PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ORLANDO UBIÑA Y AGGALUT, APPELLANT.

G.R. NO. 176349. July 10, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 00012, which affirmed with modification the August 6, 2003 Decision[2] of the Regional Trial Court of Tuao, Cagayan, Branch 11 in Criminal Case No. 895-T, finding appellant Orlando Ubiña y Aggalut guilty beyond reasonable doubt of the crime of rape.

On December 18, 2000, appellant was charged with rape in an Information[3] that reads:

> The undersigned 2[nd] Assistant Provincial Prosecutor, Officer-In-Charge hereby accuses Orlando A. Ubiña of the crime of Rape, defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, and Section 2, of Republic Act 8353, committed as follows:
>
> That on or about October 16, 2000, in the Municipality of Sto. Nino, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, [Or]Lando A. Ubiña, uncle of the offended party AAA, thus, have moral ascendancy over the aforesaid complainant, with lewd design and by the use of force and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party, AAA, a minor 15 years of age against her will.
>
> Contrary to law.[4]

Appellant pleaded not guilty to the offense charged.[5]

The facts as culled from the records are as follows:

> The series of events that led to the charge of rape started in the morning of October 9, 2000 when the appellant went to the Tabang Elementary School in Tabang, Sto. Niño, Cagayan (where AAA was a student) to inform her that her grandfather ("lolo") was in a hospital and needed her there. AAA went with the appellant but was told while at Tuguegarao that her lolo was in a different hospital. The appellant then brought her to Allacapan, Cagayan "in a house where the accused stayed when they were still young."
>
> In a room at that house, the appellant removed AAA's pants and thereafter inserted his penis into her vagina while AAA was lying down. AAA resisted when she was made to lie down and cried as the appellant removed her pants. The appellant sexually abused [her] five (5) times in the seven (7) days they stayed in Allacapan.
>
> From Allacapan, the appellant brought AAA in the afternoon of October 16, 2000 to her grandfather's house located in a rice field in Campo, Sto. Niño, Cagayan. He molested [her] twice at that location that same afternoon. Again, AAA cried as the appellant removed her shorts and panty.
>
> After three (3) days, AAA's grandfather brought her home to San Manuel. With the appellant's warning not to tell anyone what transpired between them, AAA did not mention a word regarding the incident to either her

> grandfather at Sto. Niño, or to [her] father upon her arrival at home at San Manuel. It was only on the following day that she told her father about her ordeal. AAA's father reported the matter to the police the next day.
>
> After initial police investigation, AAA was brought to the Cagayan Valley Medical Center where Dr. Jeliza Alcantara medically examined her. The examination disclosed several hymenal lacerations in her genitalia, indicating that she was no longer a virgin. The Medical Findings state:
>
> "Abdomen " flat, soft, normo active bowel sounds, non-tender
>
> GUT ï¿½ Normal External Genitalia, admits 2 fingers with ease (+) multiple complete and incomplete old healed hymenal lacerations
>
> x x x
>
> The appellant denied that he raped AAA but admitted that his father-in-law instructed him on October 9, 2000 to bring AAA home from school because he (the father-in-law who is also AAA's grandfather) was sick. [She] was summoned because no one else was available to look after him. After bringing [her] home, he went to his farm to pick up his wife. The appellant denied that he brought AAA to Allacapan, Cagayan; he had no reason to go there since he didn't know anybody from that place. He further claimed that on October 16, 2000, he was at Maguiling, Piat, Cagayan to have his buffalo carabao vaccinated; he went home by 5:00 o'clock in the afternoon of that same day.
>
> The appellant claimed that he could not think of any reason why AAA would accuse him of rape, and surmised that [her] father could be angry at, or at the very least envious of, him. He narrated that AAA's father did not receive any dowry from his father-in-law while he and his wife were given a carabao.[6]

After trial on the merits, the trial court rendered judgment, the dispositive portion of which reads:

