

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANICETO BULAGAO, ACCUSED-APPELLANT.

G.R. No. 184757. October 05, 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. 01955 dated April 14, 2008 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan in Crim. Case No. 197-M-2001 and Crim. Case No. 198-M-2001 dated January 23, 2006.

Accused-appellant Aniceto Bulagao was charged with two counts of rape in separate Informations both dated December 21, 2000. The Informations read as follows:

CRIMINAL CASE NO. 197-M-2001

That on or about the 29[th] day of June, 2000, in the municipality of Bocaue, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with force and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of [AAA],[3] 14 years old, against the latter's will and consent.[4]

CRIMINAL CASE NO. 198-M-2001

That on or about the 17[th] day of June, 2000, in the municipality of Bocaue, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with force and intimidation, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of [AAA], 14 years old, against the latter's will and consent.[5]

Upon arraignment on February 26, 2001, accused-appellant pleaded not guilty on both counts. Thereafter, trial on the merits ensued.

Only private complainant AAA took the witness stand for the prosecution. AAA was born on April 13, 1986. According to her late-registered birth certificate, her parents are BBB (mother) and CCC (father). AAA, however, testified that BBB and CCC are not her biological parents, as she was only adopted when she was very young.[6] CCC died in December 1999.[7]

In April 2000, AAA arrived from the province and settled in the house of her brother DDD (son of BBB and CCC) and his wife in Lolomboy, Bocaue, Bulacan. With AAA in the house were two other brothers, EEE and accused-appellant Aniceto Bulagao, and her younger sister, then six-year-old FFF (who were also the children of BBB and CCC).[8]

On June 17, 2000, at around 8:00 p.m., AAA and FFF were sleeping in a room which had no door. AAA was suddenly awakened when she felt somebody enter the room. She recognized the accused-appellant as the intruder, and saw that he was holding a knife. Accused-appellant poked the knife at AAA's neck, causing her to freeze in

fear. Accused-appellant removed AAA's clothes, and then his own. Both AAA and accused-appellant were wearing t-shirt and shorts before the undressing. Accused-appellant kissed her neck and inserted his penis into her vagina. FFF woke up at this moment, but accused-appellant did not stop and continued raping AAA for one hour.[9]

On June 29, 2000, AAA was residing in the house of her sister, also located in Lolomboy, Bocaue, Bulacan. At around 11:00 p.m. on that day, AAA was sleeping in the second floor of the house, where there are no rooms. AAA was roused from her sleep when accused-appellant was already undressing her. Accused-appellant removed his shorts and inserted his penis into her vagina. AAA tried to resist, but accused-appellant held her hands. Accused-appellant then touched her breasts and kissed her. Accused-appellant remained on top of her for half an hour.[10]

AAA told her mother, BBB, and her brother, EEE, about the rape incidents. Upon learning of the same, BBB did not believe AAA and whipped her.[11]

During cross-examination, the defense, in trying to establish the character and chastity of AAA, asked AAA about an alleged sexual intercourse between her and the now deceased CCC. AAA affirmed her statement in her affidavit that CCC took advantage (pinagsamantalahan) of her when he was still alive. This allegedly happened five times, the first of which was when she was only seven years old.[12] Answering a query from the court, AAA testified that she was currently in the custody of the Department of Social Welfare and Development (DSWD).[13]

The prosecution was supposed to present medico-legal officer Dr. Ivan Richard Viray as its second witness. However, the latter's testimony was dispensed with upon the stipulation of the parties on the fact of examination of AAA by Dr. Viray on September 5, 2000, and the contents of the examination report,[14] which includes the finding that AAA was in a "non-virgin state."

When it was time for the defense to present their evidence more than a year later, it also presented as its witness AAA, who recanted her testimony for the prosecution. This time, she testified that the sexual encounters between her and the accused-appellant were consensual. She fabricated the charge of rape against the accused-appellant because she was supposedly angry with him. She also claimed that she was instructed by the police officer who investigated the incident to say that the accused-appellant used a knife. She also testified that she was raped by her father CCC when she was seven years old. She was recanting her previous testimony because she purportedly was no longer angry with accused-appellant.[15]

On cross-examination, AAA clarified that she fabricated the charge of rape because she was angry with the accused-appellant for making her do laundry work for him. However, when asked if she "consented and voluntarily submitted" herself to the accused-appellant when she had sexual intercourse with him, she answered in the negative. She had been released from the custody of the DSWD and was alone by herself for some time, but she now lives with the family of accused-appellant. [16]

