

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DANILO PACULBA, APPELLANT.

G.R. No. 183453. March 09, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

On appeal is the Decision[1] of the Court of Appeals dated 29 April 2008 in CA-G.R. CR-HC No. 00280, affirming with modification the Decision[2] of the Regional Trial Court (RTC) of Kapatagan, Lanao del Norte, Branch 21, finding appellant Danilo Paculba, guilty beyond reasonable doubt of the crime of Qualified Rape and Attempted Rape.

Appellant was charged with four (4) counts of qualified rape in the Informations which read as follows:

Criminal Case No. 21-1220

That sometime in the month of June, 2002 at [xxx,xxx],[3] Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA],[4] a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1221

That sometime in the month of August, 2002 at [xxx,xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1222

That sometime in the month of November, 2002 at [xxx,xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

Criminal Case No. 21-1223

That sometime in the month of January[,] 2003 at [xxx,xxx], Lanao del Norte, Philippines and within the

jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], a minor 12 years of age and who is accused's own daughter, against her will and consent, which acts of the accused debases, degrades and demeans the intrinsic worth and dignity of said child as a human being.

Contrary to and in VIOLATION OF R.A. 8353 in relation to R.A. 7610.

In addition, an Information was filed charging appellant with attempted rape. The accusatory portion reads:

Criminal Case No. 21-1219

That on or about the 21[st] day of November[,] 2003, at [xxx, xxx], Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously commence the commission of the crime of rape directly by overt acts, to wit: that while complainant [AAA], a minor 12 years of age and who is accused's own daughter, was sleeping inside their house, the said accused removed her short pants and panty, placed himself on top of her without underwear, with the intention of having carnal knowledge of her, but did not perform all the acts of execution which should have produced the crime of rape as a consequence by reason of some cause or accident other than his own spontaneous desistance, that is, the timely awakening of said complainant who was able to push the accused and run away.

CONTRARY to and in VIOLATION OF R.A. 8353 in relation to Article 6 of the Revised Penal Code and R.A. 7610.[5]

Appellant pleaded not guilty to all the charges. Trial on the merits ensued.

Testifying for the prosecution, AAA, who was only twelve (12) years old at the time of the commission of the crimes, recounted all the harrowing details which transpired in June, August, November 2002, January 2003, and 21 November 2003. In the first four (4) occasions, AAA narrated that while she was sleeping inside her grandparents' house during the night, appellant suddenly covered her mouth, removed her pants and panty, and placed his body on top of her. Appellant then allegedly inserted his penis into AAA's vagina and she felt pain. She, however, kept the incidents to herself out of fear.[6] Finally, on 21 November 2003, at around 10:00 p.m., AAA mustered courage to resist appellant's advances. When appellant removed his brief and attempted to place his body on top of AAA's, the latter pushed him away and ran towards the room of her grandmother, BBB.[7] AAA told BBB about how appellant tormented her. BBB went out to look for appellant, who was able to escape by jumping out of the window. When appellant returned to the house, CCC,[8] AAA's grandfather, wanted to hack him but the latter threatened to chop CCC into pieces. Thereafter, appellant left the house.[9]

On the following morning, AAA, accompanied by CCC, went to report the incident first to the barangay captain and then to the police.

AAA was subjected to a physical examination by Dr. Ava Liwanag on 3 November 2003. Her findings were contained in a medico-legal report which states:

No hematoma, no abrasion, no contusion seen
Hymen severely lacerated (old)
Vaginal rugal slightly exposed.[10]

During the direct examination, Dr. Liwanag concluded that AAA had sexual intercourse on several times.[11]

Mrs. Amparo Baydal, the Municipal Civil Registrar of xxx, Lanao del Norte, testified on the genuineness of the entries in the certified true copy of AAA's birth certificate.

