

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NELSON BALUNSAT Y BALUNSAT, ACCUSED-APPELLANT.

G.R. No. 176743. July 28, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated July 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02097, affirming with modification the Joint Judgment[2] of the Regional Trial Court (RTC), Branch 11 of Tuao, Cagayan, in Criminal Case Nos. 762-T, 763-T, and 781-T. The RTC found accused-appellant Nelson Balunsat (Nelson) guilty of two counts of statutory rape committed against his first cousin AAA in Criminal Case Nos. 762-T and 763-T and for attempted rape committed against his other first cousin BBB in Criminal Case No. 781-T. On appeal, the Court of Appeals affirmed the conviction of Nelson for the statutory rape of AAA in Criminal Case No. 763-T and the penalties imposed upon Nelson for the said crime, i.e., imprisonment ranging from 17 years of reclusion temporal as minimum to reclusion perpetua as maximum, and payment of civil indemnity to AAA in the amount P50,000.00. The appellate court, however, also made the following modifications to the RTC judgment: (1) acquitting Nelson of the charge of statutory rape of AAA in Criminal Case No. 762-T on reasonable doubt; and (2) finding Nelson guilty, not of attempted rape, but of acts of lasciviousness committed on BBB, in Criminal Case No. 781-T, for which he was sentenced to suffer the indeterminate penalty of four (4) months of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum.

The three Informations filed against Nelson before the RTC of Tuao, Cagayan alleged:

Criminal Case No. 762-T:

That on or about April 26, 1999 in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Nelson Balunsat y Balunsat, with lewd design and by the use of force, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party, AAA, a woman, below 12 years old against her will.

Criminal Case No. 763-T:

That on or about April 24, 1999, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Nelson Balunsat y Balunsat, with lewd design and by the use of force, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the offended party, AAA, a woman below 12 years old against her will.

Criminal Case No. 781-T:

That on or about April 26, 1999, in the Municipality of Tuao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Nelson Balunsat, with lewd design and by the use of force and intimidation lay on top of the offended party, BBB, a minor 11 years of age to have sexual intercourse with her.

That the accused had commenced the commission of the crime of Rape directly by overt acts but did not perform all the acts of execution which would have produce it by reason of some causes of accidents other than his own spontaneous desistance.[3]

Nelson pleaded "not guilty" to all three charges.

During the trial, the prosecution presented AAA and BBB and also their birth certificates[4] to establish their ages during the rape incidents. According to the prosecution, the crimes charged were committed as follows:

The evidence for the prosecution shows that the private complainant, [AAA], was ten (10) years old at the time of the commission of the offense (Exhibit "D" and "D-1"). At about 9:00 o'clock in the morning of April 24, 1999 she was alone in their house at x x x as her parents were in the cornfields working. When she was in the process of cooking lunch, the accused Nelson Balunsat, who is the first cousin of the private complainant, their mothers being sisters, arrived. He took off the shorts and underwear of the private complainant and, thereafter, took off his short pants and underwear. He forced [AAA] to lie down on the floor and, opening wide her legs, succeeded in having sexual intercourse with her. Then he said "Nu maddanug ka e patayan ta ka" in Itawes which, in English means, "If you report this I will kill you". Then he left the private complainant who could not do anything but cry. Her private parts bled and she felt extreme pain. She did not tell her parents about the incident because of the threats made by the accused.

On April 26, 1999[,] at about 1:00 o'clock in the afternoon, private complainant [AAA] was sleeping in a room of the house of her grandmother CCC in the same barangay x x x, Tuao, Cagayan. With her was her cousin [BBB]. The accused arrived and removed his shorts and underwear and lay down beside [BBB]. The accused tried to insert his fully erect penis into [BBB]'s private parts. However, BBB resisted and the accused could not make any penetration of his penis on the former. Failing to satisfy his lust on [BBB], the accused told her to move over and then lay himself down beside private complainant [AAA]. He removed the shorts and panties of [AAA] and had sexual intercourse with her. Then he left both girls. On April 28, 1999, [AAA] told her Aunt [DDD] who then brought [AAA] first to the barangay authorities of x x x and later to the Tuao Police Station to report the twin rapes. She was then brought to the Tuao District Hospital where she was medico-legally examined by Dr. Roselyn B. Cardenas. The latter issued a medico-legal certificate (Exhibit "C") where her findings showed the following: "hymen with recent laceration at 1 o'clock" (Exhibit "C-1").

