

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSDADO CODILAN Y PALAJURIN, ACCUSED-APPELLANT.

G.R. No. 177144. July 23, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On review is the November 29, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02383 affirming, with modification, the May 16, 2001 Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, which found Diosdado Codilan (appellant) guilty beyond reasonable doubt of two counts of rape and two counts of acts of lasciviousness.

Except as to the dates of the commission of the offenses - September, October, November, and December 1998 - each of the four Informations[3] charging appellant in Criminal Case Nos. 1487-M-99 to 1490-M-99 reads as follows:

x x x x

That in or about the month of . . ., 1998, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused taking advantage of the virginal innocence of his stepdaughter [AAA] who is eight (8) years old, did then and there willfully, unlawfully and feloniously, by means of threats and intimidation have carnal knowledge of [AAA], against her will and without her consent.[4]

x x x x (Underscoring supplied)

On arraignment, appellant pleaded not guilty to the charges.[5]

Through the testimony of AAA, the prosecution established as follows:

On the dates of the incidents, AAA was playing near the house of appellant, whom she calls "Tatay," in Gumaok West, San Jose Del Monte, Bulacan during which appellant - her uncle by affinity[6] - pulled her towards a room of his house, and once inside, he perpetrated the acts complained of consisting of licking her genitalia and inserting his penis into her vagina.

Fearing appellant's threats that he would kill her if she divulged what he had done to her, AAA kept her travails to herself. She was, however, later prompted to narrate appellant's dastardly acts when she was confronted by appellant's daughter "Ate Bing Bing," her first cousin, the latter's mother and her (AAA's) father being siblings. It turned out that "Ate Bing Bing's" then 12-year-old daughter BBB (appellant's granddaughter) had witnessed the December 1998 incident and divulged it to her mother in February 1999.

AAA thereupon executed on February 25, 1999 a sworn statement detailing the assaults made upon her by appellant. BBB also executed on February 26, 1999 a sworn statement in which she corroborated AAA's narration of the incident that occurred in December 1998.[7] Like AAA, BBB echoed the contents of her sworn statement at

the witness stand.

Through Dr. Ida De Pedro Daniel who conducted the physical examination of AAA on February 20, 1999, the prosecution also established that the examination showed that AAA's hymen was intact and no extra-genital injuries were noted on her body.

In defense, appellant claimed that the charges against him were fabricated by his own daughter, BBB's mother, who did not want him to return home after serving his eight-year prison sentence for illegal possession of firearms. His daughter, he added, held a grudge against him because he had hit her with a broom and had an altercation with her husband over the latter's change of religious affiliation.

By Decision of May 16, 2001, the trial court convicted appellant of two counts of rape and two counts of acts of lasciviousness, the latter for the acts committed in September[8] and November 1998.[9] Thus the trial court disposed:

WHEREFORE, judgment is hereby rendered, as follows:

- In Criminal Case No. 1487-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum up to six (6) years of prision correccional as maximum and to pay the private complainant the amount of P20,000.00 as moral damages;
- In Criminal Case No. 1488-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Rape under Arts. 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant the amount of P100,000.00 as moral damages;
- In Criminal Case No. 1489-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum up to six (6) years of prision correccional as maximum and to pay the private complainant the amount of P20,000.00 as moral damages; and
- In Criminal Case No. 1490-M-99, this Court finds the accused guilty beyond reasonable doubt of Rape under Arts. 266-A(d) and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant the amount of P100,000.00 as moral damages.[10] (Underscoring supplied)

On appeal to the Court of Appeals, appellant faulted the trial court in giving weight and credence to the testimonies of the prosecution witnesses and in convicting him of two counts of rape.

Modifying the trial court's decision, the appellate court awarded AAA for each count of rape civil indemnity in the amount of P50,000, reduced the award of moral damages to P50,000, and awarded exemplary damages of P25,000.

In awarding exemplary damages, the appellate court considered the aggravating circumstance of relationship, appellant being AAA's uncle by affinity, hence, a relative within the third civil degree.

On the assailed credibility of AAA and the other prosecution witnesses, the appellate court cited settled jurisprudence that (1) the offended party's testimony, if credible, is sufficient to sustain a conviction, and (2) appellate courts will generally not disturb the findings of the trial court as the latter is in a better position to determine the credibility of witnesses whom it heard and whose deportment and manner of testifying it observed during trial.

