

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUEL VELARDE ALIAS DOLOY BELARDE, APPELLANT.

G.R. No. 182550. March 23, 2011

Ponente: BRION, J.

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BRION, J.:

On appeal is the Decision[1] of the Court of Appeals (CA) affirming in toto the Decision[2] of the Regional Trial Court (RTC), Branch 27, Catbalogan, Samar, finding RUEL VELARDE alias DOLOV BELARDE (appellant) guilty beyond reasonable doubt of consummated rape as defined and penalized under paragraph 1(d) of Article 266-A and Article 266-B of the Revised Penal Code, and sentencing him to suffer the penalty of reclusion perpetua.

FACTS

The facts, as culled from the records, are summarized below.

In the evening of November 2, 1999, AAA[3] (at the time nine [9] years, nine [9] months and thirteen [13] days old)[4] was watching television in the house of her neighbors - the appellant's family - in Barangay Maputi, Municipality of Zumarraga, Samar Province. Shortly before 11:00 p.m., she became sleepy and went home. At home (located in the same barangay), she spread her sleeping mat on the floor and went to sleep. She awakened from this sleep when she felt the appellant on top of her. She tried to shout but he covered her mouth. The appellant then took off her shorts and panties, removed his own pants, and inserted his penis into her vagina through pumping motions. AAA felt pain in her vagina and cried. The appellant only stopped his assault when AAA's father appeared and chased him, but the appellant managed to escape by jumping out of a window.

The following day, the appellant - then on his way to Catbalogan -was apprehended by a barangay tanod. On February 4, 2000, he was criminally charged for rape.[5]

THE RULING OF THE TRIAL AND APPELLATE COURTS

At the trial, the prosecution presented AAA, her mother BBB, and the resident physician of the Samar Provincial Hospital in Catbalogan, Dr. Alfonso Flores. BBB testified that AAA was born on January 19, 1990 in Barangay Maputi, Zumarraga Island, Samar,[6] and presented AAA's Certificate of Live Birth[7] and Certificate of Baptism[8] as proof of this claim. Dr. Flores testified that while AAA's vagina had no hymenal lacerations, the confluent abrasion thereon indicated that it had been "disturbed," possibly by a hard and rough object.[9]

The appellant, his father Rolando Velarde, his first cousin Wilson Orbello, his uncle-in-law Perlito Orbello, and one Rosalinda Orbello testified for the defense.

The defense rests on denial and alibi. According to the defense, on November 1, 1999, the appellant, with his cousin Wilson Orbello, went home to Barangay Maputi to observe All Souls' Day; both had come from Tacloban

City where the appellant worked as a warehouse watchman. The following day, the appellant visited the cemetery and went home at around 4:00 p.m. to watch television. At 6:00 p.m., his cousin Marvin Orbello invited him to drink tuba, and the appellant consumed half a gallon of tuba at Marvin's house. He, returned home by 9:00 p.m. to sleep, in preparation for his early return to Tacloban City the next morning. The appellant woke up at 5:00 a.m. the next day and hurried to catch the 6:00 a.m. boat trip to Catbalogan. He was already aboard a motorboat when a barangay tanod came and forced him to disembark because of the complaint AAA had filed against him.

The defense posits that AAA charged appellant with rape because AAA's father, CCC, who allegedly misbehaves in their barangay when drunk, held a personal grudge against the appellant's father, Rolando Velarde, whom CCC allegedly owed money to and stole chickens from.

The RTC disbelieved the defense. It found AAA's testimony to be "highly credible" and accordingly, convicted the appellant, under the following terms:

WHEREFORE, and in view of the foregoing, the court hereby pronounces the accused RUEL VELARDE, alias Doloy Belarde, GUILTY, beyond reasonable doubt, as principal by direct participation, of the consummated crime of RAPE, under Article 266-A, Paragraph (1), Sub-paragraph (d) of the Revised Penal Code, and condemns the said accused to suffer the penalty of reclusion perpetua, with the accessories of the law, to indemnify the offended girl, [AAA] in the amount of P50,000.00, as well as pay her another amount of ₱50,000.00 by way of moral damages, and to bear the costs of this action.

SO ORDERED.

The CA affirmed the RTC Decision in toto.