The April 26, 1999 rape incident as testified to by private complainant [AAA], was corroborated by [BBB], the private complainant in Criminal Case No. 781-T for Attempted Rape.

[BBB] testified that at about 1:00 o'clock p.m. on April 26, 1999 she and her cousin [AAA] were in the house of their grandmother CCC at x x x, Tuao, Cagayan, lying on a bed sleeping. The accused Nelson Balunsat arrived and went to the place where the two girls were sleeping. He laid down beside [BBB] and after removing his clothes tried to insert his penis inside her private parts. [BBB], however, resisted and the accused was unable to have sexual intercourse with her. Failing in his intentions on [BBB], the accused moved to [AAA] and had sexual intercourse with the latter. [BBB] testified that she saw the fully erect penis of the accused entering the vaginal orifice of [AAA]. She could not do anything because she was threatened by the accused.[5]

The defense, on the other hand, relied on denial and alibi, testified to by Nelson himself. Nelson's testimony was summarized as follows:

The accused interposed the defense of alibi. He claims that in the morning of April 24, 1999 he went to Bgy. Lallalayug, Tuao, Cagayan, with the other young men of Bgy. x x x to play basketball. After playing basketball, he and [his] companions went to the house of one Fred Ocab where he stayed up to about 4:00 o'clock in the afternoon, after which he went home.

As regards the rape on April 26, 1999, the accused Nelson Balunsat claimed that after eating lunch at his house

at about 11:00 o'clock he went to the house of one Manang Siony, which is near his house, to hear the drama being aired over the radio. Parenthetically, it should be mentioned that the accused is living with his grandmother [CCC] where the alleged rape of April 26, 1999 (Criminal Case No. 762-T) took place. He denied having raped [AAA] either on April 24, 1999 or on April 26, 1999. x x x .[6]

The court a quo rendered its Joint Judgment on January 9, 2002 finding Nelson guilty beyond reasonable doubt of two counts of rape and one count of attempted rape, thus:

WHEREFORE, in view of all the foregoing, the Court finds the accused Nelson Balunsat y Balunsat GUILTY beyond reasonable doubt of the crime of RAPE on two (2) counts and ATTEMPTED RAPE and hereby sentences him:

- In Criminal Case No. 762-T: to suffer imprisonment ranging from seventeen (17) years of reclusion temporal as minimum to reclusion perpetua as maximum and to pay the private complainant AAA the amount of Fifty Thousand as civil indemnity;
- In Criminal Case No. 763-T: to suffer imprisonment of seventeen (17) years of reclusion temporal as minimum to reclusion perpetua as maximum and to pay the private complainant AAA the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity;
- In Criminal Case No. 781-T: to suffer imprisonment of six (6) years of prision correccional as minimum to ten (10) years of prision mayor as maximum.

He is further sentenced to suffer all the accessory penalties provided for by law.[7]

Nelson filed with the RTC a Notice of Appeal of the foregoing judgment on January 29, 2002,[8] and his appeal before the Court of Appeals was docketed as CA-G.R. CR No. 26323. However, the Public Attorney's Office (PAO), as counsel de oficio for Nelson, filed on October 6, 2002 a Manifestation with Motion to Elevate the Case to the Supreme Court[9] on the ground that the appealed RTC judgment imposed upon Nelson, two penalties of reclusion temporal to reclusion perpetua imprisonment and one sentence of prision correccional to prision mayor imprisonment, were within the appellate jurisdiction of the Supreme Court pursuant to Rule 122, Section 3(c) of the Revised Rules of Criminal Procedure. The Court of Appeals, in its Resolution[10] dated November 14, 2002, granted Nelson's Motion and ordered its Division Clerk of Court to forward the records of the case to the Supreme Court for appropriate action.

In our Resolution[11] of December 16, 2002, we accepted the appeal and informed Nelson that he may file an additional appellant's brief; and in case such brief is filed, we required the Office of the Solicitor General (OSG) to also file an additional appellee's brief. We further directed our Division Clerk of Court to inquire from or confirm with the Director of the Bureau of Corrections whether Nelson was then confined at the New Bilibid Prison or any other national penal institution under the said Bureau.

