THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE GALVEZ Y BLANCA, ACCUSED-APPELLANT.

G.R. No. 181827. February 02, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02275 dated July 13, 2007 affirming the conviction of accused-appellant Jose Galvez y Blanca of the crime of rape.

Five separate Informations were filed against accused-appellant Galvez in the Regional Trial Court (RTC) of Malolos, Bulacan:

Criminal Case No. 3190-M-2002:

> That sometime in the year 1999, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the tender age and innocence of said AAA,[2] then ten (10) years old and with lewd designs, did then and there willfully, unlawfully and feloniously kiss, touch the breasts and insert his finger into the private parts of said AAA, thereby endangering her health and safety and badly affecting her emotional and psychological well being and development.[3]

Criminal Case No. 3191-M-2002:

> That sometime in the year 2000, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then eleven (11) years old, against her will and without her consent.[4]

Criminal Case No. 3192-M-2002:

> That sometime in the year 2001, in the Municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then twelve (12) years old, against her will and without her consent.[5]

Criminal Case No. 3193-M-2002:

> That sometime in the first quarter of the year 2002, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then thirteen (13) years old, against her will and without her consent.[6]

Criminal Case No. 3194-M-2002:

> That on or about the 21[st] day of June 2002, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then thirteen (13) years old and 9 months old, against her will and without her consent.[7]

The trial court summarized the narration of complainant AAA as follows:

> In her initial direct examination on March 31, 2003, private complainant testified that she was born on August 22, 1988 (Exh. "A"). Accused whom [she] identified in Court is her grandfather, the father of her mother. On June 21, 2002 at around 12:00 o'clock midnight, she was in their house at Barangay Peri, Sta. Lucia, Angat, Bulacan sleeping with her siblings, accused, her grandmother Damiana, who is the mother of her father, and her grandfather Popeng, who is the father of her father. Her mother lives in Masbate, while her father works in Manila and comes home only on week-ends. While she was sleeping, accused crawled beside her and inserted his penis in her vagina. She pushed the accused but he threatened her with a knife which he poked at her side. He told her not to tell anyone. After inserting his penis in her vagina, [he] touched her breasts. She told the pastor of her church about the incident sometime in June during a church service. She and her pastor thereafter went to the police station to give her statement, which she identified in Court (Exh. "B"). She testified that this was the first time that accused raped her.
>
> Continuing her direct-examination on February 8, 2004, private complainant testified that the June 21, 2002 incident was not the first time that the accused raped her. She could not, however, remember the dates these incidents were committed against her by the accused. She remembers that accused raped her many times, the first time of which was when she was twelve (12) years old. This incident happened in Pacific, Angat, Bulacan at their residence. At this incident, accused inserted his penis in her vagina. This happened in the bedroom of their house while her three (3) siblings were playing outside the house. Accused did not say anything to her before the incident. She resisted with no avail. She reported this incident to her aunt Gloria in 2002 when she was already thirteen (13) years old. It took her three (3) years before she reported the incident because her grandfather told her not to tell anyone about what happened or else he will kill her. After this incident when she was twelve (12) years old, he again raped her sometime in 2002. Aside from the incidents when she was twelve (12) years old, and on June 21, 2002, she was thirteen (13) years old when she was raped again in their house in Peri, Sta. Lucia, Angat, Bulacan. As to how this rape happened, she stated that [it is] "the same", i.e., he inserted his penis in her vagina. Her grandfather raped her many times, almost everyday since she was thirteen (13) years old up to when she was fourteen (14) years old. Even so, she only reported the incident to her aunt in 2002 because she could not bear what accused [w]as doing to her. At that time, aside from accused and her three (3) siblings, her other grandparents and her aunt Gloria were living with her. Her father was then working in Meycauayan, Bulacan while her mother is in Masbate. Aside from her aunt Gloria, she also reported the incident to her pastor, Imelda Loyola. She was with her aunt and pastor when she reported the incident to the police.
>
> Continuing her direct examination on February 24, 2005, she testified that after reporting the incident to the police, they went to the doctor for examination. She identified accused in court.[8]

The prosecution also presented Dr. Ivan Richard Viray, who examined AAA on July 4, 2002. He presented his conclusion that AAA is no longer a virgin; that there are no external signs of application of any trauma; and that there was a shallow healed laceration at 9:00 o'clock position on complainant's hymen.[9]

On the other hand, the defense presented accused-appellant Galvez, who simply denied the accusations against him. He did not offer any alibi.

