

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARNEL MACAFE Y NABONG, APPELLANT.*G.R. No. 185616. November 24, 2010*

Ponente: BRION, J.

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This is an appeal from the decision,[1] dated May 26, 2008, of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00277, affirming with modification the March 10, 1999 decision of the Regional Trial Court (RTC), Branch 16, Zamboanga City. The RTC decision[2] found appellant Arnel Macafe y Nabong guilty beyond reasonable doubt of three (3) counts of rape and meted him the death penalty for each count.

BACKGROUND FACTS

The records show that AAA[3] is the daughter of BBB and CCC. After CCC died, BBB married the appellant in 1994; they lived together in Parang, Marikina together with BBB's children from her first marriage.[4] In August 1995, the appellant and BBB, together with AAA and her sister, DDD, went to Zamboanga City and stayed at the house of BBB's older brother, EEE. BBB's three other children were already in Zamboanga City at that time.[5] In May 1996, BBB went to Israel to work as a caregiver; she left her five children under the appellant's care.

1[st] rape

At around 10:00 a.m. of September 10, 1997, AAA was sitting alone on the sofa located at the sala of EEE's house, when the appellant approached her and told her to lie down. When AAA did as ordered, the appellant pulled down her shorts and panty. AAA resisted but the appellant succeeded in removing them. The appellant spread AAA's legs apart, and went on top of her. The appellant removed his shorts and briefs, and inserted his penis in AAA's private parts. AAA felt pain in her private parts. She tried to push the appellant but was unsuccessful. Afterwards, she felt a warm sticky substance coming from the appellant's penis. The appellant told her to wash her private parts in the bathroom. Thereafter, the appellant left. AAA saw blood in her private parts when she washed them.[6]

2[nd] rape

On September 15, 1997, the appellant instructed AAA not to attend her classes so that he will have a companion in the house. At around 11:00 a.m., AAA was at the balcony of the house when the appellant ordered her to go to the bodega. When AAA arrived at the bodega, the appellant told her to lie down on the blanket on the floor. When AAA did as ordered, the appellant removed her shorts and panty. AAA resisted, but the appellant tied her both hands with a shoelace. Afterwards, the appellant spread AAA's legs apart. The appellant then removed his shorts and briefs, went on top of AAA, and inserted his penis in her vagina. AAA felt pain in her private parts. Thereafter, she noticed blood and a sticky substance coming out of her vagina.[7]

3[rd] rape

On September 18, 1997, the appellant told AAA not to go to school. AAA followed the appellant's order because she was afraid that he would whip her if she disobeyed. In the afternoon and while AAA was sitting at the balcony, the appellant ordered AAA to go to the bodega. AAA went there as instructed, and on her arrival, the appellant ordered her to lie down on the blanket on the floor. AAA refused, but the appellant slapped her. When AAA laid on the blanket, the appellant removed her shorts and panty, and then spread her legs apart. The appellant then removed his pants and briefs, went on top of AAA, and inserted his penis in her vagina. AAA felt pain in her private parts; she also felt "something warm" coming from the appellant's penis. She noticed blood coming from her vagina when she washed it afterwards.[8]

On all three (3) occasions, the appellant threatened to kill AAA if she revealed the incident to anyone.[9]

The records likewise reveal that on September 30, 1997, the appellant whipped AAA on the different parts of her body because she came home late.[10] AAA reported the whipping incident to her teacher, Grace Alvarez. When Grace saw the contusions on AAA's body, she advised AAA to leave their house; she also referred the matter to Esteban "Steve" Pasol, Jr., the father of one of AAA's classmates.[11] AAA told Esteban that she ran away from home because the appellant whipped her. Esteban reported the incident to a barangay official and to the ABS CBN radio station. On the next day, AAA was interviewed by an ABS CBN radio personnel. Esteban, thereafter, brought AAA to the Department of Social Welfare and Development and then to the Zamboanga Medical Center for a medical examination.[12]

On November 13, 1997, AAA revealed to Grace that she had been raped, although she did not immediately name her rapist. AAA disclosed the rape because she "could not take it anymore"; and because she learned that the appellant also raped her younger sister.[13] Grace called AAA's grandparents, and requested them to go to the school. On their arrival, AAA told them that she had been raped by the appellant.[14] Immediately after, they brought AAA to the Zamboanga Medical Center.[15]