Nelson filed his Appellant's Brief[12] on February 24, 2003, while the People, through the OSG, filed its Appellee's Brief (with Recommendation for Increase of the Penalty and for Award of Civil Indemnity and Moral Damages)[13] on July 14, 2003.

Conformably with our decision in *People v. Mateo*,[14] Nelson's appeal was returned to the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02097.

On July 13, 2006, the Court of Appeals promulgated its Decision in CA-G.R. CR.-H.C. No. 02097, affirming with modifications the appealed RTC judgment.

While agreeing with the RTC that Nelson did rape AAA on April 24, 1999 as charged in Criminal Case No. 763-T, the Court of Appeals found reasonable doubt that Nelson raped AAA again on April 26, 1999 as charged

in Criminal Case No. 762-T. The appellate court ratiocinated:

At bar, however, there are matters which are extremely doubtful regarding the perpetration of the second rape. The prosecution was uncertain whether AAA and BBB were lying together on the floor or on the folding bed inside CCC's house at around 1:00 p.m. of April 26, 1999; whether who between BBB and AAA was the first subject of appellant's assault; and whether the two minors were sleeping or awake when appellant arrived. What the prosecution could only muster was the alleged undressing of AAA and the penetration of appellant's penis into her vagina but no actual sexual intercourse was proven. Interestingly, there was not even a modicum of testimonial evidence whether appellant removed also his undergarments. Moreover, it is least probable that appellant could have satisfied his lust on AAA for about 2 to 3 minutes under such a precarious situation.

Evidently, AAA failed to account satisfactorily how she was raped the second time around. She, BBB and their CCC were all awake when appellant arrived at the time and place in question. There was no indication that they were paralyzed with fear by his sudden presence at the time when the said minors were about to sleep. That BBB was the initial subject of appellant's lechery could have so alarmed AAA and prompted her to avoid the ensuing assault on her. It is highly inconceivable for AAA to remain dormant while BBB was nearly raped by appellant. Struggle, outcry, shouting, or resistance was not futile, despite poking of the knife at BBB's stomach, which circumstance was neither alleged in the Information nor proven at the trial, hence unreliable. Interestingly, the same knife was not used against AAA, as admitted by BBB.

In the light of AAA's situation at that moment, she had the earliest opportunity to escape. Yet, she did not. Or, it could have been that AAA merely relayed to BBB the sordid tale of the previous rape, i.e, having seen the penis of appellant fully erect, its penetration into AAA's organ, which formed, although fruitless, a part of BBB's eyewitness account that led to the accusation of second rape. Or, in AAA's subject narration, she could have only wanted to reinforce her desire to be vindicated for the outrage she had earlier felt against appellant.

Unfortunately, We cannot indulge in speculations and surmises in Our judicial review. Where there is no sufficient proof of the corpus delicti of an alleged rape, the crime is deemed to be inexistent and could not be attributed to the accused. Speculations and probabilities cannot take the place of proof required to establish the guilt of the accused beyond reasonable doubt, and suspicion, no matter how strong, must not sway judgment. Courts cannot function to supply the missing links in the prosecution evidence which otherwise insufficiently proves carnal knowledge.[15]

The Court of Appeals also downgraded Nelson's crime in Criminal Case No. 781-T from attempted rape to consummated acts of lasciviousness based on the following portion of BBB's testimony:

Q

On April 26, 1999 at around 1:00 P.M., do you still recall where were you?

A

Yes, sir.

Q

Where were you at that time?

A

At the house of Lola [CCC].

Q

Who were your companions at that time?

A

[AAA].

Q

What were you doing at that time?

A

At the house of Lola [CCC].

Q

Who were your companion at that time?

A

[AAA], sir.

Q

What were you doing then in the house of your Lola [CCC]?

A

We went to sleep there, sir.

x x x x

Q

When Nelson Balunsat wanted to insert his penis into your vagina, did he succeed?

A

No, sir.

COURT:

Q

How were you clothed at that time when Nelson Balunsat tried to insert his penis into your private parts?

A

Short pants, sir.

Q

Were you still using your short pants when you entered the bedroom to sleep?

A

I was wearing my shorts and T-shirts, sir.