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On April 20, 2006, the trial court rendered its Decision convicting accused-appellant Galvez in Criminal Case No. 3094-M-2002, but acquitting him in the other four cases:

> WHEREFORE, premises considered, accused is hereby ACQUITTED in Criminal Case Nos. 3090-M-2002, 3091-M-2002, 3092-M-2002 and 3093-M-2002.
>
> Accused is, however, found GUILTY beyond reasonable doubt of the crime of rape in Criminal Case No. 3094-M-2002 and hereby sentence him to suffer the penalty of RECLUSION PERPETUA.
>
> Accused is also ordered to pay private complainant AAA civil indemnity ex-delicto of P50,000.00, exemplary damages of P25,000.00 and moral damages of P50,000.00.[10]

In arriving at the foregoing disposition, the trial court noted that there was no testimony at all as regards the alleged rapes to which accused-appellant was accused of in Criminal Case Nos. 3090-M-2002 and 3091-M-2002. As regards Criminal Case Nos. 3092-M-2002 and 3093-M-2002, the trial court found AAA's testimony to be very general, as she appeared to have failed to remember any detail other than that the accused-appellant inserted his penis into her vagina.[11] The trial court likewise noted the discrepancy in AAA's testimony on March 31, 2003 (wherein she testified that she was raped by accused-appellant for the first time on June 21, 2002), and her testimony on February 2, 2004 (wherein she testified that she was raped many times before June 21, 2002).[12] The trial court further found her statement that she was raped many times contrary to the physical evidence presented, since Dr. Viray found only one healed shallow laceration.[13] The trial court therefore acquitted accused-appellant in Criminal Case Nos. 3090-M-2002 to 3093-M-2002.

The trial court, however, found AAA's testimony as regards Criminal Case No. 3094-M-2002 to be clear, convincing, full of details and consistent, and ruled that there is no doubt in its mind that accused-appellant indeed sexually molested AAA on June 21, 2002.

Accused-appellant elevated the case to the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02275 and was raffled to its Second Division. On July 13, 2007, the appellate court, finding AAA's testimony unflinching and resolute,[14] affirmed the conviction of accused-appellant. The Court of Appeals, however, modified the civil damages imposed upon accused-appellant as follows:

> The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of one count of qualified rape under par. 3, Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, but erred in imposing the penalty of reclusion perpetua considering that at the time of the promulgation of its Decision on April 20, 2006, the proper penalty for such crime then is death. However, in view of the passage of Republic Act No. 9346 on June 24, 2006, which expressly prohibits the imposition of the death penalty, this Court is now constrained to affirm the imposition of Reclusion Perpetua under Article 266B(1) of the Revised Penal Code, as amended. As shown by her Certificate of Live Birth (Exh. "A", records, p. 103), [AAA] was born on August 22, 1988, and thus was only thirteen years and nine months old when appellant, [her] own grandfather, raped her on June 21, 2002. Both the qualifying circumstances of the victim's minority (below 18 years of age) and her relationship with the offender had been alleged in the Information and duly proved during the hearings. Furthermore, following the ruling in People v. Cabalquinto, G.R. No. 167693, September 19, 2006, the awarded civil indemnity and moral damages must each be increased from P50,000.00 to P75,000.00.
>
> IN VIEW OF ALL THE FOREGOING, the instant appeal is DISMISSED and the challenged decision AFFIRMED, with modification that the civil indemnity and moral damages granted must each be for the amount of P75,000.00. In all other aspects, the lower court's decision stands. Costs against appellant.[15]

Accused-appellant appealed to this Court, adopting the Brief it filed before the Court of Appeals with the following lone assignment of error:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[16]

Accused-appellant claims that like the rest of the charges against him, the complaint under Criminal Case No. 3094-M-2002 should suffer the same fate. According to him, the discrepancy in AAA's testimony on March 31, 2003 and that on February 2, 2004 as to whether she was raped before June 21, 2002 goes into her credibility and candor.