On redirect examination, AAA testified that accused-appellant did not force himself upon her. She affirmed that accused-appellant had a little defect in his mind. On re-cross examination, AAA testified that accused-appellant was not her sweetheart.[17]

Another witness for the defense was Yolanda Palma, a clinical psychologist. She conducted a mental examination on accused-appellant on September 12, 2002, and found that accused-appellant was suffering from mental retardation as he had an IQ of below 50.[18]

Accused-appellant, who was 40 years old when he testified on June 15, 2005, claimed that AAA seduced him by

removing her clothes. He asserted that they ended up merely kissing each other and did not have sexual intercourse. He denied pointing a knife at AAA. AAA accused him of rape because she was asking for P300 from him after they kissed. Accused-appellant also testified that there was no legal proceeding for the adoption of AAA ("ampun-ampunan lang").[19]

On January 23, 2006, the RTC rendered its joint Decision in Crim. Case No. 197-M-2001 and 198-M-2001, decreeing as follows:

WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime as charged, and hereby sentences him to suffer:

(a) In Crim. Case No. 197-M-01, the penalty of DEATH. The accused is likewise directed to indemnify the private complainant in the amount of P50,000.00;

(b) In Crim. Case No. 198-M-01, the penalty of DEATH. The accused is likewise directed to indemnify the private complainant in the amount of P50,000.00.[20]

The RTC observed that AAA was in the custody of the DSWD when she testified for the prosecution, and was returned to the family of the accused-appellant after her original testimony. It was during the time when she was back in the custody of the accused-appellant's family that she recanted her testimony for the prosecution. According to the RTC, it is clear that she had no other place to go to as she was completely orphaned and was dependent on the family of the accused, and it was understandable that she may have recanted in order to remain in the good graces of the accused-appellant's family.[21]

As regards the defense of accused-appellant that he was suffering from mental retardation, the RTC noted that the psychological examination of accused-appellant was conducted more than a couple of years after the dates of the complained of incidents. There was no showing from the findings of the psychologist that accused-appellant had the same mental or psychological condition at the time of the said incidents. Even assuming that accused-appellant was of such mental state at the time of the incidents, the psychologist testified that accused-appellant had the capacity to discern right from wrong.[22]

On April 14, 2008, the Court of Appeals rendered its Decision affirming that of the RTC, except with a modification on the penalty in view of the enactment of Republic Act No. 9346 prohibiting the imposition of death penalty. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is DISMISSED. The decision of the Regional Trial Court of Malolos, Bulacan, Branch 13, dated 23 January 2006, is AFFIRMED with MODIFICATION on the penalty imposed and damages awarded. Accused-appellant is sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, in each of the two (2) counts of rape. He is further directed to pay private complainant the sum of P50,000.00 as moral damages, for each count of rape, in addition to the civil indemnity awarded by the court a quo.[23]

Hence, accused-appellant interposed the present appeal. Both parties manifested that they are waiving their rights to file a supplemental brief, as the same would only contain a reiteration of the arguments presented in their appellant's and appellee's briefs.[24]

In seeking to overturn his conviction, accused-appellant asserted that the prosecution evidence was insufficient, particularly in view of AAA's withdrawal of her original testimony.

We have recently held that "[c]ourts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary considerations. Hence, a retraction does not necessarily negate an earlier declaration. They are generally unreliable and looked upon with considerable disfavor by the courts.

Moreover, it would be a dangerous rule to reject the testimony taken before a court of justice, simply because the witness who has given it later on changes his mind for one reason or another." [25] We have, in the past, also declared that the recantation, even of a lone eyewitness, does not necessarily render the prosecution's evidence inconclusive. [26] In the often-cited *Molina v. People*, [27] we specified how a recanted testimony should be examined:

Mere retraction by a prosecution witness does not necessarily vitiate the original testimony if credible. The rule is settled that in cases where previous testimony is retracted and a subsequent different, if not contrary, testimony is made by the same witness, the test to decide which testimony to believe is one of comparison coupled with the application of the general rules of evidence. A testimony solemnly given in court should not be set aside and disregarded lightly, and before this can be done, both the previous testimony and the subsequent one should be carefully compared and juxtaposed, the circumstances under which each was made, carefully and keenly scrutinized, and the reasons or motives for the change, discriminatingly analyzed. x x x. [28] (Emphases supplied.)

These rules find applicability even in rape cases, where the complainant is usually the lone eyewitness. Thus, in *People v. Sumingwa*, [29] where the rape victim later disavowed her testimony that she was raped by her father, this Court held:

In rape cases particularly, the conviction or acquittal of the accused most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself. When a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.