These jurisprudential rules, the appellate court held, are particularly significant given its finding that AAA was

merely eight years old at the time the offenses were committed. Like the trial court, the appellate court found AAA's testimony candid and straightforward to merit full faith and credit. It further found AAA's answers during the rigorous and at times misleading cross-examination to be clear and unflinching.

Respecting the medical findings which, appellant insisted, contradicted the charges of rape, the appellate court stressed that mere entry of the penis into the lips of the female genital organ, even without rupture or laceration of the hymen, suffices to convict the perpetrator of rape. For the hymen may be so elastic, it explained, as to stretch without laceration during intercourse, hence, the absence of lacerations in the hymen does not disprove sexual abuse especially when the victim is of tender age.

The appellate court further stressed that the physical examination of AAA took place several months after the occurrence of the incidents, hence, it was highly probable that traces of extra-genital injuries may have already disappeared at the time of the examination.

Moreover, the appellate court stated that lack of extra-genital injuries could also be explained by the fact that AAA did not resist the sexual advances of her uncle who, because of his moral ascendancy and the threats he made on her, had cowed her into submission and silence.

While the rapes committed in October and December 1998 were proven beyond reasonable doubt, the appellate court concurred with the trial court's finding that the incidents in September and November of the same year were not sufficiently established to amount to rape, hence, its affirmance of the trial court's conviction of appellant only for acts of lasciviousness. Amplifying its affirmance, the appellate court noted that AAA did not state that she felt pain during those two incidents, unlike the two others in which she recalled having felt pain in the genital area. And so the appellate court surmised that the organ of appellant failed to touch, but merely grazed, AAA's labia or pudendum.

On the penalties imposed, the appellate court found that the trial court's conviction of appellant only for simple rape with respect to the October and December incidents was proper.

While the appellate court noted that AAA claimed that she was eight years old at the time the incidents were committed, it found no independent evidence to conclusively establish the same.

Respecting the relationship of appellant to AAA, the appellate court noted that what was established is that appellant is an uncle by affinity, he being married to her father's sister; and while this relationship is within the third civil degree, the Informations referred to appellant as AAA's stepfather.

The Court finds appellant's appeal to be bereft of merit.

Indeed, the trial court, which had the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.[11] Its findings are accorded great respect unless it overlooked or misconstrued some substantial facts which, if considered, might affect the result of the case,[12] which circumstance does not obtain in this case.

As the transcripts of stenographic notes reflect, AAA's account of her harrowing experiences was candid and straightforward; and her answers during the rigorous cross-examination were definite and categorical as to the fact that appellant had molested her. Of the October incident, she testified on direct examination:

Public Pros.:

Q

You stated earlier that the second time that he abused you was October, 1998, where did it happen?

A

In their house, ma'am.

Q

In the same place where he abused you in September 1998?

A

Yes, ma'am.

Q

Why were you there in October when this incident took place?

A

We were playing with his nieces, ma'am.

Q

As you were playing with his nieces, what happened?

A

He lifted me towards his room, ma'am.

Q

What time was it when this happened in October, 1998?

A

I cannot recall, ma'am.

Q

Was it morning, noontime, afternoon or nighttime?

A

Also noontime, ma'am.

Q

This time in October 1998 when he lifted you inside his room, were there other persons inside his house?

A

None, ma'am.

Q

You said that he lifted you towards his room, when you were already in his room, what happened?

A

He touched my private parts then he inserted his penis into my vagina and then he lipped [sic] my private parts, ma'am.

Q

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

A

It was painful, ma'am.

Q

What happened after that?

A

None, ma'am.

Q

What did you do?

A

I told him that I will just urinate, ma'am, but I did not go back anymore.

Q

Did you report this incident that took place in October, 1998 to anybody?

A

I did not tell anyone because he threatened me that he will kill me if I will tell anybody about that.[13]
(Underscoring supplied)

And on cross-examination, she testified:

Q

You mean, Ate Bing Bing when she asked you about what the accused did to you in front of your parents, that was the first time that she asked you about that?

A

Yes, sir.

Q

Your father and mother they were around when Ate Bing Bing asked you?

A

Yes, sir.

Q

Now, exactly what were the words used by Ate Bing Bing when she asked you?

A

Ate Bing Bing asked me what Tatay did to me?

Q

Do you know of any reason why Ate Bing Bing asked you that question?

A

None, sir.

Q

And of course, you denied that the accused did anything to you, is it [sic] not ?