We disagree. We have held that in our jurisprudence, falsus in uno falsus in omnibus is not an absolute rule of law and is in fact rarely applied in modern jurisprudence.[17] It deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.[18] Thus, the modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case.[19] In the case at bar, the trial court, which found some portions of AAA's testimony unconvincing, was nevertheless impressed by the following portion of the testimony of AAA concerning the events of June 21, 2002:

FISCAL DE GUZMAN:

Q:

Now, on June 21, 2002 at about 12:00 o'clock midnight, do you remember [your] whereabouts?

A:

I was in my bed, Ma'am.

Q:

What were you doing at that time?

A:

I was sleeping, Ma'am.

Q:

Who were with you, if any, at that time while you were then sleeping?

A:

None, Ma'am.

Q:

And, you were then sleeping in your resident located at Bgy. Peri, Sta. Lucia, Angat, Bulacan, is that correct?

A:

Yes, Ma'am.

Q:

This house where you were then sleeping, how many rooms [does] it have?

A:

There is no room, Ma'am.

Q:

And it is only a one (1) room house?

A:

Yes, Ma'am.

Q:

There is no division whatsoever in the house?

A:

There is a division, Ma'am.

Q:

What was that division for in your house?

A:

It is a place where my siblings is (sic) sleeping, Ma'am.

Q:

That is a division from your place where you were sleeping and the siblings where they were sleeping?

A:

Yes, Ma'am.

Q:

And, what was that division made of?

A:

It is made of wood, Ma'am.

Q:

The place where you were then sleeping, it has no door?

A:

None, Ma'am.

Q:

And also that place where your siblings were sleeping?

A:

Yes, Ma'am.

Q:

So, you mentioned that there was an unusual incident, what was that unusual incident?

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COURT:

What date?

FISCAL DE GUZMAN:

June 21, 2002, Your Honor.

COURT:

Okay, answer.

WITNESS:

A:

Ginapang po ako ng lolo ko.

FISCAL DE GUZMAN:

Q:

Who is this lolo you are referring to?

A:

Lolo Jose, Ma'am.

Q:

Is he also residing in that same house with you?

A:

Yes, Ma'am.

Q:

And, how is he related to your Lola, BBB.

A:

Mag-balae po.

Q:

When you say "Balae", what do you mean by Balae?

A:

My father is the son of BBB and my mother is the daughter of Jose.

Q:

So, for clarification, Madame Witness, you are living in the same house with the accused in this case, with your lola BBB and your siblings?

A:

Yes, Ma'am.

x x x x

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Q:

Now, you mentioned that "Ginapang ka ni lolo Jose," after that what happened?

A:

He inserted his penis to my vagina, Ma'am.

Q:

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

A:

It hurts, Ma'am.

Q:

What did you do?

A:

I was pushing him, Ma'am.

Q:

What happened while you were pushing him?

A:

He was fight (sic) back, Ma'am.

Q:

How was he fighting back?

A:

He was threatening me with a knife, Ma'am.

Q:

Was he telling you anything?

A:

Not to tell anyone, Ma'am.

Q:

How was he holding that knife?

A:

Like this, Ma'am.

INTERPRETER:

Witness is demonstrating through her right hand.

FISCAL DE GUZMAN:

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Q:

On what part of the body was the knife poked?

A:

On my side, Ma'am.

Q:

While he was inserting his penis on (sic) your vagina, where was that knife?

A:

He was holding the knife, Ma'am.

Q:

What else happen (sic) after he inserted his penis on your vagina and you try (sic) to struggle?

A:

He touched me, Ma'am.

Q;

On what part of your body?

A;

My breast, Ma'am.

Q:

What else happen (sic) after that?

A:

No more, Ma'am.

Q:

How about your lolo, what did you do after touching your breast?

A:

None, Ma'am.

Q:

Did he leave you in the house?

A:

Yes, Ma'am.

Q:

He went out of the house that night?

A:

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Yes, Ma'am.

Q:

Did you report that incident [to] anyone?

A:

Yes, to our pastor, Ma'am.

Q:

When did you report that incident?

A:

June, Ma'am.

Q:

Could you still remember how many days after that incident happened?

A:

I cannot remember, Ma'am.

Q:

Where did you report that incident to your pastora?

A:

At our church, Ma'am.

Q:

During a service?

A:

Yes, Ma'am.

Q:

Why did you report that incident to your pastora?

A:

Because I cannot bear it anymore, Ma'am.

Q:

Was it the first time the incident happened to you?

A:

Yes, Ma'am.

