarin (Clarin) who testified that appellant was her neighbor for four years.[25] Clarin asserted that at the time the alleged rapes were committed, "AAA" was not in "BBB" but in "EEE" attending school,[26] hence appellant could not have raped her. Clarin averred that "AAA" arrived at "BBB" only on March 24, 2001,[27] or one day after the latest alleged rape was committed.

Romualdo Dulay (Dulay), another defense witness, testified that he was also a neighbor of the appellant.[28] He claimed that during the time material to this case, "AAA" was not in "BBB" but in "EEE" attending school.[29] He allegedly saw "AAA" in "BBB" only on March 25, 2001.[30]

The last witness for the defense was the appellant himself. He denied having raped "AAA". He claimed that from the first week up to the third week of March 2001, he was at "BBB" together with "DDD", his live-in partner, and his helpers. He averred that at that time, or until March 23, 2001, "AAA" was not in "BBB" but in "EEE" attending school.[31] Appellant insisted that "AAA" arrived at "BBB" only on March 24, 2001[32] at around 2 o'clock in the afternoon.[33]

Ruling of the Regional Trial Court

In its Decision dated March 8, 2004, the RTC rendered its Decision finding appellant guilty as charged. The trial court found "AAA's" testimony to be credible and without any showing of ulterior motive to falsely testify against the appellant.[34] The dispositive portion of the Decision reads:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Rosauro Asetre y Duran GUILTY beyond reasonable doubt of four counts of rape and hereby sentences him to the penalty of reclusion perpetua in each of the four (4) cases. He is also ordered to pay "AAA" the sum of Fifty Thousand Pesos (P50,000.00) in each of [these] cases or a total of Two Hundred Thousand Pesos (P200,000.00).

SO ORDERED.[35]

Appellant filed his Notice of Appeal;[36] hence, the trial court ordered the records of the case to be forwarded to the CA.[37]

Ruling of the Court of Appeals

On September 1, 2006, the CA rendered its Decision dismissing the appeal and affirming in its entirety the Decision of the trial court. Just as the trial court disregarded appellant's arguments on the alleged inconsistencies in the testimony of "AAA" regarding the dates of the commission of the crimes, the appellate court likewise found the same to be inconsequential.

The appellate court also found no compelling reason to overturn the findings of the trial court on the credibility of "AAA",[38] more so because there was no evidence of any improper motive on her part.[39]

The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the instant APPEAL is hereby DISMISSED. Accordingly, the decision of Branch 21 of the Regional Trial Court of Santiago City, in Criminal Case Nos. 21-3516 to 21-3519, is hereby AFFIRMED.

SO ORDERED.[40]

On February 19, 2007, we accepted appellant's appeal and required the parties to file their respective supplemental

briefs.[41] However, on April 17, 2007[42] and May 7, 2007,[43] respectively, appellee and appellant manifested that they are no longer filing their supplemental briefs considering that they have already exhaustively discussed their arguments in their respective briefs filed before the CA. Hence, this appeal is being resolved based on the briefs submitted by the parties before the CA.

Issues

In his brief,[44] appellant assigns the following errors:

- THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
- THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

Appellant argues that he deserves an acquittal considering the glaring inconsistencies in "AAA's" testimony regarding the dates of the commission of the offenses and the places where the crimes were allegedly committed.[45] Citing *People v. Ladrillo*,[46] appellant claims that contrary to the ruling of the trial court, the failure of "AAA" to specify the dates of the commission of the crimes creates serious doubts on whether she was indeed raped. Appellant also insists that "AAA" contradicted herself as to who reported the incidents to her aunt "DDD".

On the other hand, appellee insists that the issue boils down to the credibility of the witnesses and that the trial court did not err in giving full faith and credence to the testimony of "AAA"[47] which is consistent, candid and steadfast.[48] Appellee argues that any inconsistency in the testimony of "AAA" as regards the dates of the commission of the crimes is understandable considering her young age and the traumatic experience she had undergone.[49] Besides, it claims that said inconsistencies did not discredit the credibility of "AAA" because "discrepancies on the exact dates of the sexual abuses are inconsequential, the exact date of the commission of the rape not being an essential element of the crime." [50]

Finally, appellee asserts that in addition to civil indemnity, "AAA" is likewise entitled to an award of moral damages as well as exemplary damages for each count of rape.[51]

Our Ruling

The appeal is partially meritorious.

We have thoroughly reviewed the records of the case and we find that the evidence presented by the prosecution showed that appellant is guilty of only one count of rape, and not four counts.

The Informations charged appellant with having raped "AAA" on the first week, second week, and third week, of March 2001, and on March 23, 2001. However, as argued by the defense, the testimony of "AAA" with regard to the first three incidents particularly on the dates when and the places where the offenses were supposedly committed contains disturbing discrepancies.

During her direct examination, "AAA" testified, viz:

Q

You stated [that] you were staying with "DDD" and the [appellant] in the month of March, 2001 in a tent located in "BBB", "CCC", do you recall x x x any incident that happened?

A

x x x I was raped, sir.

x x x x

Q

You stated that you were rape[d], who raped you?