A

No, sir.

Q

What did you answer to your Ate Bing Bing?

A

I told her what Tatay did to me, sir.[14] (Underscoring supplied)

AAA's account of the December incident, on the other hand, was corroborated by BBB whose testimony was clear and straightforward as well. Thus BBB narrated:

Fiscal:

Q

While you were outside the house of your lolo, do you remember any unusual incident that you witnessed?

A

Yes, sir.

Q

What was that unusual incident?

A

While I was outside the house near the window, I heard somebody shouting "Aray ko po, tama na po," then I peeped thru the window and I saw my lolo Diosdado with his shorts pulled down and [AAA] was also without shorts lying down and I saw my lolo, as if he is inserting his penis into the vagina of [AAA].

Q

What was the relative position of your lolo as compared to [AAA] when you saw this incident?

A

He was lying face down, sir.

Q

And where was [AAA] when you saw your lolo "nakadapa"?

A

My lolo was lying on top, sir.

Court:

Q

Were they in bed?

A

Yes, Your Honor.

x x x x

Fiscal:

Q

What did you do, if any, when you saw them?

A

I went inside the house and I slowly opened the door and I saw Tatay immediately stood up while [AAA] seated herself and I noticed that her shorts was [sic] slightly pulled down. They were surprised upon seeing me, sir.

Q

And did you tell anybody about the incident that you witnessed?

A

None yet, sir.

Q

Up to now, have you told anybody about it?

A

Yes, sir.

Q

And who is that to whom you confided the incident?

A

I told it to my mother, sir.

Court:

Q

When your grandfather, the accused here, saw you, what did he do?

A

As if he was talking to [AAA], Your Honor.

Court:

Q

How about you, what did you do when you opened the door and saw [AAA] and your grandfather already

seated?

A

I brought [AAA] outside, Your Honor.

Q

Did you talk to [AAA] after you brought her outside?

A

Not at the moment, Your Honor.

Q

What do you mean "Hindi po kaagad"?

A

I talked to her after several days, Your Honor.

Q

Did [AAA] tell you anything when you brought her outside?

A

Yes, Your Honor.

Q

What did she tell you?

A

She confided to me what happened to her even before that date, Your Honor.[15] (Underscoring supplied)

That there were no lacerations in AAA's hymen and that her hymen was intact do not necessarily negate the commission of rape.

It is well settled that medical findings of injuries in the victim's genitalia are not essential to convict the accused of rape because proof of hymenal lacerations is not an element of rape.[16] What is essential is that there was penetration, however slight, of the labia minora,[17] which circumstance was proven beyond doubt in this case by the testimony of AAA, and that of BBB insofar as the December incident is concerned. It bears noting that the medico-legal officer admitted that despite her findings, it was not impossible for penetration to have been made.[18]

That the physical examination of AAA was done only in February 1999 or two months after the last incident also strongly militates against the presence of any traces of injury as the appellate court correctly observed. Given the tender age of AAA, the healing process could probably have already obliterated any telltale signs of sexual assault at the time of the examination.

As for the conviction of appellant for simple rape, the same is consistent with Article 266-B of the Revised Penal Code[19] and the settled rule that both the special qualifying circumstances of relationship and minority must not only be alleged in the information but must likewise be proved during the trial.[20] As both these circumstances were not concurrently alleged and proved, appellant can only be convicted of simple rape.

The Informations alleged that appellant was the stepfather of AAA. As reflected earlier, the evidence presented during the trial showed that he was AAA's uncle by affinity within the third civil degree.

The minority of AAA, on the other hand, though alleged in the Informations, was not proved by independent evidence, documentary or otherwise. In decisions of this Court, it has been stressed that even if the defense does not contest the minority of the victim,[21] or such minority is stipulated by the parties,[22] it is still incumbent upon the prosecution to prove the victim's age with absolute certainty.

In light then of the prosecution's failure to correctly allege AAA's relationship to appellant and to prove her minority, the penalty of reclusion perpetua, a single and indivisible penalty, was correctly imposed.

As to the incidents in September and November 1998, indeed, the evidence does not prove with moral certainty that rape was committed. The deeds committed were, therefore, properly appreciated only as acts of lasciviousness.

Finally, the appellate court correctly awarded civil indemnity of P50,000[23] for each count of rape, its imposition upon a finding of a commission thereof[24] being mandatory in accordance with current jurisprudence.