> WHEREFORE, in view of all the foregoing, the court finds that the guilt of the accused Orlando A. Ubiña for the crime of Rape, defined and penalized under Article 266-B of the Revised Penal Code has been established beyond reasonable doubt and hereby sentences the said accused Orlando A. Ubiña to suffer imprisonment of thirty (30) years of Reclusion Perpetua. He is further sentenced to indemnify the private complainant AAA the amount of P50,000.00 as civil indemnity.
>
> No pronouncement as to cost.
>
> SO ORDERED.[7]

On appeal, the Court of Appeals affirmed with modification the Decision of the trial court, thus:

> WHEREFORE, the decision of the Regional Trial Court of Tuao, Cagayan, Branch 11, in Criminal Case No. 895-T, finding the appellant guilty of the crime of rape is AFFIRMED with MODIFICATION with respect to penalty and the awarded damages. The appellant is sentenced to suffer the penalty of reclusion perpetua and to pay the complainant P50,000.00 as moral damages and, as awarded by the trial court, P50,000.00 as civil indemnity. No pronouncement as to costs.
>
> SO ORDERED.[8]

The appellate court disregarded the aggravating circumstance of craft and the special qualifying circumstances of minority and relationship of the parties in the imposition of penalty because it noted that they were not alleged in the information. It however modified the penalty of 30 years' imprisonment imposed by the trial court and instead imposed the single and indivisible penalty of reclusion perpetua. It also awarded the amount of P50,000.00 as moral damages.

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Appellant denies raping AAA. He alleges that after he fetched AAA from school on October 9, 2000, he went to the farm to fetch his wife; that on October 16, 2000, he had his carabao vaccinated at Maguiling, Piat, Cagayan; that AAA's father fabricated the accusation against him out of jealousy because their father-in-law gave him and his wife a carabao as dowry, while the former and his wife were not given any; that the testimony of AAA was inconsistent and incredible - AAA cannot recall the place where the alleged first sexual abuse happened; and AAA's father, unlike other parents of rape victims, did not immediately report the alleged rape incidents to the police, nor did he confront him about what he allegedly did to his daughter. Finally, appellant invokes his right to be presumed innocent considering that the prosecution failed to prove his guilt beyond reasonable doubt.

The appeal is bereft of merit.

In reviewing rape cases, this Court is guided by three principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[9]

When a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity. Also, in a long line of cases, we have held that if the testimony of the rape victim is accurate and credible, a conviction for rape may issue upon the sole basis of the victim's testimony because no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt unless she is, in fact, a rape victim.[10]

In the instant case, both the trial and appellate courts found AAA's testimony to be clear, convincing, and credible. In fact, records show that AAA properly identified her rapist and realistically depicted her harrowing experience in the hands of appellant:

> Q
>
> Do you know the accused in this case?
>
> A
>
> Yes, sir.
>
> Q
>
> Why do you know him?
>
> A
>
> My mother and his wife are sisters.
>
> x x x x
>
> Q
>
> Do you recall where were you at around 10:00 O'clock in the morning of October 9, 2000?
>
> A
>
> Yes, sir.
>
> Q

Where were you?

A

At Tabang Elementary School, sir.

Q

At that particular date and time, do you still recall if somebody came to you?

A

Yes, sir.

Q

Who was that person?

A

Lando Ubiña, sir.

Q

Who is this Lando Ubiña, is he the same accused Lando Ubiña in this case?

A

Yes, the same person sir.

Q

If he will be shown to you, will you be able to recognize him?

A

Yes, sir.

Q

If he is now in the court room, will you please point at him?

A

There, sir (Witness pointed to a person who was asked his name and he answer [sic] that he is Lando Ubiña). [11]

x x x x

FISCAL:

Q

Did you reach the hospital?

A

No, sir.

Q

Where did you go then?

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A

In Allacapan.

x x x x

Q

While in Allacapan, do you recall if something happened to you?

x x x x

A

He removed my short pants.

x x x x

COURT:

Q

What did you do when Orlando Ubiña removed your pants?

