

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TERCENCIO FUNESTO Y LLOSPARDAS, APPELLANT.

G.R. No. 182237. August 03, 2011

Ponente: BRION, J.

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BRION, J.:

We decide the appeal filed by accused Terencio Funesto y Llospardas (appellant) from the December 13, 2006 decision [1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 00415 MIN.

The Factual Antecedents

On June 9, 1992, the prosecution charged [2] the appellant at the Regional Trial Court (RTC), Branch 2, Libertad, Butuan City, [3] with rape [4] committed on January 15, 1992 against AAA, [5] a child below 12 years old. The appellant pleaded not guilty to the charge. [6] In the trial that followed, AAA, her mother (BBB), and Dr. Teonesto K. Mora (Medical Officer at Cabadbaran District Health Office) testified on the details of the crime.

The appellant, BBB, and AAA lived in a house in Barangay Marcos, Magallanes, Agusan del Norte. At around 9:00 p.m. of January 15, 1992, while BBB was at a prayer service, the appellant approached the sleeping AAA, then nine years old, and removed her panty. He then forcibly inserted his penis into her vagina, waking up AAA. Due to the extreme pain and numbness in her legs, AAA could not push him away. After satisfying his lust, the appellant restored AAA's panty and returned to his mosquito net. AAA noticed blood in her private parts. [7]

When BBB returned from the prayer service (held at the residence of a certain Edna M. Almonte in observance of the feast of Sto. Niño), [8] she noticed blood at the hemline and at the back part of AAA's dress. Upon inquiry, AAA disclosed to her what the appellant did to her. BBB confronted the appellant who denied the allegations and threatened to slap AAA. [9] BBB wanted to go out to ask for help, but the appellant threatened to kill her if she reported the incident. [10]

BBB brought AAA the following day to the Cabadbaran Emergency Hospital because AAA could not stand, could hardly urinate, and felt extreme pain in her abdomen. [11] Dr. Mora, who medically examined AAA, found that her hymen was no longer intact, and that she had an anterior vaginal laceration. He also noticed the reddish discoloration of her labia minora. Specimen taken from her genitalia also tested positive for the presence of human spermatozoa. [12]

The appellant, interposing denial as a defense, alleged that BBB fabricated the charge due to his rejection of her sexual advances, and to extort money. [13]

The RTC Ruling

The RTC found the appellant guilty of statutory rape in its May 4, 1999 decision. It gave credence to the candid testimony of AAA and the corroborating medical findings, and rejected the appellant's allegation of fabrication. In appreciating the victim's minority to qualify the crime as statutory rape, the RTC noted that while the prosecution

did not present AAA's certificate of live birth to prove her age, the defense did not question AAA's age when she testified that she was nine years old. The court also observed that if AAA did not look her age of nine years, the defense would have called its attention while AAA was on the witness stand. It imposed the penalty of reclusion perpetua on the appellant, and ordered him to pay AAA P100,000.00 as compensatory and moral damages, and to pay BBB P50,000.00 as moral damages. [14]

The RTC forwarded the records of the case to this Court for automatic review. Pursuant to *People v. Mateo*, [15] we referred the case to the CA for intermediate appellate review.

The CA Ruling

In its December 13, 2006 decision, the CA affirmed the RTC's appreciation of AAA's clear, straightforward, and spontaneous testimony that pointed to the appellant as the person who raped her. The CA deleted the P50,000.00 moral damages awarded to BBB, noting that such award is only for the victims. [16]

From the CA, the case is now with us for final review.

Our Ruling

We affirm the appellant's conviction.

Based on the records before us, we see no reason to disturb the RTC's appreciation of the credibility of AAA's testimony. The assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; his findings are binding and conclusive upon this Court when affirmed by the CA. [17]

We differ from the lower courts' conclusion that AAA's minority can be appreciated to qualify the crime as statutory rape since her minority was not proven by independent evidence. In *People v. Pruna*, [18] the Court set out the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim. [19]

In the present case, the prosecution failed to present any certificate of live birth or any similar authentic document to prove the age of AAA when she was sexually violated. Neither did the appellant expressly admit AAA's age.

