

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARIEL JACOB Y ZUÑEGA, ACCUSED-APPELLANT.

G.R. No. 177151. August 22, 2008

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the September 21, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01372 affirming the January 13, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 38, Daet, Camarines Norte. The RTC decision found the appellant Ariel Jacob y Zuñega (appellant) guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of reclusion perpetua.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that states:

That on or about 1:00 in the afternoon of August 7, 2000 at Barangay Gaboc, municipality of Mercedes, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously had carnal knowledge of his cousin [AAA],[3] a minor, against her will and prejudicial to her development as a child, to her damage and prejudice.

CONTRARY TO LAW.[4]

On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: BBB; AAA; and Dr. Virginia Barrameda-Mazo. The appellant took the witness stand for the defense and did not present any other witness.

BBB, mother of AAA, narrated that at around 11:00 o'clock in the morning of August 7, 2000, she and her daughter CCC went to Daet to buy school uniforms for her children. They left AAA alone in their house.[5] They returned to their house at around 4:30 in the afternoon and found it closed. Thinking that AAA was not inside, she opened the kitchen door by reaching for the barrel bolt.[6] She and CCC entered the house at the same time.[7] Soon after entry, CCC came running to her to report that AAA was lying in bed and was shaking. She rushed to AAA's side and asked her thrice why she was shaking. AAA, who appeared in shock, did not immediately answer. It was only after she spanked AAA on the hips that she appeared to regain her composure. AAA told her that her (AAA's) hips, legs and vagina were aching and that the appellant, also known as "Kitot," raped her.[8]

BBB testified further that she knows the appellant because he is the nephew of her present husband, DDD.[9] She also disclosed that her first husband, EEE, is the natural father of AAA.[10]

On September 18, 2001, AAA herself testified in court. The RTC succinctly summarized the material points of her testimony as follows:

She is the private complainant in this case and testified that on August 7, 2000, she was nine (9) years old.[11]

While in their house at 1:00 o'clock in the afternoon, the accused arrived and showed to her his penis.[12] He removed her panty and thereafter inserted his penis inside her vagina. She felt pain.[13] She fought back, but the accused was strong.[14] After the raping [sic] incident, accused gave her two (2) pesos but the accused retrieved the money[15] and went home.

That [sic] her mother brought her to Dr. Virginia Mazo for genital examination and also to the Police Station of Mercedes. She filed a complaint for rape against the accused.[16] On cross examination, she testified that she did not report for school on August 7, 2000 because she was not permitted by her mother;[17] that her cousin FFF told her to file rape case against the accused;[18] that there was misunderstanding between the parents of Ariel Jacob and her parents.[19] [Footnotes referring to the pertinent parts of the record supplied]

Dr. Virginia Barrameda-Mazo (Dr. Mazo), the Municipal Health Officer of Paracale, Camarines Norte, narrated that she conducted a physical examination of AAA on August 10, 2000 at the Camarines Norte Provincial Hospital at the request of the Chief of Police.[20] The genital examination yielded the following findings:

GENITAL EXAMINATION

Pubic hair, no growth. Labia majora, coaptated, with elongated, semi-oblong reddish contusions on both sides, extending downwards up to the fourchette area, beginning at the clitoris area. Labia minora, gaping. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, short, thin intact. Hymenal orifice measures 1.0 cm. in diameter. Vaginal walls and rugosities cannot be reached by examining finger.[21]

The appellant was the sole defense witness and gave a different version of events. He testified that he was in Lucena City on August 7, 2000 on a fishing expedition. He left Barangay Gaboc, Mercedes, Camarines Norte on August 4, 2000 on board a fishing vessel (basnigan),[22] and reached Lucena City on August 6, 2000.[23] He returned to Mercedes only on August 12, 2000.[24]

The appellant denied knowing AAA[25] when so asked on cross-examination. He also claimed that he had asked for permission from the pilot of the fishing vessel to go on board in order to earn a living. He did not ask his companions in the vessel to execute affidavits to confirm that he was indeed on board the vessel on August 4, 2000.