Q

When the accused tried to insert his penis into your private part, were you still wearing short pants?

A

Yes, sir.

Q

Of what material is your short pants?

A

Orange in color, sir.

Q

Was it a soft material?

A

Yes, sir.

COURT:

Proceed.

FISCAL:

Q

You said that Nelson Balunsat tried to insert his penis into your vagina, did his penis enter into your vagina?

x x x x

A

It was about to be inserted but I resisted.

Q

How did you resist?

A

I struggled, sir.

COURT:

Q

What was the accused wearing when he tried to insert his penis into your private parts?

A

He covered his body with a blanket.

x x x x

FISCAL:

You said a while ago that the accused covered his body with a blanket, so he was naked at that time?

A

Yes, sir.

Q

And you would see his penis as he removes the blanket that he use to cover his body?

A

Yes, sir.

COURT:

Q

When he tried to insert his penis, did you see his penis?

A

Yes, sir.

Q

Did you feel his penis touch your private parts?

A

Yes, sir.

Q

What part of your private parts were touched by his penis?

A

Here, sir. (witness pointing to the upper portion of the labia).[16]

From the foregoing, the appellate court made the following conclusions:

However, it was established that BBB was fully dressed up. All the more, the medical findings of Dr. Cuarteros showed that [BBB]'s hymen was intact, thus negating the charge of penetration. [Nelson] may have perched on top of BBB with her shorts and panty put on. But that is not rape. In reality, [BBB] resisted. Thus, [Nelson] asked her to move away, and vented his lust on [AAA]. Not every form of sexual molestation constitutes carnal knowledge. [Nelson]'s act of pressing his penis without penetration is, to our view, a mere sexual abuse which cannot be equated with rape, even on its attempted stage. Evidently, there was no slightest touching of the lips of [BBB]'s organ or the labia of the pudendum.

x x x x

Consequently, the circumstances attendant in Crim. Case No. 781-T constituted acts of lasciviousness since the following elements were proven, namely: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex. Doctrinally, acts of lasciviousness is considered an offense included or subsumed in the attempted rape charge.[17]

In the end, the Court of Appeals decreed:

WHEREFORE, the appealed joint Decision is AFFIRMED with MODIFICATION.

A) In Crim. Case No. 763-T, appellant NELSON BALUNSAT is found guilty of statutory rape and sentenced to suffer the penalty and to pay the civil indemnity, both imposed by the trial court;

B) In Crim. Case No. 762-T, he is ACQUITTED on reasonable doubt;

C) In Crim. Case No. 781-T, he is found guilty of Acts of Lasciviousness and is hereby sentenced to suffer the indeterminate penalty of Four (4) Months of arresto mayor, as minimum, to Two (2) Years, Four (4) Months and One (1) Day of prision correccional, as maximum.[18]

Nelson, through the PAO, filed with the Court of Appeals a Notice of Appeal on August 9, 2006.[19]

We accepted Nelson's appeal in a Resolution[20] of April 23, 2007, and required the parties to file their respective supplemental briefs, if they so desire.

In the separate Manifestations submitted on July 13, 2007 and July 16, 2007 by the People and Nelson, respectively, said parties waived the filing of supplemental briefs and, instead, opted to stand by the briefs they filed before the Court of Appeals.

Nelson's appeal is grounded on the following lone assignment of error:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED WHEN THE LATTER'S GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

Given that Nelson was already acquitted of the charge of rape in Criminal Case No. 762-T on the ground of reasonable doubt, his instant appeal relates only to his convictions for rape in Criminal Case No. 763-T and for acts of lasciviousness in Criminal Case No. 781-T. We can no longer pass upon the propriety of Nelson's acquittal in Civil Case No. 762-T because the appeal before us is Nelson's and not the People's. And more importantly, it is the rule that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the Court of Appeals.[21]

The crimes charged were purportedly committed on April 24, 1999 and April 26, 1999, after the effectivity of Republic Act No. 8353, also known as the Anti-Rape Law of 1997, which took effect on October 22, 1997. The Anti-Rape Law of 1997 further amended Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, by renumbering the said provision as Articles 266-A and 266-B, which now read:

Art. 266-A. 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 machinations 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.

Art. 266-B. Penalties.- Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua. (Emphasis ours.)