A

He was the one, sir.

INTERPRETER:

Witness pointed to the accused x x x

PROS. DAMASEN:

Q

When did the accused [rape] you?

A

March 23, sir.

Q

What year?

A

2001, sir.

Q

Do you recall how many times the accused raped you?

A

Four (4) times, sir.

Q

When was the first time?

A

During the first week, sir.

Q

First week of what month?

A

March, 2001, sir.

Q

When the accused first raped you, where was that?

A

In our tent at "BBB," sir.

x x x x

Q

How did he rape you?

A

He took off my clothes, sir.

x x x x

Q

After the accused removed [your shorts], what happened?

A

x x x [H]e raped me, sir.

x x x x

Q

How did he rape you?

A

He just inserted his penis [into] my vagina, sir.

Q

What did you do when the accused inserted his penis into [your] vagina?

A

I continued struggling, sir.

x x x x

Q

You said you were raped four (4) times in the month of March, 2001[,] where did the second rape [happen]?

A

x x x [A]t "BBB," sir.

x x x x

Q

Who raped you?

A

Also my [stepfather], sir.

x x x x

Q

How about the 3[rd] time where did the rape [happen]?

A

Also at "BBB," sir.[52]

However, during cross-examination, "AAA" testified that:

Q

Madam Witness you said that you were raped by the accused x x x in the first week of March, 2001, isn't it?

A

What I know, sir, that was March 23.

Q

So the accused did not rape you in the first week of March, so you were only raped by the accused [on] the 23[rd] of March, is that correct Madam Witness?

A

Yes, sir.

Q

The accused also did not rape you on the second week of March, 2001?

A

Yes, sir.

Q

Also in the third week?

A

Yes, sir.[53]

It will be recalled that in her direct examination, "AAA" testified that she was raped inside their tent in "BBB". However, in her re-direct examination, "AAA" testified that she was raped elsewhere, viz:

Q

Now, you said you were raped four times in March 2001 where did the first rape [happen]?

A

"FFF", sir.

Q

How about the second rape where did it happen x x x?

A

"EEE", Nueva Vizcaya, sir.

Q

How about the third rape where did it [happen]?

A

Also at "EEE," sir.[54]

We thus could not agree with the findings of the trial court and the CA that the inconsistencies in the testimony of "AAA" regarding the first three rape incidents are inconsequential. These inconsistencies create a reasonable doubt in our mind as to whether appellant did in fact rape "AAA" during those occasions. Consequently, we are constrained to acquit appellant of the charges of rape allegedly committed during the first week, second week, and third week, of March 2001 based on reasonable doubt.

In contrast, "AAA's" testimony as regards the March 23, 2001 incident was candid and consistent. She never wavered in her narration that through threats and intimidation, appellant had carnal knowledge of her against her will. During her cross-examination, she testified, viz:

Q

Madam Witness can you remember what time were you raped by the accused on that 23[rd] of March, 2001?

A

That was evening because he came to fetch me from my place at about 2:00 o'clock, sir.

Q

2:00 o'clock in the morning or afternoon Ms. Witness?

A

In the afternoon, sir.

Q

Where did the accused fetch you in that afternoon of March 23, 2001?

A

From our house, sir.

Q

And that is in "EEE", isn't it?

A

Yes, sir.

Q

What time did you arrive at "BBB", "CCC" when you were fetch[e]d by the accused in "EEE"?

A

It is already night, sir.

Q

Can you estimate the time?

A

No, sir. I don't know.

Q

When you arrived at "BBB", "CCC", isn't it that your [aunt] "DDD" was there?

A

She was not there, sir.

Q

Why is it that your [aunt] "DDD" was not there when you arrived from "EEE"?

A

She went to attend [a] wedding x x x

Q

When you arrived at "BBB" where did you go Ms. Witness together with the accused?

A

At the place where [he] raped me, sir.

Q

Where is that place?

A

At the waiting shed which is covered, sir.

Q

Covered with what Ms. Witness?

A

Galvanize[d] iron, sir.

Q

Isn't it that there are [other] tents near your tent where you stayed when you arrived from "EEE"?

A

There was none, sir.

Q

But when you arrived at the place where the tent is located there are other people around isn't it Ms. Witness?

A

There was none, sir.

Q

x x x [A]re there no houses around near the tent that you stayed on the night of March 23, 2001?

A

There was none, sir.

Q

How did the accused rape you?

A

He removed my clothing, sir.

Q

How did he [remove] your clothing?

A

I was then wearing skirt and he removed my panty, sir.

Q

And you voluntarily consented isn't it Ms. Witness?

A

No, sir.

Q

You did not shout isn't [it] Ms. Witness?

A

I [shouted], sir. I even cried.

Q

But isn't it that the accused when he raped you he was not arm[ed] x x x?

A

There is none, sir.

Q

He did not even tell you any threatening words, isn't it Ms. Witness?

A

He threatened me, sir. He said that he is going to kill me if I will not accede to his desire.

Q

You said that it was too painful when you were raped?

A

Yes, sir.

Q

And that was the reason why you cried because it was painful?

A

Yes, sir.

Q

And that was also the reason why you struggled because it was painful, isn't it?