THE APPEAL

The appellant claims that his guilt was not proven beyond reasonable doubt. He argues that (1) his identity was not sufficiently established due to the dim light in the room where the rape allegedly took place; (2) the confluent abrasion observed by Dr. Flores on AAA's vagina, being caused by a "hard and rough object," was allegedly not caused by a man's penis; and (3) the "failure" of the prosecution to present AAA's father on the witness stand was "perplexing." Finally, the appellant also argues that AAA was "incredible and unbelievable" due to the following "material" inconsistencies in her testimony: (a) AAA initially testified that she was raped twice by the appellant, but later declared that she was raped only once;^[10] (b) AAA first stated that the rape occurred "inside a room in her house," then changed it to "outside the room;"^[11] and (c) AAA initially testified that her father came upon them while the appellant was having sexual intercourse with her, but later declared that she went down their house and saw her father after the appellant had abused her.^[12] Citing *People of the Philippines v. Ernesto Flores*,^[13] and *People of the Philippines v. Ronie Caboverde y Acas*,^[14] the appellant posits that these "irreconcilable and unexplained contradictions" in AAA's testimony engender "serious doubts" as to her reliability and veracity, and cast reasonable doubt on his guilt.

THE COURT'S RULING

We AFFIRM with modification the lower courts' decisions.

The CA did not err on the credibility of AAA.

We are satisfied that AAA is a credible witness.

We agree with the CA that while AAA's testimony had inconsistencies, these inconsistencies do not at all affect her credibility. Inconsistencies are to be expected when a person is recounting a traumatic experience.^[15] Rape, a

traumatic experience, is usually not remembered in detail.[16] This observation is more pronounced in the case of minors such as AAA who was merely ten years old at the time she testified. For this reason, we held in *People of the Philippines v. Domingo Sta. Ana y Tupig* that it is not proper to judge the actions of children who have undergone traumatic experience by norms of behavior expected from adults.[17]

Further, we have repeatedly ruled that this Court accords great respect to a trial court's assessment of witnesses as it had the advantage of actually examining their demeanor, hearing their responses and testing their credibility on the stand. We note the following declaration of the RTC:

The court finds the testimony of the offended girl highly credible. The court has carefully observed the manner the girl testified and studied the contents of her testimony. It sees no reason to doubt the essential veracity of the offended girl's declarations in court, especially as they referred to the all-important issue of the accused's carnal knowledge of her.[18]

We agree with the CA that the RTC did not err in believing the testimony of AAA; we are satisfied that the RTC had undertaken precautions to ensure that AAA, a child-witness, would not perjure herself.[19] While mindful of our pronouncement in *People of the Philippines v. Avelino Gazmen, et al.*,[20] we, nonetheless take note that the judge who conducted the trial of the case, the Hon. Sinforiano A. Monsanto, also penned the decision of the court.

That said, the testimonies of rape victims who are young and immature deserve full credence, considering that no woman, especially a young one, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, subject herself to a public trial, if she had not been motivated by the desire to obtain justice for the wrong committed against her.[21]

In these lights, we see no reason to disturb the ruling of the CA on AAA's credibility.

The CA did not err on AAA's positive identification of the appellant as her rapist.

We are likewise satisfied with the CA's disposition of the appellant's contention that AAA could not have positively identified him as her rapist given the dim lighting of the room where the rape took place. The CA correctly observed that the appellant was already on top of AAA when she awakened; this proximity, coupled with the fact that AAA knew the appellant well as he was her neighbor, enabled AAA to positively identify him as her attacker. In addition, we note that AAA reiterated her positive identification of the appellant as her attacker on two occasions in open court:

FISCAL VILLARIN

Q.

You said that you noticed that he was already on top of you, whom are you referring to?

A.

Him (witness pointing to a person who answers to the name of Roel [sic] Belarde).[22]

Q.

Are you sure that it was the accused who allegedly molested you or had sexual intercourse with you that evening?

A.

Yes, sir.[23]

Ruptured hymen not an element of rape.

In *People of the Philippines v. Geronimo Borromeo y Marco*[24] we reiterated our oft-repeated doctrine that an intact hymen does not negate a finding that the victim had been raped. The CA correctly labelled as unmeritorious the appellant's contention that his RTC conviction was erroneous because the examining doctor (Dr. Flores) found AAA's hymen to be intact. Our ruling in *People of the Philippines v. Gorgonio Villarama*[25] finds particular application in this case:

In most cases of rape committed against young girls where total penetration of the victim's organ is improbable due to the small vaginal opening, it has been held that actual penetration of the victim's organ nor rupture of the hymen is not required.