Nelson is charged in Criminal Case No. 763-T with statutory rape considering that AAA was then below 12 years

old.

The gravamen of the offense of statutory rape, as provided for in Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. Sexual congress then with a girl under 12 years of age is always rape. Thus, force, intimidation or physical evidence of injury are immaterial.[22]

To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant.[23]

As shown by AAA's Certificate of Live Birth, she was born on February 3, 1989. Hence, on April 24, 1999, when the rape charge in Criminal Case No. 763-T supposedly took place, she was only 10 years and 2 months old. Inside the court room, AAA identified her first cousin Nelson as her rapist. The remaining element of statutory rape which needed to be established herein is carnal knowledge between Nelson and AAA.

We stress that in the crime of rape, complete or full penetration of the complainant's private part is not at all necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entry or at least the introduction of the male organ into the labia of the pudendum is proved. The mere introduction of the male organ into the labia majora of the victim's genitalia, even without the full penetration of the complainant's vagina, consummates the crime. Hence, the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia consummates rape.[24]

We have carefully gone over the records of this case, particularly, the transcript of stenographic notes to ferret out the truth and we find AAA's testimony on the incident that took place on April 24, 1999 to be candid, straightforward, truthful, and convincing, consistent with the finding of the RTC, which had the opportunity to closely observe AAA as she was giving her testimony. AAA was able to describe with the simplicity of a child the ordeal that she suffered, even vividly recounting the pain caused by Nelson's penetration of her female organ, to wit:

FISCAL BACULI:

Q

Will you please narrate to this Court what happened to you while you were cooking?

A

While sitting at the bench Nelson Balunsat arrived, sir.

Q

When he arrived, what happened next?

A

Nelson Balunsat removed my panty, sir.

Q

What were you wearing then aside from your panty?

A

I was wearing short pants, sir.

COURT:

Q

So Nelson Balunsat also removed your shorts?

A

Yes, sir.

FISCAL BACULI:

Q

After Nelson Balunsat removed your shorts and panty, what happened next?

A

He inserted his penis in my vagina, sir.

Q

Did you actually feel the penis entering into your vagina?

A

Yes, sir.

Q

What did you feel when Nelson Balunsat inserted his penis into your vagina?

A

It was painful, sir.

Q

After sexually assaulting you, what happened next?

A

My vagina bled, sir.

Q

The accused Nelson Balunsat ever threatened you?

A

Yes, sir.

Q

What did he tell you?

A

He threatened me, sir.

COURT:

Put on record that the witness is crying in the witness stand.

WITNESS:

A

He said that if I will tell what happened to me, he will kill me, sir.

Q

If you will see him again will you be able to identify him?

A

Yes, sir.

Q

Will you please point to him if he is in court?

A

There, sir. (The witness pointed to a person when asked his name he answered that he is Nelson Balunsat).

Q

After the accused sexually assaulted you, did you ever mention the incident to anybody?

A

Yes, sir.

Q

To whom did you relate the incident?

A

To Auntie [DDD], sir.

Q

Do you recall what date and month, did you report the incident to your Auntie [DDD]?

A

Yes, sir.

Q

What date and month?

A

April 28, 1999, sir.

Q

After reporting the incident to your Auntie [DDD], what did you do next?

A

We went to the district hospital, sir.

Q

Did you report the incident to the Barangay officials?

A

Yes, sir.

Q

After coming from the district hospital for medical treatment, did you report the incident to the police?

A

Yes, sir.[25]

AAA broke down and cried while narrating on the witness stand how she was sexually abused by Nelson. Such spontaneous emotional outburst strengthens her credibility. The crying of a victim during her testimony bolstered her credibility with the verity borne out of human nature and experience. As previously held, when a young girl like private complainant cries rape, she is saying in effect all that is necessary to show that rape has indeed been committed.[26]

Moreover, AAA's testimony is supported by the following medical findings of Dr. Roselyn B. Cuarteros of the Tuao District Hospital:

FINDINGS

1. PERINEUM - no evident of recent wound.
2. FOURCHETTE - sharp angle
3. VAGINA - hymen with recent laceration at 1 o'clock
 - admits 1 finger with ease
 - (+) positive whitish discharged, no sperm identified
 - (+) positive congestion.[27] (Emphasis ours.)

