

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BIENVENIDO LAZARO @ BENING, ACCUSED -APPELLANT.

G.R. No. 186379. August 19, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 14 August 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02381, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82, finding appellant Bienvenido Lazaro alias Benny (Bienvenido) guilty of the crime of rape in Criminal Case No. OD-875.

Bienvenido was charged before the RTC with the complex crime of Forcible Abduction with Rape. The accusatory portion of the Complaint reads:

That on or about the 31[st] day of August, 1995 at around 6:00 o'clock in the morning, in Barangay XXX, Municipality of Odiongan, Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, did then and there willfully and feloniously take by force and abduct the undersigned offended party by then and there taking and bringing her to the house of said accused, against her consent and by means of violence, and had carnal knowledge with her, against the latter's will.[3]

Upon arraignment on 4 March 1996, Bienvenido, assisted by counsel, pleaded not guilty to the charge.[4]

The evidence of the prosecution, as gathered from the testimonies of the victim AAA[5], the victim's uncle BBB, and Dr. Aida Dusaban Atienza, the government physician who examined AAA, are as follows:

AAA, an eleven-year-old girl, was born on 24 December 1984.[6] She lived with her grandmother at the latter's house in Barangay XXX, Odiongan, Romblon. At 6:00 o'clock in the morning of 31 August 1995, while AAA was walking on her way to school, Bienvenido, whom AAA called Lolo, stopped her and brought her to his house.[7] There, Bienvenido removed AAA's panties and made her lie down on the floor, with her face up. Bienvenido took off his pants and inserted his penis into AAA's vagina and made the push and pull movement.[8] Thereafter, Bienvenido donned his pants and threatened to kill AAA if she divulged his bestial act to anyone. Afraid of Bienvenido's threatening words, AAA cried. She went back to her grandmother's house. When AAA arrived, her aunt was there, but she did not tell her aunt about the incident. On 29 September 1995, worried about AAA's changing demeanor, AAA's uncle, BBB, insistently questioned her. It was then that AAA revealed her ordeal. BBB wasted no time and brought her to the health center where she was examined by Dr. Aida Atienza. Dr. Atienza's examination showed that AAA's breast was still on its pre-puberty stage. AAA's vaginal wall had been penetrated possibly by fingers or by a penis, and there were healed complete lacerations at the 4:00, 5:00 and 9:00 o'clock positions.

The defense interposed the defense of denial and alibi and presented the testimonies of Bienvenido and his niece, Yolanda Forcadas.

Bienvenido denied molesting AAA. He said that at 5:00 in the morning of 31 August 1995, he went to the port of Poctoy, Odiongan, Romblon to sell his crops. At around 12:00 noon when his goods were sold, he went to the house of his nephew, Rolando Forcadas, which was situated near the port, where he stayed until 6:00 in the morning of the following day.

At around 9:00 a.m. of 31 August 1995, he saw AAA together with a certain Felmor Perater, Jr. embracing each other. He called the attention of the two, saying that he would report the incident to AAA's grandmother. He did not report the said incident to AAA's grandmother.

However, on re-direct examination, Bienvenido made another declaration that at around 6:00 in the morning of 31 August 1995, he was in Barangay XXX, Odiongan, Romblon, harvesting corn. Thereafter, he went back to his house and took a rest. The next day, while he was in the field, he caught AAA and Felmor Perater, Jr. engaged in sexual intercourse. He scolded the two and reported the matter to AAA's grandmother. He also claimed he was the one who accompanied AAA to the Rural Health Officer for a medical examination.[9]

For her part, Yolanda Forcadas testified that on 11 August 1995, Bienvenido visited her in Barangay Batiano, Odiongan, Romblon. In the morning of 12 August 1995, Bienvenido returned to his place.

The RTC, in a decision dated 24 July 2001, convicted Bienvenido of the crime of rape only. The RTC ruled out forcible abduction, since evidence tended to show that the victim was lured by the perpetrator to go with him to his house. This was buttressed by AAA's admission that she had been given money by Bienvenido twice, and that she had been to the house of the former once. The RTC imposed upon Bienvenido the penalty of reclusion perpetua and ordered him to indemnify the victim in the amount of P50,000.00 and to pay the costs. The decretal portion reads:

WHEREFORE, premises considered, accused BIENVENIDO LAZARO is hereby found GUILTY of rape and is hereby meted the penalty of reclusion perpetua, with all the accessory penalties of the law, to indemnify the victim in the amount of P50,000.00 and to pay the costs.