As for the award of moral damages which the appellate court reduced to P50,000 for each count of rape, the same is also in order in accordance with current jurisprudence, which amount is automatically granted in a rape case without need of further proof other than the fact of its commission. For it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[25]

The award of exemplary damages is in order too, the presence of the aggravating circumstance of relationship[26] being considered for the imposition of exemplary damages.

WHEREFORE, the challenged decision of the Court of Appeals is AFFIRMED with modifications. As modified, the dispositive portion of the Decision reads as follows:

Appellant, Diosdado Codilan y Palajurin, is found guilty beyond reasonable doubt of Rape in Criminal Case Nos. 1488-M-99 and 1490-M-99 and is accordingly sentenced to suffer in each case the penalty of reclusion perpetua and to pay also in each case the private complainant, AAA, P50,000 as civil indemnity, P50,000 as moral damages, and P25,000 as exemplary damages.

Appellant is likewise found guilty beyond reasonable doubt of Acts of Lasciviousness in Criminal Case Nos. 1487-M-99 and 1489-M-99 and is accordingly sentenced in each case to suffer a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum, to six (6) years of prision correccional as maximum, and to pay the private complainant, AAA, the amount of P20,000 as moral damages.

SO ORDERED.

Quisumbing, (Chairperson), Ynares-Santiago, Tinga, and Velasco, Jr., concur.

* Additional member per Special Order No. 509 dated July 1, 2008 in lieu of Justice Arturo D. Brion who is on leave.

[1]Rollo, pp. 3-28. Penned by Justice Andres B. Reyes, Jr. then chairperson of the CA Ninth Division, and concurred in by Justices Hakim S. Abdulwahid and Mariflor P. Punzalan Castillo.

[2] CA rollo, pp. 26-30.

[3]Records, pp. 2-3; 9-10; 13-14; and 17-18.

[4] Id. at 13.

[5] Ibid. Arraignment sheet signed by the accused on September 3, 1999.

[6] Appellant is married to the sister of AAA's father.

[7] Exhibit "B," Folder of Exhibits.

[8] Criminal Case No. 1487-M-99.

[9] Criminal Case No. 1489-M-99

[10] Records, pp. 116-117.

[11] People v. Fernandez, G.R. No. 176060, October 5, 2007, 535 SCRA 159, 162-163; People v. Watiwat, 457 Phil. 411, 421 (2003); People v. Esperanza, 453 Phil. 54, 67 (2003).

[12] People v. Fernandez, *ibid.*; People v. Ariola, 418 Phil. 808, 816 (2001).

[13] Transcript of Stenographic Notes (TSN), November 24, 1999, pp. 7-8.

[14] TSN, January 12, 2000, p. 8.

[15] TSN, June 14, 2000, pp. 7-9.

[16] People v. Opeliña, 458 Phil. 1001, 1012 (2003); People v. De Taza, 457 Phil. 635, 664 (2003); People v. Rizaldo, 439 Phil. 528, 537 (2002); People v. Managaytay, 364 Phil. 800, 807 (1999).

[17] People v. De Taza, *ibid.*; People v. Osing, 402 Phil. 343, 354 (2001).

[18] TSN, October 25, 2000, p. 8.

[19] The pertinent provision of Article 266-B of the RPC reads:

Article 266-B. Penalties. x x x

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

- When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. (Emphasis supplied)

x x x x.

[20] People v. Barcena, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 556; People v. Watiwat, *supra* note 11 at 428; People v. Esperanza, *supra* note 11 at 75-76; People v. Ferrera, 441 Phil. 439, 443 (2002); People v. Ariola, *supra* note 12 at 823.

[21] People v. Ferrera, *ibid.*; People v. Cula, 358 Phil. 742, 757 (2000); People v. Javier, 370 Phil. 128, 148 (1999).

[22] People v. Sajolga, 436 Phil. 327, 339 (2002).

[23] People v. Fernandez, *ibid.*

[24]People v. Rizaldo, 439 Phil. 528, 537 (2002); People v. Fernandez, 426 Phil. 168, 176 (2002).

[25] People v. Cabalquinto, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 435; People v. Manalo, 444 Phil. 655, 674 (2003); People v. Mangila, 382 Phil. 473, 487 (2000).

[26]Vide People v. Catubig, 416 Phil. 102, 120 (2001); People v. Ferrera, supra note 20 at 444 and People v. People v. Nerio, 418 Phil. 311, 340 (2001).

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