It is settled that when the victim's testimony is corroborated by the physician's finding of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. Laceration, whether healed or fresh, is the best physical evidence of forcible defloration.[28]

Nelson's defense consisted mainly of denial and alibi. Mere denial without any strong evidence to support it cannot prevail over AAA's categorical and positive identification of Nelson. His alibi is likewise unavailing. We give scant consideration to Nelson's claim that he went to Barangay Lallalayug, Tuao, Cagayan, with five companions from Barangay x x x to play basketball in the morning of April 24, 1999, after which, they stayed at the house of a certain Fred Ocab until 4:00 o'clock in the afternoon. Nelson did not present as corroborating witness any one of his supposed five companions to Barangay Lallalayug in the morning of April 24, 1999 or Fred Ocab in whose house he allegedly stayed at in the afternoon of the same date. For alibi to be considered, it must be supported by credible corroboration, preferably from disinterested witnesses who will swear that they saw or were with the accused somewhere else when the crime was being committed.[29] In the absolute absence of corroborating evidence, Nelson's alibi is implausible.

We find little merit in Nelson's assertion that the false rape charges were filed against him because of a land dispute between him and his Auntie DDD, who accompanied AAA to the barangay authorities and the Tuao Police Station to report the purported rape. We are unconvinced that an aunt is capable of risking her young niece's reputation and future and her entire family's honor by concocting up a charge as serious as rape against a nephew over a piece of property. Time and again, we have ruled that it is unlikely for a young girl like AAA and her family to impute the crime of rape to their own blood relative and face social humiliation if not to vindicate AAA's honor.[30] No member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, more so in this case where the victim and the offender belong to the same family.[31]

Concerning Criminal Case No. 781-T, the Court of Appeals modified the guilty verdict of the RTC against Nelson from attempted rape to acts of lasciviousness. We can no longer review the "downgrading" of the crime by the appellate court without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused.[32] In effect, the Court of Appeals already acquitted Nelson of the charge of attempted rape, convicting him only for acts of lasciviousness, a crime with a less severe penalty. Hence, we limit ourselves to determining whether there is enough evidence to support Nelson's conviction for acts of lasciviousness.

The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[33] All these elements are present in Criminal Case No. 781-T.

First, there were acts of lasciviousness or lewdness, i.e., Nelson lying naked on top of his cousin BBB while the latter was sleeping at their grandmother's house; and Nelson attempting to insert his penis into BBB even when the latter was fully-clothed. Second, the lascivious or lewd acts were committed on BBB who was only 11 years old at the time of the incident. And third, the offended party BBB is another person of the opposite sex.

BBB positively identified Nelson as the offender. We stress that both the RTC and the Court of Appeals gave great weight to BBB's testimony and were convinced that Nelson committed a crime against BBB on April 26, 1999 at around 1:00 p.m., even though said courts may have varying views as to the precise designation of the crime. In contrast, Nelson merely denied the accusation against him, proffering the alibi that he was at a neighbor's house the whole day of April 26, 1999, going home to his grandmother's place only to eat lunch at around 11:00 a.m.

Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[34] Also, for Nelson's alibi to be credible and given due weight, he must show that it was physically impossible for him to have been at the scene of the crime at the approximate time of its commission. His defense of alibi is not only self-serving and easily fabricated, but is also the weakest defense he could interpose. We have uniformly held that denial is an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility.[35]

Having found Nelson guilty beyond reasonable doubt of statutory rape in Criminal Case No. 763-T and acts of lasciviousness in Criminal Case No. 781-T, we shall proceed to determine the penalties to be imposed on him.