Accused is entitled to full time of his preventive imprisonment pursuant to Art. 29 of the Revised Penal Code.[10]

Bienvenido appealed the judgment of conviction to the Court of Appeals. In its decision dated 14 August 2008, the Court of Appeals affirmed the guilty verdict and the sentence imposed by the RTC. In addition to the award of P50,000.00 as civil indemnity, the Court of Appeals ordered Bienvenido to pay the victim P75,000.00 as moral damages, thus:

WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 82, in Odiongan, Romblon in Crim. Case No. OD-875, finding accused-appellant Bienvenido Lazaro guilty of the crime of rape and imposing the penalty of reclusion perpetua, is hereby AFFIRMED with the MODIFICATION that accused-appellant is further ordered to pay the victim P75,000.00 as moral damages.[11]

Hence, the instant recourse.

Bienvenido claims that it was witness BBB, the victim's uncle, who initiated the filing of the criminal complaint against him. Since Article 344[12] of the Revised Penal Code and Section 5, Rule 110[13] of the Revised Rules of Court require that the right to file an action be given to the parents, grandparents or guardians of the minor, the filing by BBB of the complaint renders the same defective.

In a bid to be exculpated from the charge, Bienvenido contends that AAA's testimony had material inconsistency as to the date of the commission, since at one point AAA declared that the rape happened on 12 August 1995; and

in the rest of her testimony, she said it occurred on 31 August of the same year.

In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (a) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[14]

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced coitus.[15] In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with.[16] If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[17]

In this case, upon assessing the victim's testimony, the RTC found her credible, thus:

There is no evidence to show any dubious reason or improper motive why the victim in the case would testify falsely against the accused or falsely implicate him in a heinous crime.

x x x x

The laceration on the vagina of the girl who was examined weeks after the incident by Dra. Atienza is indicative of some object having entered it. Adding to this is the testimony of AAA that accused rode on her body and made a "pull and push movement." [18]

This Court itself has diligently pored over the transcripts of stenographic notes of this case and, like the RTC, it finds the victim's testimony on the incident forthright or straightforward, consistent with an honest and realistic account of the tragedy that befell her. She narrated the incident and the circumstances immediately after it in this manner:

Q:

Upon arriving in his house, where did he bring you?

A:

In the upper part of his house.

Q:

Upon reaching there, what did he do to you?

A:

He took off my panty.

Q:

After he took off your panty, what did he do to you?

A:

He made me lie down.

Q:

Face up or face down?

A:

Face up.

Q:

Where did you lie down?

A:

On the floor.

Q:

After making you lie down on the floor of his house, what did the accused do?

A:

He took off his pants.

Q:

After taking off his pants, what did he do to you?

A:

He put his penis in my vagina.

Q:

How did you feel when his penis was placed in your vagina?

A:

It was painful.

Q:

After placing his penis to your vagina, what did the accused do?

A:

He made the push and pull movement.

Q:

How long is this push and pull movement last?

A:

About two minutes.

Q:

After that push and pull movement, what did the accused do?

A:

He stood up.

Q:

And what did he do since he had taken off his pants?

A:

He put on his pants.

Q:

According to you, your panty was taken off by the accused, what did you do after that push and pull?

A:

I put on my panty.

Q:

After putting on your panty, what did the accused tell you, if any?

A:

Don't tell anybody, if you tell I will kill you.

Q:

After warning you not to tell anybody otherwise you will be killed, what did you do?

A:

I cried.

x x x x

Q:

On 29 September 1995, do you know where was uncle Rolly Venus?

A:

In their house.

Q:

Did you see him?

A:

Yes, sir.

Q:

When you saw your uncle on that date, what if any transpired between you and your uncle?

A:

He asked me why I am lonely and weak.

Q:

What did you answer him?

A:

I relayed the incident.

Q:

That incident of August 31, 1995?

A:

Yes, sir. [19]

On cross examination, AAA held fast to her declaration that she was molested by Bienvenido, thus:

Q:

During this time your Lolo Bening was giving you money x x x?