The prosecution presented a certified true copy of AAA's birth certificate to show that she was born on 23 January 1980, and that her father is Danilo Paculba.[12]

On the other hand, appellant interposed alibi as his defense. He claimed that in June 2002, the date when the first rape was apparently committed, he lived in the house of a certain Nadong Tabias situated in Magsaysay, Lanao del Norte. In August 2002, appellant declared that he was in Cebu working as a quack doctor. In November 2002, he stated that he was in Malabang, Lanao del Sur. In January 2003, he purportedly went back to Magsaysay, Lanao del Norte. And on 21 November 2003, appellant said that he was living in the house of Baking Dumasig in Tangub, Lanao del Norte. He denied the accusations of AAA and intimated that the relatives of his deceased wife blamed him for the death of his wife, hence these cases were filed against him.[13]

Appellant was found guilty by the RTC of four (4) counts of rape and one (1) count of attempted rape. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:

- a) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in June, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of P75,000.00;
- b) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in August, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of P75,000.00;
- c) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in November, 2002, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of P75,000.00;
- d) finding accused DANILO PACULBA guilty beyond reasonable doubt for raping AAA in January, 2003, and the Court hereby sentences him to death by lethal injection and to indemnify AAA in the amount of P75,000.00; and
- e) finding accused AAA guilty beyond reasonable doubt for attempting to rape AAA on 21 November 2003, and the Court hereby sentences him to suffer an indeterminate prison term of 6 years and 1 day of prison mayor as minimum to 12 years and 1 day of reclusion temporal as minimum.[14]

The trial court gave full credence to the testimony of AAA and found her answers to be "simple and candid, and were all reinforced and sufficiently explained by succeeding ones." [15] Appellant's alibi was dismissed for being weak and unsubstantiated.[16]

In view of the penalty imposed, the case was elevated to this Court for review. However, conformably with our decision in *People v. Mateo*, [17] the case was transferred to the Court of Appeals for appropriate action and disposition.[18]

The Court of Appeals affirmed with modification the judgment of the trial court, viz:

WHEREFORE, in light of the foregoing, the Decision dated December 29, 2004 of the Regional Trial Court, 12th Judicial Region, Branch 21, Kapatagan, Lanao del Norte, is hereby AFFIRMED with MODIFICATIONS. Accused-appellant Danilo Paculba is SENTENCED to the penalty of reclusion perpetua with no possibility of parole for each of the four (4) counts of qualified rape committed against AAA in Criminal Case Nos. 21-1220, 21-1221, 21-1222 and 21-1223. Accused-appellant is further ORDERED to indemnify AAA for each count of qualified rape, in the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P25,000.00 as exemplary damages.

For the crime of attempted rape committed against AAA in Criminal Case No. 21-1219, accused-appellant is hereby SENTENCED to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum. In addition, accused-appellant is ORDERED to indemnify AAA for the crime of attempted rape, in the amounts of P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages. With costs.[19]

The appellate court found AAA's testimony credible and consistent with the medical findings that she was raped.

Appellant filed a notice of appeal on 29 May 2008.

In the Resolution of 27 August 2008, this Court gave due course to the appeal and ordered the respective parties to file their supplemental briefs.[20] Both parties manifested that they shall adopt their briefs filed before the appellate court.[21] Thereafter, the case was deemed submitted for decision.

In his brief, appellant essentially questions the credibility of AAA. He argues that AAA's account of each rape was devoid of any distinctive detail which would render her testimony spontaneous and candid.[22] Appellant also points out that the date when the alleged attempted rape was committed, or on 21 November 2003, cannot be reconciled with the date when AAA was examined by the medico-legal expert, which was on 3 November 2003.[23] Moreover, appellant claims that the existence of erasures on entries in AAA's birth certificate renders the document doubtful and, thus, did not sufficiently establish the real age of AAA.[24]

The Office of the Solicitor General, in its brief, vouches for the credibility of AAA. Furthermore, it belies appellant's defense of denial because it was not corroborated by any other witness.[25]

The lone issue to be resolved by this Court is whether appellant's guilt has been proven beyond reasonable doubt.

We completely agree with the findings of the Court of Appeals, particularly on the credibility of the rape victim.

In a prosecution for rape, the victim's credibility becomes the single most important issue. For when a woman says she was raped, she says in effect all that is necessary to show that rape was committed; thus, if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[26]

The rule is settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[27]

In this case, the test of credibility for a rape victim was more than sufficiently met.