Dr. Ma. Regina Bucoy Vasquez, the resident physician of the Zamboanga Medical Center, conducted a physical examination on AAA on November 14, 1997,[16] and saw incomplete and healed multiple lacerations in her hymen. According to Dr. Vasquez, the multiple lacerations on AAA's private parts imply that she has had previous sexual contacts.[17]

AAA was brought to the Tetuan Police Station, where she gave her statement to the police.[18] Thereafter, the prosecution filed three (3) complaints for rape, before the RTC, against the appellant, docketed as Criminal Case Nos. 15124-26.[19]

The appellant denied the allegations against him, and claimed that AAA's aunt, FFF, merely instigated AAA to say that she had been raped by him. He explained that FFF was mad at him for his failure to give the money sent by BBB for her (FFF). The appellant further added that FFF wanted to put him in jail so that she (FFF) would manage the money BBB sent. The appellant admitted that he whipped AAA on September 30, 1997 because she came home late.[20]

THE RTC RULING

The RTC convicted the appellant of three (3) counts of rape under Article 335 of the Revised Penal Code, and sentenced him to suffer the death penalty for each count. The RTC also ordered the appellant to pay the victim P50,000.00, as civil indemnity, and P25,000.00, as exemplary damages, for each count of rape.

The RTC found AAA's testimony to be clear, straightforward, credible, convincing, and free from any contradiction. It, likewise, found no ill motive on AAA's part to falsely testify against her own stepfather.

Furthermore, AAA's testimony was supported by the medical findings of Dr. Vasquez, who found incomplete healed lacerations on the victim's hymen.

The RTC also held that AAA's one (1) month delay in reporting the rapes did not impair her credibility. The RTC explained that it is not uncommon for young girls to conceal the assaults on their virtue due to the threats on their lives, more so when the rapist is the victim's own stepfather living with her. The RTC finally ruled that the appellant's denial was not supported by any other evidence.

THE CA DECISION

The CA, in its decision dated May 26, 2008, affirmed the RTC decision with the modification that the death penalty be reduced to reclusion perpetua for each count of rape, as the complaints failed to allege the appellant's relationship to the victim. The CA also ordered the appellant to further pay the victim P50,000.00, as moral damages, for each count.

The CA found AAA's testimony credible and convincing, more so since it was supported by the medical findings of Dr. Vasquez. The CA also disregarded the appellant's denial and imputation of ill-motive on the part of FFF, for lack of evidence to support these defenses.

THE ISSUE

In his brief, the appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He claims that AAA was not a credible witness, and avers that she was merely influenced by FFF to make false accusations against him.

THE COURT'S RULING

After due consideration, we dismiss the appeal but increase the awarded exemplary damages from P25,000.00 to P30,000.00 for each count of rape.

Sufficiency of Prosecution Evidence

Rape is defined and penalized under Article 335[21] of the Revised Penal Code, as amended, which provides:

ARTICLE 335. 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.

Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Hence, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[22]

In her testimony, AAA positively identified the appellant as the one who raped her on three occasions, namely,

September 10, 1997, September 15, 1997, and September 18, 1997. Her testimonies were clear and straightforward; she was consistent in her recollection of the details of her defloration. In addition, her testimonies were corroborated by the medical findings of Dr. Vasquez.

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and, thereafter, pervert herself by subjecting herself to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime as serious as rape if what she claims is not true.[23]

The prosecution, thus, positively established the elements of statutory rape under Article 335, paragraph 3 of the Revised Penal Code. First, the appellant succeeded in having carnal knowledge of AAA on three occasions on September 1997. Second, AAA was below twelve years of age at the time of the incidents, as evidenced by her birth certificate and testimony showing that she was born on June 1, 1986.

The Appellant's Defenses

The appellant denied having raped AAA, and insisted that AAA only filed the cases at the instigation of FFF, who was mad at him for failing to remit the money that BBB sent.

The appellant's defense of denial must crumble in light of AAA's positive and specific testimony. We have consistently held that the identification of the accused, when categorical and consistent, and without any showing of ill motive on the part of the eyewitness testifying, should prevail over mere denial. In the context of this case, the appellant's denial, unsupported by any other evidence, cannot overcome the victim's positive declaration on his identity and involvement in the crime attributed to him.