A

Yes, sir.[55]

In her re-direct examination, "AAA" remained consistent in her testimony that she was raped by the appellant. Thus:

Q

Now, you stated that you were brought by your stepfather to "BBB", "CCC", in the month of March 2001, do you still recall when was that, when in March, 2001?

A

March 23, sir.

Q

And who was his companion when he fetch[ed] you in "EEE"?

A

He was alone, sir.

x x x x

Q

Do you recall what time you left "EEE"?

A

2:00 o'clock, sir.

x x x x

Q

Why do you remember March 23, 2001 from among the three (3) rapes that happened earlier?

A

Because that was the time when he fetch[ed] me from our house at "EEE", sir.

x x x x

Q

How about on March 23, 2001 when the accused raped you[,] where [did it happen]?

A

Here at "BBB," sir.[56]

As defined under Article 266-A of the Revised Penal Code, rape is committed -

- By a man who shall have carnal knowledge of a woman under any of the following circumstances:
- Through force, threat or intimidation;
- When the offended party is deprived of reason or is otherwise unconscious;
- By means of fraudulent machination or grave abuse of authority;
- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

x x x x

As regards the March 23, 2001 incident, the prosecution established that appellant had carnal knowledge of "AAA" through force, threat or intimidation. "AAA's" confusion relative to the first three incidents does not warrant his acquittal as regards the March 23, 2001 incident; neither does it detract us from the fact that she was indeed raped by the appellant on March 23, 2001. Notably, "AAA's" testimony was corroborated by the medical findings of Dr. Barcena. Moreover, appellant could not ascribe any ill motive on the part of "AAA" on why she would charge appellant with such a serious crime.

Under Article 266-B of the Revised Penal Code, the penalty for rape committed under the circumstances is reclusion perpetua. Moreover, pursuant to prevailing jurisprudence, "AAA" is entitled to an award of civil indemnity in the amount of P50,000.00, moral damages in the amount of P50,000.00, as well as exemplary damages of P30,000.00. Finally, an interest of six percent (6%) per annum should be imposed on all damages awarded from the finality of judgment until fully paid.[57]

WHEREFORE, the appeal is PARTIALLY GRANTED. Appellant Rosauro Asetre y Duran is hereby ACQUITTED of the three counts of rape docketed as Criminal Case Nos. 3516, 3517 and 3519 on reasonable doubt. He is, however, found GUILTY beyond reasonable doubt of one count of rape in Criminal Case No. 3518 and is sentenced to suffer the penalty of reclusion perpetua and to pay "AAA" P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages. All damages awarded in this case should be imposed with interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] CA rollo, pp. 111-130; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid.

[2] Records, Vol. 1, pp. 96-107; penned by Judge Fe Albano Madrid.

[3] Records, Vol. 1, p. 1; Records, Vol. 2, p. 1; Records, Vol. 3, p. 1; Records, Vol. 4, p. 1.

[4] Records, Vol. 1, p. 1; docketed as Crim. Case No. 3516.

[5] Records, Vol. 2, p. 1; docketed as Crim. Case No. 3517.

[6] Records, Vol. 4, p. 1; docketed as Crim. Case No. 3519.

[7] Records, Vol. 3, p. 1; docketed as Crim. Case No. 3518.

[8] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

[9] Records, Vol. 1, p. 39.

[10] Id. at 36.

[11] TSN, November 15, 2001, p. 5.

[12] Id. at 11.

[13] Id.

[14] Id. at 12.

[15] Id. at 13.

[16] Id. at 15.

[17] Id.

[18] Id. at 14.

[19] Id. at 16.

[20] Id. at 17-19.

[21] Id. at 19.

[22] TSN, December 10, 2001, p. 9.

[23] Id. at 13.

[24] Id.

[25] TSN, January 9, 2002, pp. 5-6.

[26] Id. at 8-10.

[27] Id. at 10-11.

[28] TSN, January 14, 2002, p. 5.

[29] Id. at 7.

[30] Id. at 10.

- [31] TSN, September 11, 2002, pp. 6-11.
- [32] Id. at 15.
- [33] Id. at 16.
- [34] Records, Vol. 1, p. 101.
- [35] Id. at 107.
- [36] Id. at 109-110.
- [37] Id. at 111.
- [38] CA rollo, p. 127.
- [39] Id.
- [40] Id. at 129-130.
- [41] Rollo, p. 22.
- [42] Id. at 23-25.
- [43] Id. at 26-27.
- [44] CA rollo, pp. 36-50.
- [45] Id. at 46.
- [46] 377 Phil. 904 (1999).
- [47] CA rollo, p. 82.
- [48] Id. at 89.
- [49] Id. at 91-92.
- [50] Id. at 92. Citations omitted.
- [51] Id. at 103-104.
- [52] TSN, November 15, 2001, pp. 9-18.
- [53] TSN, November 22, 2001, p. 5.
- [54] Id. at 23-24.
- [55] TSN, November 22, 2001, pp. 6-10.
- [56] Id. at 19-24.
- [57] *People v. Olesco*, G.R. No. 174861, April 11, 2011.

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