The lower court lent full credence to AAA's testimony that appellant raped her on four occasions and attempted to rape her on 21 November 2003. AAA testified in a clear, spontaneous and candid manner. AAA categorically testified that her father sexually abused her, thus:

Q:

Sometimes (sic) on the night of June 2002, what incident have you recalled?

A:

He did something to me.

Q:

Who is the person who do (sic) something to you?

A:

Danilo Paculba.

Q:

Your father?

A:

Yes, sir.

Q:

What did he do to you?

A:

He cover (sic) my mouth and removed my pants and panty and placed his body on top of me.

Q:

What else?

A:

He make (sic) a push and pull movement.

Q:

Towards whom that he made the push and pull movement?

A:

My father made a push and pull movement on me.

Q:

What do you mean by this push and pull movement by your father towards you?

A:

I feel pain.

Q:

What part of your body (sic) feel pain?

A:

My vagina.

Q:

Why, what did your father do to your vagina?

A:

He inserted his penis into my vagina.

Q:

While he inserted his penis to your vagina, what did you feel?

A:

I was afraid.

Q:

What else?

A:

A heavy pain.[28]

AAA's testimony regarding the subsequent rapes in August and November 2002, and January 2003 was also of the same import.[29]

Appellant seeks to destroy AAA's credibility by assailing her testimony for lack of details as to how rape was committed. In *People v. Alipio*,^[30] the Court ruled that rape is a harrowing experience, the exact details of which are usually not remembered. Inconsistencies, even if they do exist, tend to bolster, rather than weaken the credibility of the witness, for they show that the testimony was not contrived or rehearsed.^[31] AAA recounted in simple yet very clear terms the different instances of how she was ravished by appellant. Through her account, the elements of the crime of qualified rape were sufficiently established.

Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, provides in the first paragraph as follows:

When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

First, AAA testified that appellant had sexual intercourse with her. Her testimony was supported by the medical certificate issued and testified on by Dr. Liwanag. Hence, the element of carnal knowledge is present in this case.

Second, force or intimidation was employed by appellant and he succeeded in having carnal knowledge of AAA. AAA testified several times that she was afraid of her father. Appellant was able to effectively intimidate and threaten AAA to submit to his will because he wields moral ascendancy over her. As aptly put by this Court in *People v. Sandico*:^[32]

x x x force and intimidation necessary in rape is naturally a relative term, depending not only on the age, size and strength of the parties, but also on their relation to each other. Considering that the assailant is no less than complaining witness' own father who wields parental influence over her person, the crime undoubtedly was consummated with facility. The reason is that in rape committed by a father against his own daughter, the former's moral ascendancy over the latter substitutes for violence or intimidation. A rape victim's actions are oftentimes overwhelmed by fear rather than reason. It is this fear, springing from the initial rape, that the perpetrator hopes to build a climate of extreme psychological terror which would, he hopes, numb his victim into silence and submissiveness. Incestuous rape magnifies the terror because the perpetrator is the person

normally expected to give solace and protection to the victim. Furthermore, in incest, access to the victim is guaranteed by the blood relationship, proximity magnifying the sense of helplessness and degree of fear.[33]

Alibi is an inherently weak defense and can easily be fabricated.[34] The settled jurisprudence is that categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, as in the case at bar, constitute self-serving evidence undeserving of weight in law.[35] Thus, appellant's alibi, more so that it is not corroborated by any witness, cannot prosper over AAA's positive identification.

Appellant noted a discrepancy on the dates provided in the documentary evidence presented by the prosecution. The alleged date of the last crime of attempted rape was committed on 21 November 2003. On the other hand, AAA underwent medical examination presumably after the attempted rape but the date indicated in the medical report was 3 November 2003. Indeed, there seems to be an error in specifying the dates. At any rate, errors or inconsistencies as to the exact time or date or day of the week when the rape was consummated do not impair the credibility of the complaining witness, for as long as there is consistency in relating the principal occurrence and positive identification of the assailant.[36] Moreover, the exact date is not an essential element of rape.[37] It bears no significance to the actual commission of the crime.

Paragraph 7(1) of Article 335 further provides that:

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

1. 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.