This conclusion notwithstanding, we find that the prosecution sufficiently proved that force and intimidation attended the commission of the crime, as alleged in the Information. Jurisprudence firmly holds that the force or violence required in rape cases is relative; it does not need to be overpowering or irresistible; it is present when it allows the offender to consummate his purpose. [20] In this case, the appellant employed that amount of force sufficient to consummate rape. In fact, the medical findings confirmed AAA's non-virgin state.

Thus, the appellant is guilty of simple rape under Article 335(2) of the Revised Penal Code, and was properly sentenced with the penalty of reclusion perpetua. [21]

On the appellant's civil liabilities, a victim in simple rape cases is entitled under prevailing jurisprudence not only to P50,000.00 as civil indemnity and to an added P50,000.00 as moral damages, but also to P30,000.00 as exemplary damages to serve as an example to deter persons with perverse or aberrant sexual behavior from sexually abusing children. [22] So, this should be in the present case.

WHEREFORE, the December 13, 2006 decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00415 MIN is hereby AFFIRMED with MODIFICATION. Appellant Terencio Funesto y Llospardas is found guilty beyond reasonable doubt of rape, and sentenced to suffer the penalty of reclusion perpetua. He is also ordered to pay AAA P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Perez, and Sereno, JJ., concur.

[*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[1] Penned by Associate Justice Sixto C. Marella, Jr., and concurred in by Associate Justices Edgardo A. Camello and Mario V. Lopez; rollo, pp. 4-13.

[2] The accusatory portion of the Information reads:

That on or about the 15[th] day of January, 1992, at more or less 9:00 o'clock (sic) in the evening, in Barangay Marcos, Municipality of Magallanes, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant, AAA, a woman under 12 years old, against her will, to her damage and prejudice.

CONTRARY TO LAW. (Records, p. 1.)

[3] Docketed as Criminal Case No. 5142.

[4] See REVISED PENAL CODE, Art. 335.

[5] Pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection

Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

[6] Records, p. 42.

[7] TSN, November 11, 1992, pp. 3-4, 6, and 13.

[8] Id. at 13.

[9] Id. at 7.

[10] Id. at 15-16.

[11] Id. at 16-17.

[12] TSN, November 9, 1992, p. 6; Exhibit "A," records, p. 5.

[13] TSN, November 11, 1996, pp. 4-5, 17.

[14] The dispositive portion of the decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the court hereby finds accused TERCENCIO FUNESTO Y LLOPARDAS guilty beyond reasonable doubt for the crime of RAPE[,] as defined and penalized under Article 335 of the Revised Penal Code[,] and accordingly hereby sentences him to suffer the penalty of RECLUSION PERPETUA, condemning and ordering said accused to pay the victim AAA the amount of Php100,000.00 as compensatory and moral damages and the amount of Php50,000.00 to BBB, the mother of the victim[,] as moral damages.

The accused, in the service of his sentence, shall be credited with the period of his preventive imprisonment he has so far undergone pursuant to RA 6127.

SO ORDERED. (Records, p. 246.)

[15] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[16] The dispositive portion of the decision reads:

WHEREFORE, the appealed Judgment is affirmed with modification. The award of P50,000.00 to BBB is deleted.

SO ORDERED. (Rollo, p. 12.)

[17] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 230; and *Heirs of Florentino Remetio v. Villaruel*, G.R. No. 132357, May 31, 2006, 490 SCRA 43, 47.

[18] 439 Phil. 440 (2002).

[19] Id. at 470-471.

[20] *People v. Buban*, G.R. No. 172710, October 9, 2009, 603 SCRA 205, 223-224; and *People v. Nogpo, Jr.*,

G.R. No. 184791, April 16, 2009, 585 SCRA 725, 744-745.

[21] The crime was committed in 1992, prior to the passage of the law imposing death for rape cases (RA 7659 took effect on December 31, 1993) and the new rape law (RA 8353, or the Anti-Rape Law of 1997, took effect on October 22, 1997).

[22] *People v. Aguilar*, G.R. No. 185206, August 25, 2010, 629 SCRA 437, 450; and *People v. Macapanas*, G.R. No. 187049, May 4, 2010, 620 SCRA 54, 76.

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