We also find unmeritorious the appellant's claim that FFF merely instigated AAA to file the complaints against him. We stress that it was not FFF but AAA's grandparents who decided to file the case against the appellant. At any rate, the appellant's claim that FFF convinced AAA to file fabricated rape charges because the appellant failed to give the money due her is too flimsy a reason for an aunt to subject her niece to humiliation and scandal.

The Proper Penalty and Indemnity

Under the second part of Article 335 of the Revised Penal Code, the death penalty shall be imposed 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.

As shown by her Certificate of Live Birth,[24] AAA was born on June 1, 1986; AAA also testified to this fact.[25] Clearly, AAA was only eleven years old when the three rapes happened in September 1997. Nonetheless, the CA was correct in reducing the death penalty to reclusion perpetua because the circumstance of relationship was not alleged in the complaints. None of the complaints alleged that the appellant was the stepfather of AAA.

We affirm the awards of P50,000.00 as civil indemnity and moral damages, respectively, for each count of rape, as they are in accord with prevailing jurisprudence. Civil indemnity is awarded on the finding that rape was committed. Similarly, moral damages are awarded to rape complainants without the need of a pleading or proof of their basis; it is assumed that a rape complainant actually suffered moral injuries, entitling her to this award.[26]

However, we increase the amount of the awarded exemplary damages from P25,000.00 to P30,000.00 pursuant to established jurisprudence. The award of exemplary damages is justified, under Article 2229 of the Civil Code, to

set a public example and serve as deterrent against elders who abuse and corrupt the youth.[27]

WHEREFORE, in light of all the foregoing, we AFFIRM the May 26, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00277, with the following MODIFICATIONS:

(a) appellant Arnel Macafe y Nabong is hereby found GUILTY beyond reasonable doubt of three (3) counts of STATUTORY RAPE, as defined and penalized under Article 335 of the Revised Penal Code; and

(b) the amount of the awarded exemplary damages is INCREASED from P25,000.00 to P30,000.00.

SO ORDERED.

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

[1] Penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Edgardo T. Lloren; rollo, pp. 5-19.

[2] Penned by Judge Jesus C. Carbon, Jr.; records, pp. 23-93.

[3] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed; see *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, September 28, 1998, pp. 6 and 9-10.

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

[6] *Id.* at 17-20.

[7] *Id.* at 22-28.

[8] *Id.* at 30-35; TSN, September 30, 1998, pp. 2-16.

[9] TSN, September 28, 1998, pp. 35-36; TSN, September 29, 1998, p. 22.

[10] TSN, September 28, 1998, pp. 37 and 42.

[11] *Id.* at 38-39; TSN, September 30, 1998, pp. 18-21.

[12] TSN, September 28, 1998, pp. 40-46; TSN, October 5, 1998, pp. 5-8.

[13] TSN, September 28, 1998, pp. 55 and 61; TSN, September 29, 1998, p. 25; TSN, October 1, 1998, pp. 9-11.

[14] TSN, September 28, 1998, pp. 57 and 62.

[15] TSN, September 29, 2010, p. 3.

[16] TSN, September 28, 2010, pp. 13-14.

[17] *Id.* at 23-24.

[18] TSN, September 29, 1998, p. 4.

[19] Except for the dates of the commission of the crime, the three (3) criminal complaints are similarly worded, as follows:

That on or about September 10, 1997, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned, [AAA], a girl, 11 years of age, against her will.

CONTRARY TO LAW.

[20] CA rollo, pp. 167-184; TSN, October 8, 1998, pp. 30 and 35.

[21] The crimes subject of Criminal Case Nos. 15124-26 were committed before Article 335 of the Revised Penal Code was repealed by Republic Act No. 8353 or the Anti-Rape Law of 1997.

[22] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157, 164.

[23] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671.

[24] See records, p. 26; see also TSN, October 7, 1998, pp. 63-67 (Formal offer of exhibits).

[25] TSN, September 28, 1998, p. 6.

[26] See *People v. Canares*, G.R. No. 174065, February 18, 2009, 579 SCRA 588, 606.

[27] See *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307; *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378; *People v. Jumawid*, G.R. No. 184756, June 5, 2009, 588 SCRA 808.

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