Under Article 222-B of the Revised Penal Code, statutory rape shall be punished by reclusion perpetua. We note, however, that the Court of Appeals merely affirmed the order of the RTC for Nelson to pay AAA civil indemnity in the amount of P50,000.00. Neither the Court of Appeals nor the RTC awarded moral damages, which is

mandatory upon a finding of rape. Consistent with the current jurisprudence, moral damages in the amount of P50,000.00 should also be awarded in AAA's favor.[36] In view of the presence of an aggravating circumstance, we additionally award exemplary damages in accordance with Article 2230 of the Civil Code. The Information in Criminal Case No. 781-T expressly alleged that AAA was below 12 years of age at the time of the commission of the offense and this was sufficiently established by the presentation of her Birth Certificate in court. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P30,000.00 as exemplary damages is justified.[37]

The imposable penalty for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code, as amended, is prison correccional in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of arresto mayor which has a range of one (1) month and one (1) day to six (6) months. Absent any modifying circumstance attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of prison correccional or two (2) years, four (4) months and one (1) day to four (4) years and two (2) months. Accordingly, Nelson is hereby meted an indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prison correccional, as maximum. In addition, we award the amounts of P20,000.00 civil indemnity, P30,000.00 moral damages, and P2,000.00 exemplary damages to BBB in accordance with prevailing jurisprudence.[38]

WHEREFORE, the assailed decision of the Court of Appeals is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Nelson Balunsat y Balunsat is **GUILTY** beyond reasonable doubt of:

1. **STATUTORY RAPE** under Article 266-A of the Revised Penal Code in Criminal Case No. 763-T and sentenced to suffer the penalty of reclusion perpetua. He is also ordered to pay the victim AAA the amount of P50,000.00 as civil indemnity; P50,000.00 as moral damages; and P30,000.00 as exemplary damages.
2. **ACTS OF LASCIVIOUSNESS** under Article 366 of the Revised Penal Code in Criminal Case No. 781-T and sentenced to suffer the indeterminate penalty of imprisonment for six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prison correccional, as maximum. He is likewise ordered to pay the victim BBB the amount of P20,000.00 as civil indemnity, P30,000.00 as moral damages, and P2,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.

[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring; rollo, pp. 4-24.

[2] Penned by Judge Orlando D. Beltran, CA rollo (CA-G.R. CR.-H.C. No. 02097), pp. 22-27.

[3] CA rollo (CA-G.R. CR.-H.C. No. 02097), pp. 9-10.

[4] Records, pp. 19-20.

[5] CA rollo (CA-G.R. CR.-H.C. No. 02097), pp. 23-25.

[6] Id. at 25.

[7] Id. at 26-27.

[8] Records, p. 97.

- [9] CA rollo (CA-G.R. CR No. 26323), pp. 28-29.
- [10] Id. at 31-33.
- [11] CA rollo (CA-G.R. CR.-H.C. No. 02097), p. 2.
- [12] Id. at 7-21.
- [13] Id. at 33-76.
- [14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.
- [15] Rollo, pp. 18-19.
- [16] TSN, June 14, 2001, pp. 3-5.
- [17] Rollo, p. 22.
- [18] Id. at 23.
- [19] Id. at 25.
- [20] Id. at 28.
- [21] *People v. Sandiganbayan*, G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185, 206.
- [22] *People v. Ligotan*, 331 Phil. 98, 105 (1996).
- [23] *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588, 601-602.
- [24] *People v. Flores*, 448 Phil. 840, 856 (2003).
- [25] TSN, June 5, 2000, pp. 4-6.
- [26] *People v. Jusayan*, G.R. No. 149785, April 28, 2004, 428 SCRA 228, 236-237.
- [27] Records, p. 4.
- [28] *People v. Clores, Jr.*, G.R. No. 130488, June 8, 2004, 431 SCRA 210, 216.
- [29] *People v. Antivola*, 466 Phil. 394, 411 (2004).
- [30] *People v. Bali-Balita*, 394 Phil. 790, 810 (2000).
- [31] *People v. Flores*, *supra* note 24 at 855.
- [32] *People v. Alarcon*, G.R. No. 174199, March 7, 2007, 517 SCRA 778, 783-784, citing *People v. Dela Torre*, 430 Phil. 420, 430 (2002).
- [33] *Perez v. Court of Appeals*, 431 Phil. 786, 796 (2002).
- [34] *People v. Corral*, 446 Phil. 652, 665 (2003).
- [35] *People v. Villafuerte*, G.R. No. 154917, May 18, 2004, 428 SCRA 427, 435.
- [36] *People v. Pacheco*, G.R. No. 187742, April 20, 2010.
- [37] Id.; *People v. Macapanas*, G.R. No. 187049, May 4, 2010.
- [38] *People v. Poras*, G.R. No. 177747, February 16, 2010.

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