The RTC primarily considered the testimonies and documentary evidence relevant to the elements of the crime of rape. It did not "find it necessary to inquire into the defense of alibi put up by the defense, it being an established doctrine that the accused [sic] conviction must rest on the strength of the evidence of the prosecution." Its decision of January 13, 2003 found the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of RECLUSION PERPETUA and to pay the offended party the amount of P50,000.00 as civil indemnity and P30,000.00 as moral damages.[26]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[27] however, we transferred the records to the CA for intermediate review and disposition.[28]

The CA, in a decision[29] dated September 21, 2006 firstly noted that the Office of the Solicitor General, representing the State, recommended that the appealed decision be affirmed as "the totality of the evidence indubitably established the appellant's guilt beyond reasonable doubt." [30] Significantly, it considered in its decision the claim of the accused about the absence of hymenal laceration; the alleged misunderstanding between the appellant's parents and those of the victim; the inconsistencies pointed out in the testimonies of the prosecution witnesses; and the appellant's defense of alibi. The appellate court considered all these contentions "untenable". Thus, the CA affirmed the RTC decision in toto.

In his Brief,[31] the appellant argues that the appellate court erred -

- in giving full faith and credence to the incredible testimonies of the prosecution witnesses; and
- in convicting him of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal but modify the amount of the awarded moral damages.

Sufficiency of the Prosecution Evidence

The Revised Penal Code, as amended by Republic Act No. 8353,[32] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

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 machination 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.

x x x x

Thus, for the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[33]

Central in the determination of guilt for the crime of rape is the credibility of the complainant's testimony. Rape is a crime largely committed in private where no witness other than the victim is available.[34] For this reason, jurisprudence has recognized that the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[35]

AAA, while recounting her unfortunate ordeal, positively identified the appellant as the one who raped her. Her testimony dated September 18, 2001 was clear and straightforward; she was consistent in her recollection of the details of her defloration, and never wavered in pinpointing to the appellant as the one who raped her. To directly quote from the records:

FISCAL FERRER:

Q:

You know the accused Ariel Jacob alias Kitot?

[AAA]:

A:

Yes, sir.

Q:

Why do you know him?

A:

Because he undressed me and he put out his penis and showed it to me.

Q:

Your surname is Jacob and the surname of Ariel is also Jacob, is it not?

A:

Yes, sir.

Q:

Are you related to him?

A:

Yes, sir.

Q:

In what capacity?

A:

He is my cousin.

Q:

And you know him by his nickname Kitot?

A:

Yes, sir.

Q:

And the accused alias Kitot you know him for quite some time already?

A:

Yes, sir.

Q:

And this accused alias Kitot is inside the courtroom, will you please point him out?

A:

That one, Sir.

(Witness pointing to the accused who gave his name as Ariel Jacob)

COURT:

How are you commonly called?

ACCUSED:

Kitot, your Honor.

x x x x

FISCAL FERRER:

Q:

A while ago, you said that Kitot showed to you his penis?

[AAA]:

A:

Yes, sir.

Q:

How did he do it?

A:

He inserted his penis into my vagina.

Q:

You mean to say he placed his penis inside your vagina which according to you his penis was still wet?

A:

Yes, sir.

Q:

Did he remove your panty?

A:

Yes, sir.

Q:

Was he able to insert his penis inside your vagina?

A:

Yes, sir.

Q:

And what did you feel when his penis was inside your vagina?

A:

It was painful.

Q:

When he was inserting his penis inside your vagina were you lying down?

A:

Yes, sir.

Q:

Where?

A:

On the floor.

Q:

And for how long was his penis inside your vagina?

A:

For a long time.

Q:

More than 2 minutes?

A:

Yes, sir.

x x x x

Q:

And after Kitot raped you he gave you P2.00?

A:

Yes, sir.

Q:

And you accepted it?

A:

Yes, sir.

Q:

Why did you accept the P2.00 given by Kitot after raping you?

A:

He claimed it back.

Q:

After you were raped he retrieved the P2.00 from you?

A:

Yes, sir.

Q:

And you claim in your affidavit that your private organ was painful?

A:

Yes, sir.

Q:

Did you complain to Kitot? Did you ask him why he was placing his penis inside your vagina?