Q:

I am referring to the raping incident, was that the first time that the accused Jose Galvez raped you?

A:

Yes, Ma'am.

Q:

What did the pastora do when you reported the incident to her?

A:

We went to the police station, Ma'am.

Q:

What did you do at the police station?

A:

We gave our statement, Ma'am.

Q:

I am showing to you a Sinumpaang Salaysay, is this statement you are referring to?

A:

Yes, Ma'am.[20]

The trial court, which had the opportunity to observe both AAA and accused-appellant directly and to test their credibility by their demeanor on the witness stand, was completely persuaded by the above testimony of AAA as regards the events of June 21, 2002. Other than the fact that we give great weight to the findings of fact of the trial court, an independent reading of said testimony compels us to conclude that AAA's version is indeed worthy of credence especially when compared to the bare denial of accused-appellant who did not even offer an alibi. As observed by the Court of Appeals, AAA's testimony is "unflinching and resolute" and "passes the test of credibility nary any indication whatsoever of a concocted testimony."[21] Furthermore, it is almost cliché to add that "[c]ourts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice."[22]

Accused-appellant likewise attacks AAA's credibility on the ground that the physical evidence presented yielded no proof of external signs of physical injuries, implying that this negates the contention that AAA was raped. We disagree. The shallow healed laceration at 9:00 o'clock position on complainant's hymen, presented in the testimony of Dr. Viray, is in fact convincing physical evidence of the rape, especially considering the age of AAA and the fact that accused-appellant used a knife to threaten her. Thus, in People v. Cuadro,[23] we held:

> Further, the medical findings of Dr. Obedoza are indicative of rape. It is not indispensable that marks of external bodily injuries should appear on the victim of rape. Considering that in the commission of the first, second and third rapes, appellant threatened the victim with a knife, it is logical that no external injuries would appear on her body. What is more telling is that the victim, at her young age, sustained lacerations in her genitalia. We have ruled that lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[24]

More importantly, even if we assume for the sake of argument that AAA did not put up a struggle against accused-appellant, we have consistently held that actual force or intimidation need not be employed in incestuous rape of a minor. [25] Thus, in the case at bar, we find that the moral and physical dominion of the ascendant is

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sufficient to take the place of actual force or intimidation.

We therefore affirm the conviction of accused-appellant. Consistent with prevailing jurisprudence on qualified rape, we also affirm the modification made by the Court of Appeals to the trial court's Decision as regards the civil indemnity and moral damages that should be granted to AAA in the amount of Seventy-Five Thousand Pesos (P75,000.00) each. Established jurisprudence, however, further warrant that we increase the award of exemplary damages from Twenty-Five Thousand Pesos (P25,000.00) to Thirty Thousand Pesos (P30,000.00).[26]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02275 dated July 13, 2007 is hereby AFFIRMED with further MODIFICATIONS that:

(1) The exemplary damages to be paid by accused-appellant Jose Galvez y Blanca is increased from Twenty-Five Thousand Pesos (P25,000.00) to Thirty Thousand Pesos (P30,000.00); and

(2) Accused-appellant Jose Galvez y Blanca is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Del Castillo, and Perez, JJ., concur.
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[1] Rollo, pp. 2-16; penned by then Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa, concurring.

[2] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[3] Records, p. 1.

[4] Id. at 8.

[5] Id. at 11.

[6] Id. at 13.

[7] Id. at 15.

[8] CA rollo, pp. 12-14.

[9] Records, p. 4.

[10] CA rollo, p. 30.

[11] Id. at 17-18.

[12] Id. at 18.

[13] Id. at 23.

[14] Rollo, p. 6.

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[15] Id. at 14-15.

[16] CA rollo, p. 48.

[17] People v. Paredes, 332 Phil. 633, 638-639 (1996); People v. Jalosjos, 421 Phil. 43, 68 (2001).

[18] People v. Julian, 337 Phil. 411, 426-427 (1997); People v. Masapol, 463 Phil. 25, 33 (2003).

[19] Id.

[20] TSN, March 31, 2003, pp. 4-10.

[21] CA rollo, p. 104.

[22] People v. Lusa, 351 Phil. 537, 545 (1998).

[23] 405 Phil. 173 (2001).

[24] Id. at 185.

[25] People v. Orillosa, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[26] People v. Sarcia, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

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