A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. [30]

In the case at bar, the determination by the trial court of the credibility of AAA's accusation and recantation is facilitated by the fact that her recantation was made in open court, by testifying for the defense. Unlike in cases where recantations were made in affidavits, the trial court in this case had the opportunity to see the demeanor of AAA not only when she narrated the sordid details of the alleged rape by her "adoptive" brother, but also when she claimed that she made up her previous rape charges out of anger. As such, it is difficult to overlook the fact that the trial court convicted accused-appellant even after examining the young witness as she made a complete turnaround and admitted to perjury. The legal adage that the trial court is in the best position to assess the credibility of witnesses thus finds an entirely new significance in this case where AAA was subjected to grueling cross examinations, redirect examinations, and re-cross examinations both as a prosecution and defense witness. Still, the trial court found that the private complainant's testimony for the prosecution was the one that was worthy of belief.

However, even if we disregard the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, it is clear to this Court which of the narrations of AAA was sincere and which was concocted. AAA's testimony for the prosecution, which was taken when she was in the custody of the DSWD, was clear, candid, and bereft of material discrepancies. All accused-appellant can harp on in his appellant's brief was AAA's failure to recall the length of the knife used in the assaults, a minor and insignificant detail not

material to the elements of the crime of rape. She remained steadfast on cross-examination even as defense counsel tried to discredit her by bringing up her dark past of being sexually molested by the accused-appellant's father when she was seven years old. This is in stark contrast to her testimony for the defense, where AAA, now living with accused-appellant's family, claimed that she fabricated a revolting tale of rape simply because accused-appellant made her do laundry. AAA's recantation even contradicts the testimony of accused-appellant himself. While AAA claims in her retraction that she had consensual sex with her brother, accused-appellant testified that they merely kissed and that AAA's purported motive for the rape charges was monetary.

As furthermore observed by both the trial court and the Court of Appeals, the cross-examination of AAA as a defense witness revealed that it was taken at a time when AAA had nowhere to go and was forced to stay with the family of accused-appellant and upon a reliance on the family's implied commitment to send accused-appellant to Mindanao:

PROS. JASON:

Q:

Where are you staying at present?

A:

In our house, sir.

Q:

And your house where you were staying is the house of the parents of the accused?

A:

Yes, sir.

Q:

And you don't have any relatives where you can go and stay except from that house?

A:

None, sir.

Q:

Where [are] your parents?

A:

I do not know, sir.

Q:

Are they all dead or still alive?

A:

They are deceased, sir.

Q:

All?

A:

Both are deceased, sir.

Q:

Do you mean to say that do you have full blood brother and sister?

A:

They all separated, sir.

Q:

Do you know where they were living?

A:

No, sir.

Q:

From the time you were released from the DSWD you are alone by yourself?

A:

Yes, sir.

Q:

And the person[s] who are now taking care of you are giving you shelter and everyday foods [sic] from the family of the accused, is that correct?

A:

Yes, sir.

x x x x

Q:

Ms. Witness, if ever the case of Aniceto will be dismissed because you testify today[, would] you admit for a fact that he [was] also staying in the house where you are staying now?

A:

No, sir.

Q:

Where will he stay?

A:

In Mindanao, sir.

Q:

Because that was one of the promise or commitment of the family of the accused, is it not?

A:

No, sir.

Q:

And how did you know he will stay in Mindanao?

A:

Because my other Kuya will not allow him to stay in the house, sir.

Q:

Because your other Kuya does not like Aniceto Bulagao to do the things that you have complaint [sic] against him, is it not?

A:

Yes, sir.

Q:

And what you are "isinusumbong" is the case today against him, is it not?

A:

Yes, sir.[31]

Accused-appellant, in his appeal, did not insist on the allegation in the trial court that he was suffering from mental retardation. Nevertheless, we agree with the finding of the trial court that there was no proof that the mental condition accused-appellant allegedly exhibited when he was examined by Yolanda Palma was already present at the time of the rape incidents. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence.[32] Besides, this Court observes that neither the acts of the accused-appellant proven before the court, nor his answers in his testimony, show a complete deprivation of intelligence or free will. Insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime.[33] Only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.[34]