A:

Yes, sir.

Q:

What was the answer of Kitot?

A:

He told me not to make noise [sic] because it might heard [sic] by our neighbors.

Q:

Did you fight back to Kitot when he was inserting his penis inside your vagina?

A:

Yes, sir.

Q:

What did you do?

A:

I boxed him and he placed my hands on my back.

Q:

And because he was strong you were not able to fight him [sic] back?

A:

Yes, sir.

Q:

After raping you, where did he go?

A:

He went home.

x x x [36] [Emphasis ours]

The trial court had this to say on this testimony:

X x x This court was impressed by the testimony (TSN Sept. 18, 2001, pp. 5, 6, 7, 8, 9 & 10) of the complainant as straightforward and "bore the hallmarks of truth." Moreover, complainant withstood a punishing cross-examination without wavering despite some inconsistencies brought about by the minority (10

years old). Imagine a Grade 2 Pupil of Gaboc Elementary School testifying. She recounted vivid details of the said incident that could not have been concocted by a girl of tender age. She was able to establish that at about 1:00 o'clock in the afternoon of August 7, 2000, she was in the house not in school (TSN, Sept. 18, 2002, pp. 15 & 18).

Even the failure of a rape victim to relate certain details [of] the things done to her does not lessen her credibility - instead, it indicates her sincerity, candor and lack of outside suggestion. (People vs. Pamor, 237 SCRA 22).

The complainant's testimony similarly strikes us to be clear, convincing and credible, corroborated as it is in a major way by witnesses BBB and Dr. Mazo. Thus, to us, the prosecution positively established the elements of rape required under Article 266-A. First, the appellant succeeded in having carnal knowledge with the victim; AAA was steadfast in her assertion that the appellant inserted his penis into her vagina. Second, the appellant employed force in satisfying his lustful desires. AAA categorically stated that she boxed the appellant while the later was inserting his penis into her vagina; the appellant however placed AAA's hand on her back, indicating resistance on the part of the victim that the appellant overpowered.

The appellant's defenses

In stark contrast with the prosecution's case is the appellant's weak and uncorroborated defense.

The appellant's bald claim that he did not know AAA borders on the incredible as they have common relations and they lived in the same rural community. It is likewise disproved by the defense's own claim that there was a misunderstanding between their parents that motivated the charge of rape.[37] If their families were close enough to have a misunderstanding and the victim and her kin knew "Kitot," it is unlikely that the latter would not personally know the victim. Related to this is the glaring gap in the defense - its failure to effectively rebut the positive identification by the victim that "Kitot" raped her.

The appellant's defense of alibi - i.e., that he was on board a fishing vessel going to Lucena City on the date of the rape incident - comes with all the inherent weaknesses that jurisprudence has identified with this defense. It is an inherently weak defense that is viewed with suspicion because it is easy to fabricate.[38] There is likewise the settled rule that a categorical and positive identification of an accused by an eyewitness who is not shown to have any ill-motive, prevails over alibi and denial.[39] In sum, alibi and denial must be supported by strong corroborative evidence in order to merit credibility.

In the present case, we find no evidence in the record to corroborate the appellant's claim that he went on board a fishing boat to Lucena City on the day the rape was perpetrated. He did not know the owner of the boat, the pilot or any of its crew, and could offer no plausible explanation why he was allowed to board the fishing vessel. He also claimed that the fishing trip lasted for eight (8) days; surprisingly, he could not remember the names of any of his crewmates. His testimony, too, was full of inconsistencies regarding the exact time and date of his departure and arrival from Mercedes to Lucena City. These inconsistencies impact as well on a basic component of his defense of alibi - i.e., that it was physically impossible for the appellant to be at the scene of the crime on the date of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical impossibility that the defense of alibi requires in order to merit serious consideration.