The settled rule is that the mere introduction of the male organ into the labia majora of the female pudendum is sufficient to consummate rape. This rule renders inconsequential the appellant's contention that AAA was not raped since the confluent abrasion observed by Dr. Flores on her vagina was caused by a "hard and rough object" - not by something hard and "smooth" like the male penis as the appellant argued. What is significant in this case is that a credible witness - the victim herself - testified that the appellant succeeded in introducing his penis into her vagina:

FISCAL VILLARIN:

Q.

How did the accused get on having sexual intercourse with you, how did he do it?

COURT

Q.

What did he do which caused you pain?

A.

He tried to insert his penis unto me.

Q.

On what part of your body did he try to insert his penis?

A.

Into my vagina.

Q.

You said that you felt pain, where did you feel your pain?

A.

At my lavia [sic].[26]

Q.

You said that the accused tried to insert his penis inside your vagina?

A.

Yes, sir.

Q.

Did he succeed in putting his penis inside your vagina?

A.

Yes, sir.

Q.

Are [you] sure of that?

A.

Yes, sir.

Q.

How many times did the penis of the accused enter your vagina, if you can remember?

A.

Only once.[27]

Failure of AAA's father to testify is of no moment.

The appellant insinuates that the rape charge against him is false simply because AAA's father failed to testify in support of his daughter's claim. We do not find this argument meritorious. As the CA correctly ruled, the matter of deciding whom to present as witness for the prosecution is not for the accused or for the trial court to decide, but is a prerogative given to the prosecutor.[28] What is significant is the existence of a credible testimony - the testimony of AAA - sufficient to convict the appellant. Courts are not precluded from rendering judgment based on the testimony of even a single witness.

We, likewise, agree with the CA and the RTC that the defense failed to impute a credible motive for AAA to falsely accuse the appellant of rape. As the RTC observed, had AAA's father actually wanted to get even with the appellant's father, there were ways of attaining that goal other than through the filing of a case that entailed subjecting AAA to shame and humiliation. It is unnatural for a parent to use his daughter as a tool of malice, especially if the consequence is to subject the child to embarrassment and lifelong stigma.[28] It is highly improbable, too, that a girl of tender years, one not yet exposed to the ways of the world, would impute a crime as serious as rape if the crime had not really been committed.[30]

In sum, we find that the prosecution successfully established the commission of rape under Article 266-A(1)(d) of the Revised Penal Code; rape is committed when a man has carnal knowledge of a woman who is under twelve (12) years of age. We are satisfied that the prosecution proved beyond reasonable doubt that in the evening of November 2, 1999, the appellant had carnal knowledge of AAA, who - having been born on January 19, 1990[31] - was only nine (9) years old at that time.

Furthermore, the appellant's defenses of denial and alibi cannot prevail over AAA's positive testimony that the appellant raped her that night. Denial and alibi are the weakest of all defenses because they are easy to concoct and fabricate.[32] To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as a purely self-serving tale. Alibi, on the other hand, is rejected when the prosecution sufficiently establishes the identity of the accused.[33] The facts in this case do not present any exceptional circumstance warranting a deviation from these rules.

We, therefore, affirm the finding of guilt beyond reasonable doubt made by the RTC and the CA.

The Proper Penalty

The RTC and the CA correctly imposed the penalty of reclusion perpetua on the appellant. Articles 266-A and 266-B of the Revised Penal Code, which define and penalize rape, provide:

Article 266-A. Rape; When and How Committed. - Rape is committed:

I) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

xxxx

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.

xxxx

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

The Proper Indemnity

We affirm the awards made by the lower courts of civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00, which are amounts in accordance with the latest jurisprudence on rape. Civil indemnity is mandatory when rape is found to have been committed.[34] Moral damages are awarded to rape victims without need of proof other than the fact of rape, on the assumption that the victim suffered moral injuries from the experience she underwent.[35]

However, we modify the awards made by the lower courts by ordering the appellant to pay AAA exemplary damages in the amount of P30,000.00. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as a deterrent against elders who abuse and corrupt the youth.