A

None, sir.

Q

You did not object or refuse?

A

I cried, sir.

FISCAL:

Q

After the accused removed your shortpants, what happened next or what did he do next?

A

He inserted his penis into my vagina.

x x x x

Q

Did you resist when he made you lie down?

A

Yes, sir.[12]

x x x x

Q

On October 16, 2000, do you remember if there was anything unusual that happened to you?

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A

Yes, sir.

Q

Will you tell what happened to you on October 16, 2000 at barrio Campo, Sto. Niño, Cagayan?

A

He again removed my shorts and panty and sexually abused me again.

Q

What did you do when the accused removed your shorts and panty?

A

I cried again.

Q

How many times on October 16, 2000 did the accused sexually abuse you?

ATTY. LIGAS:

Objection, the information allege [sic] only one sexual intercourse.

COURT:

Witness may answer.

A

Two times, sir.

Q

How do you know that the penis of the accused entered into your vagina at barrio Campo, Sto. Niño, Cagayan?

A

I felt the entering of his penis into my vagina.

Q

How long did he sexually abuse you at Campo?

A

For a long period, sir. [13]

It is well-settled that the evaluation of the witnesses' credibility is a matter best left to the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[14] No such facts or circumstances exist in the case at bar.

We find that the prosecution satisfactorily proved beyond reasonable doubt that appellant had carnal knowledge of AAA through force, threats and intimidation. 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.[15] Appellant is the husband of the victim's aunt; as such, he is deemed in legal contemplation to have moral ascendancy over the victim.[16] It is a settled rule that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation.[17]

The alleged inconsistencies in AAA's testimony, i.e., her inability to remember the house where she was raped and her father's alleged unnatural reaction upon knowing that his daughter was raped, are inconsequential matters that do 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, must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. 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.[18]

We have said before that the workings of a human mind are unpredictable; people react differently and there is no standard form of behavior when one is confronted by a shocking incident.[19] AAA could not be expected to remember all the details surrounding her harrowing experience with appellant. The emotional trauma she suffered may tend to make her forget a circumstantial matter such as the house where she was raped. On the same note, AAA's father cannot be expected to immediately demand justice for his daughter. His initial shock could have prevented him from doing anything at all. Be that as it may, the inaction of AAA's father on the day he knew his daughter was raped does not negate the crime of appellant.

The proposition of appellant that the father of AAA instigated the filing of the criminal charges against him is a feeble attempt to exonerate himself. Besides, no mother or father would stoop so low as to subject their daughter to the tribulations and the embarrassment of a public trial knowing that such a traumatic experience would damage their daughter's psyche and mar her life if the charge is not true.[20] Moreover, we held in People v. Viajedor,[21] that family resentment, revenge or feud have never swayed the Court from giving full credence to the testimony of a complainant for rape, especially a minor who remained steadfast in her testimony, throughout the direct and cross-examinations, that she was sexually abused.

Compared with the factual backdrop painted by prosecution witnesses, appellant's version of what transpired only generates disbelief. Denial and alibi are inherently weak defenses and constitute self-serving negative evidence which can not be accorded greater evidentiary weight than the positive declaration of credible witnesses.[22] To be believed, denial must be buttressed by strong evidence of non-culpability;[23] whereas for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the locus criminis.[24] In the instant case, it was not shown that it was physically impossible for appellant to be at the scene of the crime when it was committed. Moreover, nobody corroborated his alibi.