The appellant also insists that no carnal knowledge took place because AAA's hymen is still intact, as the results of Dr. Mazo's genital examination showed. The condition of the woman's hymen, however, is not conclusive on the question of whether rape has or has not been committed as the mere introduction of the male organ into the labia majora of the pudendum[40] is sufficient to consummate rape.[41]

AAA, being a child, would have difficulty testifying on the particular part of her vagina that was actually touched. What is certain, however, is that there was touching of the labia as AAA testified that the appellant's penis was inserted into her vagina, as a result of which she felt pain. She also testified that the penis of the appellant was inside her vagina for a long time. Several hours after the incident, AAA's vagina was still aching, as testified to by her mother, BBB. More importantly, Dr. Mazo testified that there were reddish contusions on the labia majora of the victim's private part, thus:

PROSECUTOR FERRER:

Q:

What was the result of the physical and genital examination?

DR. MAZO:

A:

There was only one pertinent findings [sic], the contusions on the labia majora.

Q:

And that was contained in this medical certificate?

A:

Yes, sir.

Q:

Will you kindly pinpoint it?

A:

The genital examination: "Pubic hair, no growth. Labia majora, coaptated, with elongated, semi-oblong reddish contusions on both sides, extending downwards up to the fourchette area, beginning at the clitoris area."

x x x x

Q:

Did you make a diagram on this findings that there's a semi-oblong reddish contusions on both sides of the labia majora, extending downwards, beginning at the clitoris area?

A:

At the bottom of the police report.

x x x x

Q:

The color of the contusion was still reddish?

A:

It was already in the healing period.

Q:

But considering your impression that it was reddish contusion, it was recently inflicted on her labia majora?

A:

Yes, sir.

Incidentally, we regard with extreme disapproval the appellant's attempt to mislead this Court by citing the case of *People v. Bali-balita*[42] to support his claim that "mere touching of the labia will not constitute consummated rape." [43] We carefully read this cited case and found nothing therein that supports the appellant's contention. On the contrary, the case states in clear and categorical terms that complete penetration of the penis is not essential to consummate rape; what is material is that there is the introduction of the male organ into the labia of the pudendum, no matter how slight.[44] Our rulings on this point have been clear and consistent.

In *People vs. Dalisay*,[45] we held that full penetration is not required to consummate carnal knowledge, as proof of entrance showing slightest penetration of the male organ within the labia or pudendum of the female organ is sufficient. *People v. Bascugin*[46] is likewise a noteworthy case on the present issue as we categorically ruled there that for rape to be consummated, the hymen of the private complainant need not be penetrated or ruptured. It is enough that the penis reaches the pudendum, or, at the very least, the labia. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence.

An apparently desperation move by the appellant was his attempt to impute ill motive on the part of the victim by claiming that AAA's testimony could have been instigated by her parents.

We cannot give weight to this bare assertion in the absence of sufficient corroborative evidence. We note, too, that not a few offenders in rape cases attribute the charges against them to family feuds, resentment or revenge. These alleged motives, however, cannot prevail over the positive and credible testimonies of complainants who remain steadfast throughout the trial.[47] Moreover, it is unnatural for a parent to use his or her offspring as an instrument of malice, since the ensuing case may subject a daughter to embarrassment and even to the mark of disgrace that a rape victim may undeservedly carry.[48]

Time and again, we have consistently held that when a woman states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assault on her person, would open herself to examination of her private parts, and would risk a public trial and possible ridicule if she had not, in truth, been raped. That she came out in the open to complain clearly signals that she wanted to seek justice for the wrong done to her.[49]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B which provide:

Article 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;

x x x x

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

x x x x

The lower courts therefore are correct in imposing the penalty of reclusion perpetua on the appellant.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding of the fact of rape. Thus, this Court affirms the award of P50,000.00 as civil indemnity based on prevailing jurisprudence.[50]

Moral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. This award is separate and distinct from the awarded civil indemnity.[51] In light of current jurisprudence that pegs the award at P50,000.00, we increase the lower court's award of P30,000.00 to P50,000.00.

WHEREFORE, in view of these considerations, we AFFIRM the September 21, 2006 Decision of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01372 in all respects, except for the award of moral damages which we INCREASE from P30,000.00 to P50,000.00. Costs against the petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Mariflor P. Punzalan Castillo; rollo, pp. 3-13.

[2] Penned by Judge Sancho Dames II; CA rollo, pp. 47-51.