WHEREFORE, premises considered, the March 31, 2006 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00117, being in accordance with the law and the evidence, is hereby **AFFIRMED** with the **MODIFICATION** that appellant RUEL VELARDE alias DOLOY BELARDE is further **ORDERED** to pay AAA exemplary damages in the amount of P30,000.00.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Villarama, Jr., and Sereno, JJ., concur.

[1] In CA-G.R. CR-H.C. No. 00117, promulgated on March 31, 2006. Penned by CA Associate Justice Apolinario D. Bruselas, Jr., and concurred in by CA Associate Justice Arsenio J. Magpale and CA Associate Justice Vicente L. Yap. Rollo, pp. 5-16.

[2] In Criminal Case No. 4897, dated August 15, 2001 Penned by Judge Sinforiano A. Monsanto. CA rollo, pp. 21-25.

[3] Pursuant to Section 44 of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing R.A. No. 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or

compromise his/her identity, as well as those of his/her immediate family or household members, shall not be disclosed; *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA rollo, p. 52.

[5] The accusatory portion of the Information reads:

x x x x

That on or about the 2nd day of November 1999, at nighttime, which was purposely sought, at Barangay Maputi, Municipality of Zumarraga, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation of person, did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a ten (10) year old minor, against her will, and in her own house.

That in the commission of the offense, the aggravating circumstance in the dwelling of the offended party was present, the latter not having given provocation for the offense.

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

[6] TSN dated July 17, 2000.

[7] Records, "Exhibits for Prosecution and Defense," Exhibit "D" (Certificate of Live Birth), p. 5. s

[8] Records, "Exhibits for Prosecution and Defense," Exhibit "E" (Certificate of Baptism), p. 6.

[9] TSN dated August 18, 2000.

[10] TSN dated May 4, 2000. pp. 18-20 and 30.

[11] Id. at 17.

[12] Id. at 16-20. The parts of the TSN pertinent to this inconsistency are reproduced below:

FISCAL VILLARIN

Q. Has the accused any movement [sic] when he was inserting his penis into your vagina?

A. He was pumping.

Q. And while the accused was pumping and his penis at [sic] the lavia of your vagina that [sic] was the time that you felt pain, is it not [sic]?

A. Yes, sir.

Q. And when did he stop?

A. Upon the arrival of my father.

Q. When your father arrived, where were you then?

A. I was already standing without my pantie [sic] and shorts.

Q. What about the accused Roel Belarde [sic], where was he?

A. He was about to jump out of the window.

Q. What you mean is that your father caught you and Roel Belarde [sic] while Roel Belarde [sic] was having sexual intercourse with you, is that what you mean?

A. He was already about to jump out of our window.

X X X X

FISCAL VILLARIN

Q. What did you do after the accused consummated his first sexual intercourse with you?

A. I kept on crying.

Q. What about Roel Belarde, where was he after the first sexual intercourse?

A. He was already on the ground.

COURT

Q. You said that the accused had sexual intercourse with you two times, how do you divide these two incidents, why do you say that there were two sexual intercourse?

A. Because she [sic] wanted to kill me.

Q. On that evening, you said that the accused had sexual intercourse with you- two times, the fiscal was asking you, after the first time that he had sexual intercourse with you where was the accused?

A. He was drinking.

COURT

Proceed.

FISCAL VILLARIN

Q. Drinking where?

A. Near their place.

Q. What was he drinking?

A. Tuba.

Q. How did you know that?

A. Because when I passed by them I saw them in going to my father. T saw them drinking tuba.

COURT

Q. You mean after the first sexual intercourse you went down your house?

A. Yes, sir, I went to my father.

Q. And after you went to your father, where did you go?

A. I did not leave my father anymore.

Q. But you told us just a while ago that there were two sexual intercourses committed against you by the accused, when did the second one occur?

A. He said that he only deficated [sic].

Q. After he deficated [sic], what happened?

A. I was with my father sleeping already.

Q. So how did the second sexual intercourse occur since you were with your father?

A. I do not know already about the second one.

Q. Now, I am asking you, tell the truth, how many times did the accused have sexual intercourse with you?

A. Only once.

x x x x

Q. Are you sure that it was the accused who allegedly molested you or had sexual intercourse with you that evening?

A. Yes, sir.

Q. A while ago you said that you went down your house and went to your father after the sexual intercourse was committed against you, do you remember that?