Minority and relationship qualify the crime of rape. These circumstances were properly appreciated by the courts. AAA's birth certificate clearly shows that she was twelve years old at the time of the incident and that appellant is her father. Relationship between father and daughter was already stipulated by the parties during pre-trial.[38]

The supposed erasures made on the birth certificate are too trivial to deserve consideration. Nonetheless, the local civil registrar explained that they ran out of forms so they instead used an old form.[39] Verily, the prosecution had sufficiently alleged and duly proved the twin qualifying circumstances of minority and relationship.

Finally, appellant imputes ill motive on the part of AAA's relatives in filing the present case against him. Motives such as family feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.[40]

The Court of Appeals correctly reduced the death penalty to reclusion perpetua for each count of rape in Criminal Cases No. 21-1220, No. 21-1221, No. 21-1222, and No. 21-1223. The passage of Republic Act No. 9346, debars the imposition of death penalty without however declassifying the crime of qualified rape as heinous.

Likewise, the Court upholds the appellate court's award of damages.

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals finding appellant DANILO PACULBA guilty of qualified rape in Criminal Cases No. 21-1220, No. 21-1221, No. 21-1222, and No. 21-1223, and attempted rape in Criminal Case No. 21-1219, is AFFIRMED in toto.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Abad, JJ., concur.

[1] Penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring. Rollo, pp. 3-31.

[2] Presided by Judge Jacob T. Malik. Records, pp. 48-74.

[3] The place of commission is withheld to preserve confidentiality of the identity of the victim. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[4] Likewise, the victim's real name, as well as the members of her immediate family, is withheld to protect her privacy, also pursuant to *People v. Cabalquinto*.

[5] Records, pp. 48-50.

[6] TSN, 14 September 2004, pp. 23-28.

[7] *Supra* note 4.

[8] *Id.*

[9] TSN, 14 September 2004, pp. 29-30.

[10] Records, p. 5.

[11] TSN, 24 August 2004, pp. 3-4.

[12] Records, p. 6.

[13] TSN, 5 October 2004, pp. 48-52.

[14] CA rollo, p. 52.

[15] Records, p. 37.

[16] *Id.* at 49-50.

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

[18] CA rollo, p. 54.

[19] Rollo, p. 30.

[20] *Id.* at 37.

[21] *Id.* at 45-46 and 51.

[22] CA rollo, p. 72.

[23] *Id.* at 73.

[24] *Id.*

[25] *Id.* at 128.

[26] *People v. Mingming*, G.R. No. 174195, 10 December 2008, 573 SCRA 509, 532; *People v. Capareda*, 473

Phil. 301, 330 (2004); *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 516.

[27] *People v. Palgan*, G.R. No. 186234, 21 December 2009.

[28] TSN, 14 September 2004, p. 5.

[29] *Id.* at 25-27.

[30] G.R. No. 185285, 5 October 2009, citing *People v. Sagun*, 363 Phil. 1 (1999).

[31] *People v. Sagun*, *id.* at 17.

[32] *People v. Sandico*, 366 Phil. 663 (1999), citing *People v. Melivo*, 323 Phil. 412, 421-422 (1996).

[33] *People v. Sandico*, *id.* at 675-676.

[34] *People v. Tamolon*, G.R. No. 180169, 27 February 2009, 580 SCRA 384, 395, citing *People v. Penaso*, 383 Phil. 200, 210 (2000); *People v. Evina*, 453 Phil. 25, 42 (2003), citing *People v. Cabiles*, 348 Phil. 220, 239 (1998).

[35] *People v. Payot, Jr.*, G.R. No. 175479, 23 July 2008, 559 SCRA 609, 621, citing *People v. Moralde*, 443 Phil. 369, 383 (2003).

[36] *People v. San Agustin*, 403 Phil. 93, 104 (2001), citing *People v. Valla*, 380 Phil. 31, 40 (2000).

[37] *People v. Aboganda*, G.R. No. 183565, 8 April 2009; *People v. Arraz*, G.R. No. 183696, 24 October 2008, 570 SCRA 136, 146; *People v. Ibañez*, G.R. No. 174656, 11 May 2007, 523 SCRA 136, 142.

[38] Records, pp. 20-22.

[39] TSN, 7 September 2004, p. 14.

[40] *Dizon v. People*, G.R. No. 170342, 18 September 2009, citing *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549 and *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.

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