[3] This appellation is pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[4] Records, p. 1.

[5] TSN, March 26, 2001, p. 5.

[6] *Id.*, at p. 7.

[7] *Id.*, p. 16.

[8] *Id.*, pp. 7-8.

[9] *Id.*, p.7.

[10] TSN, August 14, 2001, p. 3.

[11] TSN, September 18, 2001, p. 3.

[12] *Id.*, pp. 6-7.

[13] *Id.*, pp. 7-8.

[14] *Id.*, p. 10.

[15] *Id.*, p. 9.

- [16] Id., p. 11.
- [17] Id., pp. 15-16.
- [18] Id., p. 21.
- [19] Id., pp. 19-20.
- [20] TSN, June 18, 2002, pp. 2-4.
- [21] Records, p. 7.
- [22] TSN, October 15, 2002, p. 9.
- [23] Id., p. 11.
- [24] Id., p. 12.
- [25] Id., p. 13.
- [26] CA rollo, pp. 12-16.
- [27] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.
- [28] Per our Resolution dated July 6, 2005, CA rollo, p. 85.
- [29] Rollo, pp. 3-13.
- [30] Id., p. 6.
- [31] CA rollo, pp. 35-45.
- [32] The Anti-Rape Law of 1997.
- [33] People v. Dela Paz, G.R. No. 177294, February 19, 2008.
- [34] People v. Umayam, G.R. No. 147033, April 30, 2003, 402 SCRA 457.
- [35] People v. Glivano, G.R. No. 177565, January 28, 2008, 542 SCRA 656.
- [36] TSN, September 18, 2001, pp. 5-10.
- [37] Records, p. 120.
- [38] See People v. Glodo, G.R. No. 136085, July 7, 2004, 433 SCRA 535, citing People v. Carinaga, 409 SCRA 614 (2003).
- [39] People v. Bon, G.R. No. 166401, October 30, 2006, 506 SCRA 168.
- [40] The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, e.g., mons pubis, labia majora, labia minora, the hymen, the clitoris, and the vaginal orifice. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible from the outside. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. See: People v. Campuhan, G.R. No. 129433, March 30, 2000, 329 SCRA 270, citing Mishell, Stenchever, Droegmueller, Herbst Comprehensive Gynecology, 3[rd] Ed., 1997, pp. 42-44.
- [41] People v. Villarama, G.R. No. 139211, February 12, 2003, 397 SCRA 306.
- [42] People v. Bali-balita, G.R. No. 134266, September 15, 2000, 340 SCRA 450.

[43] The appellant, in his brief, quoted the separate opinion of Justice Bellosillo; however, it was taken out of context. We quote the pertinent portions of the said separate opinion: The ponencia also ruled that "as correctly pointed out by the trial court, hymenal lacerations which are usually inflicted when there is complete penetration are not essential in establishing the crime of rape as it is enough that a slight penetration or entry of the penis into the lips of the vagina takes place. To dispel any possible misunderstanding or confusion, this statement must be properly viewed in light of *People v. Campuhan*, G.R. No. 129433, 30 March 2000, where this Court discussed quite extensively and differentiated attempted rape from consummated rape. Therein, the Court explicitly ruled that for rape to be considered consummated it must be established that the penis penetrated at the very least the labia of the external genitalia, which is actually beneath the pudendum, hence, the entry or penetration; otherwise, mere touching of the labia will not suffice to constitute consummated rape. *[italics in the original]*

[44] *People v. Bali-balita*, supra note 42.

[45] G.R. No. 133926 August 6, 2003, 408 SCRA 375.

[46] G.R. No. 144195, May 25, 2004, 429 SCRA 140.

[47] *People v. Dalisay*, G.R. No. 133926, August 6, 2003, 408 SCRA 375.

[48] *People v. Tuazon*, G.R. No. 168650, October 26, 2007, 537 SCRA 494.

[49] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435.

[50] See *People v. Resuma*, G.R. No. 179189, February 26, 2008; *People v. Malicsi*, G.R. No. 175833, January 29, 2008.

[51] *People v. Nieto*, G.R. No. 177756, March 3, 2008.

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