A. Yes, sir.

Q. Now, but you also told the court that your father discovered ... you also told the court that after the sexual intercourse, your father arrived and the accused was about to jump and he was already inside the room, do you remember having said that?

A. Yes, sir.

Q. When your father arrived, you mean arrived inside the place where the rape was allegedly committed?

A. Yes, sir.

Q. He was inside the house?

A. Yes, sir.

Q. Why did you go down to your father when he was already inside the house?

A. When I went down my father was about to go home.

Q. Was it already after this alleged rape was committed against you? A. Yes, sir.

Q. He was down or inside the house at that time when your father was about to go home?

A. He was still down.

Q. So after the rape was committed against you your father was down? A. Yes, sir.

Q. And then you went down to him after the rape?

A. Yes, sir, I embraced my father.

Q. What was that occasion that you were talking about when you said he arrived?

A. When my father noticed that our floor was creaking [sic], he went to peep inside.

Q. And where was your father when he peeped?

A. He was about to enter inside our house.

Q. Where was he precisely, was he still on the ground?

A. He was about to enter the house.

Q. And when he was about to enter the house, what happened?

A. My father was about to chase that person but he did not pursue because he was already far away.

Q. And that was the time already when you went to your father? A. Yes, sir.

Q. You said that the accused tried to insert his penis inside your vagina?

A. Yes, sir.

Q. Did he succeed in putting his penis inside your vagina?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. How many times did the penis of the accused enter your vagina, if you can remember?

A. Only once. [Emphasis ours.]

[13] No. L-65647, August 30, 1988, 165 SCRA 71.

[14] No. L-66646, April 15, 1988, 160 SCRA 550.

[15] *People v. Sta. Ana*, G.R. Nos. 115657-59, June 26, 1998, 291 SCRA 188, cited in the Brief for the Appellee, CA Rollo, p. 94.

[16] *People v. Alipio*, G.R. No. 185285, October 5, 2009, 603 SCRA 40.

[17] *Supra* note 15.

[18] CA rollo, p. 24.

[19] The pertinent part of the TSN dated May 4, 2000 is as follows:

COURT

Swear in the witness. (Interpreter swears in the witness.)

[AAA], 10 years old, Grace IV pupil, residing at Catbalogan, Samar, after being duly sworn to, declare the following:

COURT (to the witness-minor)

You have nothing to fear here in this courtroom, do not be afraid of anybody, nobody will harm you here. What is important to us is you tell the truth, we do not want to put in prison those who are innocent and at the same time we also would like to see to it that those who commit the crime must be punished. Do not be afraid of anybody.

WITNESS Yes, sir.

x x x x

COURT

Before you testified [sic], you raised your right hand and you promised to tell the truth, the whole truth and nothing but the whole truth. Now, we told you already that what is important is to tell the truth. If you do not tell the truth, is there anything bad that will happen?

A. It is not good to tell a lie.

Q. Do you know what will happen to you if you tell a lie?

A I will go to prison.

Q. Now, it is important, besides going to prison [sic] and I would like also to tell you, that it is very important that you tell the truth because it is very bad that by telling a lie somebody will suffer, do you understand that?

A. Yes, sir.

[20] G.R. No. 110034. August 16, 1995, 247 SCRA 414. In this case, we held that while it is true that the judge

who heard the witnesses testify is in a better position to observe the witnesses on the stand, it does not necessarily follow that a judge who was not present during the trial cannot render a valid decision since he can rely on the transcript of stenographic notes taken during the trial as basis of his decision.

[21] *People v. Salazar*, G.R. No. 181900, October 20, 2010.

[22] TSN dated May 4, 2000, p. 12.

[23] *Id.* at 27.

[24] G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[25] G.R. No. 139211, February 12, 2003, 397 SCRA 306.

[26] TSN dated May 4, 2000, p. 15.

[27] *Id.* at 30.

[28] *People v. Gelin*, G.R. No. 135693, April 1, 2002, 379 SCRA 717.

[29] *People v. Ibarrientos*, 476 Phil. 493, 512 (2004).

[30] *People v. Salazar*, *supra* note 21.

[31] *Supra* notes 5, 6 and 7.

[32] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.

[33] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233.

[34] See *People v. Begino*, G.R. No. 181246, March 20, 2009, 582 SCRA 189.

[35] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511.

[36] See *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

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