A:

Yes, sir.

x x x x

Q:

Now, you were telling us that when your panty was taken off by your Lolo Bening, you were made to lie down on the floor, is that correct?

A:

Yes, sir.

Q:

And there, he immediately also took off his pants and ride over you for a period of two minutes?

A:

Yes, sir.

Q:

This was all he did to you?

A:

Yes, sir.

Q:

He was making the push and pull movement on your body at the same time holding your both hands with his both hands also, is that correct?

A:

Yes, sir.[20]

From the foregoing, the prosecution satisfactorily established in vivid detail that during the incident in question, Bienvenido, whom AAA called Lolo, enticed her with monetary favor to go with him to his house. Unaware of the plot hatched by the person she treated as a grandfather and at some point a provider, AAA went along with him. Taking advantage of the trust and the tender age of AAA, Bienvenido was able to consummate his evil

design. Ignorant of the ways of men, AAA did not protest or agree to the sexual advances of the malefactor. As Bienvenido inserted his penis and made a push and pull movement, AAA could only feel the pain of the insertion, not knowing that molestation had more far-reaching consequences on her emotional growth and social development.

Although the evidence is bereft of any indication that AAA, 11 years old during the incident, was coerced by the perpetrator, this fact cannot be utilized by the latter. This Court has held that if the woman is under twelve (12) years of age, proof of force and consent becomes immaterial, not only because force is not an element of statutory rape, but also because the absence of free consent is presumed when the woman is below 12 years old.[21] The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.[22] Sexual congress with a girl under 12 years old is always rape.[23]

Medical findings revealed that the victim's vagina had old lacerations that were consistent with her claim that she was molested. Against the damning evidence adduced by the prosecution, what appellant could only muster is a barefaced denial. Unfortunately for him, his defense is much too flaccid to stay firm against the weighty evidence for the prosecution. Denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters.[24] Between the self-serving testimony of Bienvenido and the positive declaration of the victim, the latter deserves greater credence.[25]

Also unavailing is Bienvenido's insinuation that it was a certain Felmor Perater, Jr. who might have violated AAA's womanhood and not he. Again, this was simply a futile attempt on the part of the accused, unsubstantiated by any thread of evidence, to extricate himself from the charge. His differing declarations on this matter (at one point, he said AAA and Felmor were just embracing each other, then at another he said the two were engaged in sexual intercourse) expose the fallacy of his claim of innocence.

Bienvenido's defense of alibi cannot be believed. For the defense of alibi to prosper, the following must be established: (a) the presence of the accused-appellant in another place at the time of the commission of the offense; and (b) the physical impossibility for him to be at the scene of the crime.[26] Bienvenido testified that he was in the same barangay when the incident took place. This testimony destroys his alibi. Assuming *arguendo* that Bienvenido was in Barangay Poctoy, a neighboring barangay, when the questioned event took place, still there is a great possibility that he could have traveled from there to the locus criminis in no time. Thus, his defense of alibi cannot prosper.

Although AAA reported the incident to her uncle only on 29 September 1995, almost a month after she was ravished, this cannot be taken against her. She was seriously threatened by the malefactor if she told the said occurrence to anyone. Naturally, as a very young girl, she must have had an overpowering fear that prevented her from telling her uncle of her grueling experience in the hands of Bienvenido. It is not uncommon for a young girl to conceal for some time the assault on her virtue.[27] Her initial hesitation may be due to her youth and the molester's threat against her. Besides, rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation.[28] It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances.[29] The range of emotions shown by rape victims is yet to be captured even by calculus.[30] It is, thus, unrealistic to expect uniform reactions from them. Certainly, the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated.[31] This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful

experience.[32] It would be insensitive to expect the victim to act with equanimity and to have the courage and the intelligence to disregard the threat made by Bienvenido. When a rape victim is paralyzed with fear, she cannot be expected to think and act coherently. This is especially true in this case, since AAA was threatened by appellant that she would be killed if ever she would tell anybody about the rape incident.

We go now to the allegation that the complaint filed was defective.