As previously stated, the RTC imposed upon accused-appellant the penalty of death for each count of rape. The Court of Appeals modified the penalty to reclusion perpetua in view of the enactment of Republic Act No. 9346. It should be noted at this point that while Republic Act No. 9346 prohibits the imposition of death penalty, the presence of a qualifying circumstance which would have warranted the imposition of the death penalty would still cause the award of moral damages and civil indemnity to be increased each from Fifty Thousand Pesos (P50,000.00) to Seventy-Five Thousand Pesos (P75,000.00) under prevailing jurisprudence.[35]

In the case at bar, both Informations charge a crime of rape qualified by the use of a deadly weapon. Under Article 266-B of the Revised Penal Code, the crime of rape under paragraph 1 of Article 266-A when committed with the use of a deadly weapon is punishable by reclusion perpetua to death. This crime was proven as charged in Crim. Case No. 198-M-2001, which was alleged to have occurred on June 17, 2000. Since no other qualifying or aggravating circumstance was alleged in the Information, the proper penalty is reclusion perpetua.

On the other hand, while AAA had testified that the accused-appellant used a knife on June 17, 2000, she said that she hid said knife before June 29, 2000, the date of Crim. Case No. 197-M-2001.[36] As such, the crime that was proven in Crim. Case No. 197-M-2001 is simple rape not qualified by any circumstance affecting criminal

liability. However, simple rape is also punishable by reclusion perpetua under Article 266-B.

In both cases, since the death penalty would not have been imposed even without the enactment of Republic Act No. 9346, this Court affirms the award of civil indemnity in the amount of P50,000.00, as well as moral damages in the amount of P50,000.00, both for each count of rape. [37] In addition, we have held that since exemplary damages are corrective in nature, the same can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[38] This Court believes that the conduct of accused-appellant herein, who raped her minor adoptive sister twice, falls under this category and is therefore liable for exemplary damages in the amount of P30,000.00 for each count of rape, in line with existing jurisprudence. [39]

WHEREFORE, the appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01955 dated April 14, 2008 finding accused-appellant Aniceto Bulagao guilty beyond reasonable doubt of two (2) counts of rape and sentencing him to suffer the penalty of reclusion perpetua, without eligibility for parole, for each count of rape is hereby AFFIRMED with the following MODIFICATIONS:

1) Accused-appellant Aniceto Bulagao is hereby ordered to pay AAA the amount of P30,000.00 as exemplary damages for each count of rape, in addition to the amounts awarded by the Court of Appeals, namely: civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00, both for each count of rape; and

2) All damages awarded in this case should be imposed with interest at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 2-20; penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid, concurring.

[2] CA rollo, pp. 44-54.

[3] The real names of the victim and her family, with the exception of accused-appellant, are withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, Volume 1, p. 1.

[5] *Id.*, Volume 2, p. 1.

[6] TSN, August 7, 2001, p. 3.

[7] TSN, May 8, 2001, p. 5.

[8] *Id.* at 6-7.

[9] *Id.* at 7-11; TSN, June 15, 2001, pp. 2-3.

[10] TSN, June 15, 2001, pp. 3-9.

[11] *Id.* at 13-14.

- [12] TSN, August 7, 2001, pp. 3-7.
- [13] TSN, October 15, 2001, p. 5.
- [14] TSN, January 29, 2002, p. 6.
- [15] TSN, March 5, 2003, pp. 3-5.
- [16] Id. at 5-8.
- [17] Id. at 9-10.
- [18] TSN, April 26, 2004, pp. 2-4.
- [19] TSN, June 15, 2005, p. 5.
- [20] CA rollo, pp. 16-17.
- [21] Id.
- [22] Id.
- [23] Rollo, p. 19.
- [24] Id. at 27-29, 38-40.
- [25] *People v. Madsali*, G.R. No. 179570, February 4, 2010, 611 SCRA 596, 607-608.
- [26] *Baldeo v. People*, 466 Phil. 845-857 (2004).
- [27] 328 Phil. 445 (1996).
- [28] Id. at 468.
- [29] G.R. No. 183619, October 13, 2009, 603 SCRA 638.
- [30] Id. at 649-650.
- [31] TSN, March 5, 2003, pp. 5-8.
- [32] *People v. Tibon*, G.R. No. 188320, June 29, 2010, 622 SCRA 510, 519.
- [33] *People v. Danao*, G.R. No. 96832, November 19, 1992, 215 SCRA 795, 801.
- [34] *People v. Condino*, 421 Phil. 213, 221 (2001).
- [35] *People v. Manulit*, G.R. No. 192581, November 17, 2010, 635 SCRA 426, 439.
- [36] TSN, June 15, 2001, p. 16.
- [37] *People v. Manulit*, supra note 35.
- [38] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.
- [39] Id. at 821.

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