In People v. Esperanza,[25] we explained that:

> The twin circumstances of minority and relationship under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659, are in the nature of qualifying circumstances because they alter the nature of the crime of rape and increase the penalty. As special qualifying circumstances they must be specifically pleaded or alleged with certainty in the information; xxx If the offender is merely a relation - not a parent, ascendant, step-parent, guardian, or common law spouse of the mother of the victim - the specific relationship must be alleged in the information, i.e., that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree." [26]

The information in the instant case only mentioned appellant as AAA's uncle, without specifically stating that he

is a relative within the third civil degree, either by affinity or consanguinity. Even granting that during trial it was proved that the relationship was within the third civil degree either of consanguinity or affinity, still such proof cannot be appreciated because appellant would thereby be denied of his right to be informed of the nature and cause of the accusation against him. Appellant cannot be charged with committing the crime of rape in its simple form and then be tried and convicted of rape in its qualified form.[27] Thus, the Court of Appeals correctly disregarded the qualifying circumstance of relationship.

However, the Court of Appeals erred in disregarding the minority of AAA because such was properly alleged in the Information and was proven during trial by the presentation of a certification of AAA's record of birth duly issued by the office of the municipal civil registrar of Sto. Niño, Cagayan.[28] Conformably with the Esperanza case,[29] when either one of the twin special qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence may be considered as an aggravating circumstance. As such, complainant's minority may be considered as an aggravating circumstance. However, it may not serve to raise the penalty in the instant case because in simple rape, the imposable penalty is reclusion perpetua which is single and indivisible.

Anent the award of damages, the appellate court correctly awarded P50,000.00 as moral damages in addition to civil indemnity because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[30] Moral damages are separate and distinct from civil indemnity;[31] however both are automatically granted once the fact of rape has been established.[32] In People v. Catubig,[33] we held that the presence of an aggravating circumstance, such as complainant's minority in the instant case, entitles her to an award of exemplary damages. The amount of P25,000.00 is deemed appropriate under the circumstances.[34]

WHEREFORE, the Decision of the Court of Appeals finding Orlando A. Ubiña guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim AAA, the sum of Fifty Thousand Pesos (P50,000.00) as civil indemnity ex delicto, and another Fifty Thousand Pesos (P50,000.00) as moral damages, is AFFIRMED with MODIFICATION that appellant is further ordered to pay the victim Twenty Five Thousand Pesos (P25,000.00) as exemplary damages.
SO ORDERED.
Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, pp. 3-18; penned by Associate Justice Arturo D. Brion and concurred in by Associate Justices Eugenio S. Labitoria and Eliezer R. De Los Santos.

[2] Records, pp. 105-107; penned by Judge Orlando D. Beltran.

[3] Id. at 22.

[4] Id.

[5] Id. at 27.

[6] Rollo, pp. 4-7.

[7] Records, p. 107.

[8] CA rollo, p. 97.

[9] People v. Sonido, G.R. No. 148815, July 7, 2004, 433 SCRA 701, 707.

[10] People v. Batiancila, G.R. No. 174280, January 30, 2007.

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[11] TSN, October 15, 2001, p. 4.

[12] Id. at 6-7.

[13] Id. at 8.

[14] People v. Candaza, G.R. No. 170474, June 16, 2006, 491 SCRA 280, 297.

[15] People v. Barcena, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 554.

[16] People v. Yatar, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 522.

[17] People v. Gutierrez, 451 Phil. 227, 240 (2003).

[18] People v. Bang-Ayan, G.R. No. 172870, September 22, 2006.

[19] People v. Ocampo, G.R. No. 171731, August 11, 2006, 498 SCRA 581, 588.

[20] Llave v. People, G.R. No. 166040, April 26, 2006, 488 SCRA 376, 401.

[21] 449 Phil. 297, 316 (2003).

[22] People v. Candaza, supra note 14.

[23] Velasco v. People, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664.

[24] Id. at 665.

[25] 453 Phil. 54 (2003).

[26] Id. at 75-76.

[27] Id. at 76.

[28] Records, p. 45.

[29] Supra note 25.

[30] People v. Calongui, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[31] People v. David, 461 Phil. 364, 387 (2003).

[32] People v. de la Torre, 464 Phil. 23, 46 (2004).

[33] 416 Phil. 102, 120 (2001).

[34] See People v. Nebria, 440 Phil. 572, 588 (2002).

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