The pertinent laws existing at the time the crime was committed in 1995 were Article 344 of the Revised Penal Code (prior to its amendment by Republic Act No. 835319, otherwise known as "The Anti-Rape Law of 1997," which took effect on 22 October 1997) and Section 5 of Rule 110 of the 1985 Rules of Criminal Procedure. Under the said laws, rape was considered as a private crime, the prosecution of which must be initiated by the minor victim or her parents, grandparents or guardian. Bienvenido asserts that it was AAA's uncle BBB who filed the complaint, rendering the same defective. This assertion is baseless. It remains an allegation, since Bienvenido failed to present any proof thereof. On the contrary, a thorough examination of the complaint and the sworn affidavit would establish that the same were duly signed by private offended party AAA. There is no indication these documents were initiated by AAA's uncle. As correctly observed by the Court of Appeals, AAA's statements were only reduced into writing by the authorities; but, at the end part of the documents, her signature was affixed thereto conforming to the contents of AAA's affidavit and the fact that she personally initiated the complaint. The affidavit was executed by AAA in the presence of the police officers and other witnesses and was countersigned by the public prosecutor.

As to Bienvenido's claim that AAA's testimony was riddled with material inconsistencies, since she gave varying dates of the commission of the crime, the same cannot be taken in his favor.

Firstly, the exact date of the commission of rape is not material. In rape cases, the time of commission of the crime is not a material ingredient of the offense.[33] In this connection, this Court also ruled that in rape cases, victims of rape hardly retain in their memories the dates, number of times, and manner in which they were violated. In the same vein, to be material, discrepancies in the testimony of the victim should refer to significant facts that are determinative of the guilt or innocence of the accused, not to mere details that are irrelevant to the elements of the crime, such as the exact time of its commission in a case of rape.[34]

Secondly, the mention of 12 August 1995 as the date of commission of the crime was a mere inadvertence on the part of the public prosecutor. The complaint-affidavit mentions 31 August 1995 as the date when AAA was raped. There was only one instance in her whole testimony when "12 August 1995" was mentioned, on page 3 of the transcript of records taken on 1 January 1996, viz:

PROS. VICTORIANO ON DIRECT EXAMINATION:

x x x x

Q:

On August 12, 1995 at about six (6:00) o'clock in the morning, where were you?

A:

I was going to school.[35]

Later, the public prosecutor corrected himself by saying:

Q:

Did you reveal to your aunt what was done to you by the accused?

A:

No, sir.

x x x x

Q:

When you saw your uncle on that date, what if any transpired between you and your uncle?

A:

He asked me why I am lonely and weak.

Q:

What did you answer him?

A:

I relayed the incident.

Q:

That incident of August 31, 1995?

A:

Yes, sir.[36] (Emphasis supplied.)

The rest of the transcript of records referred to 31 August 1995 as the date of the rape incident. On cross-examination, this was AAA's testimony:

Q:

Now, you were telling us that when your panty was taken off by your Lolo Bening, you were made to lie down on the floor, is that correct?

A:

Yes, sir.

Q:

And there, he immediately also took off his pants and ride over you for a period of two minutes?

A:

Yes, sir.

Q:

This was all that he did to you?

A:

Yes, sir.

Q:

He was making the push and pull movement on your body at the same time holding your both hands with his

both hands also, is that correct?

A:

Yes, sir.

Q:

His hand therefore was not able to hold your vagina because he was holding your both hands while making the push and pull movement?

A:

It was held by him.

Q:

When did he hold your vagina?

A:

On August 31.[37] (Emphasis supplied.)

In sum, the Court finds that the RTC, as well as the Court of Appeals, committed no error in giving credence to the evidence of the prosecution and finding appellant Bienvenido guilty of the charge. The Court has long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case.[38] In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge, whose conclusion thereon deserves much weight and respect, because the judge has the direct opportunity to observe them on the stand and ascertain if they are telling the truth or not.[39] This deference to the trial court's appreciation of the facts and of the credibility of witnesses is consistent with the principle that when the testimony of a witness meets the test of credibility, that alone is sufficient to convict the accused.[40] This is especially true when the factual findings of the trial court are affirmed by the appellate court.[41]

As to the penalty imposed, the RTC correctly sentenced appellant to reclusion perpetua. Statutory rape is punishable by reclusion perpetua to death. Since there was no aggravating or mitigating circumstance attendant to the crime, reclusion perpetua is the proper penalty.

Also affirmed is the award of the amount of P50,000.00 as civil indemnity, the same being in conformity with the recent jurisprudence. [42] However, the Court of Appeals' award of moral damages in the amount of P75,000 must be modified to P50,000.00. In *People v. Sambrano*,[43] the Court decreed that the award of P75,000 as moral damages is only warranted when the rape is perpetrated with any of the attending qualifying aggravating circumstances that require the imposition of the death penalty. The instant case involves a simple rape. Hence, the amount of P50,000.00 as moral damages is in order.

WHEREFORE, the instant petition is DENIED. The Decision of the Court of Appeals dated 14 August 2008 in CA-G.R. CR-H.C. No. 02381, finding Bienvenido Lazaro a.k.a. Bening GUILTY beyond reasonable doubt on one count of statutory rape, sentencing him to suffer the penalty of RECLUSION PERPETUA and ordering him to pay the victim P50,000.00 as civil indemnity and P50,000.00 as moral damages is hereby AFFIRMED in toto.

SO ORDERED.

Carpio Morales,[*] Velasco, Jr., Nachura, and Peralta, JJ., concur.

[*] Per Special Order No. 679 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[**] Per Special Order No. 681 dated 3 August 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Minita V. Chico-Nazario as Acting Chairperson to replace Associate Justice Consuelo Ynares-Santiago, who is on official leave.

[1] Penned by Associate Justice Isaias Dicdican with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; rollo, pp. 4-19.

[2] Penned by Judge Francisco F. Fanlo, Jr.

[3] Records, p. 1.

[4] Id. at 27.

[5] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

[6] TSN, 16 January 1996, pp. 9-10.

[7] TSN, 15 January 1996, pp. 3-4.

[8] TSN, 15 January 1996, pp. 4-5.

[9] TSN, 4 July 2000, p. 10.

[10] CA rollo, p. 134.

[11] Rollo, p. 184.

[12] Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. -

x x x x

The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

[13] Section 5, Rule 110 of the 1985 Rules of Criminal Procedure states:

Section 5. Who must prosecute criminal actions. - x x x.

The offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. In case the offended party dies or becomes incapacitated before she could file the complaint and has no known parents, grandparents, or guardian,

the State shall initiate the criminal action in her behalf.

The offended party, even if she were a minor, has the right to initiate the prosecution for the above offenses, independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardian may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the immediately preceding paragraph.

[14] *People v. Orquina*, 439 Phil. 359, 365-366 (2002).

[15] *People v. Gabawa*, 446 Phil. 616, 625 (2003).

[16] *People v. Quijada*, 378 Phil. 1040, 1047 (1999).

[17] *People v. Babera*, 388 Phil. 44, 53 (2000).

[18] CA rollo, p. 134.

[19] TSN, 15 January 1996, pp. 4-6.

[20] *Id.* at 18-19.

[21] *People v. Somodio*, 427 Phil. 363, 376 (2002).

[22] *Id.*

[23] *Id.*

[24] *People v. Morales*, 311 Phil. 279, 289 (1995).

[25] *People v. Baccay*, 348 Phil. 322, 327 (1998).

[26] *People v. Penillos*, G.R. No. 65673, 30 January 1992, 205 SCRA 546, 560.

[27] *Id.*

[28] *People v. Remoto*, 314 Phil. 432, 450 (1995).

[29] *Id.*

[30] *Id.*

[31] *People v. Malones*, 469 Phil. 301, 328 (2004).

[32] *Id.*

[33] *People v. Gopio*, 400 Phil. 217, 242 (2000).

[34] *People v. Pambid*, 384 Phil. 702, 727 (2000).

[35] TSN, 15 January 1996, p. 3.

[36] *Id.* at 6.

[37] *Id.* at 19-20.

[38] *People v. Dagpin*, 400 Phil. 728, 736 (2000).

[39] People v. Digma, 398 Phil. 1008, 1023 (2000).

[40] People v. Cula, 385 Phil. 742, 752 (2000).

[41] People v. Gallego, 453 Phil. 825, 846 (2003).

[42] People v. Calongui, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[43] 446 Phil. 145, 161 (2003).

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