

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER TEJERO, ACCUSED-APPELLANT.

G.R. No. 187744. June 20, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated November 28, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02905 which affirmed with modifications the Decision[2] dated June 22, 2007 of the Regional Trial Court (RTC) of Bangued, Abra, Branch 1, in Criminal Case Nos. 2004-202, 2004-203 and 2004-204. The RTC found accused-appellant Roger Tejero (Tejero) guilty beyond reasonable doubt of three counts of rape committed against AAA[3] and sentenced him to suffer the penalty of reclusion perpetua and to pay AAA the amount of P50,000.00 as moral damages for each count of rape. The Court of Appeals ordered Tejero to pay the additional amount of P50,000.00 as civil indemnity.

In three separate Informations dated October 6, 2004 filed before the RTC, Tejero was charged with three counts of rape committed against AAA on February 1, 2004,[4] February 8, 2004[5] and April 4, 2004,[6] which were docketed as Criminal Case Nos. 2004-204, 2004-203 and 2004-202, respectively. Except as to the aforesaid different dates of the commission of the crime, the Informations were identically worded. The Information in Criminal Case No. 2004-204[7] reads:

CRIM. CASE NO. 2004-204

The undersigned 3[rd] Asst. Provincial Prosecutor accuses ROGER TEJERO for violation of R.A. 7610 (RAPE) committed as follows:

That on or about February 1, 2004 at 3:00 P.M. at x x x, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously succeeded in having carnal knowledge with AAA, a minor, 14 years of age, by means of force and intimidation, against her will and consent, to the great damage and prejudice of the offended party.

During his arraignment on April 25, 2005, Tejero entered a plea of not guilty for all three counts.[8]

During trial, the prosecution submitted as evidence victim AAA's testimony and documents consisting of (1) the Medico Legal Certificate[9] presenting the result of the medical examination conducted on AAA by Dr. Liberty Bañez (Dr. Bañez) on July 24, 2004, and (2) AAA's Certificate of Live Birth[10] issued by the Office of the Municipal Civil Registrar of Bangued, Abra, showing that AAA was born on March 27, 1990. The prosecution's version of the events was summarized by the RTC as follows:

The prosecution presented the private complainant herself, [AAA] who testified that she was only fourteen years old when the accused raped her on three different occasions in the year 2004. Her Birth Certificate which indicated that she was born on March 27, 1990 was formally offered in evidence to show her minority at the time the crimes were allegedly committed against her. She was also a student at the x x x National High School at x x x, Abra at this time. She directly identified accused ROGER TEJERO as the man who raped her

repeatedly. She regarded him as her stepfather since he has been cohabiting with her mother in their home at x x x, Abra when these criminal acts were committed by him. She claimed that she was first raped by the accused on a Sunday February 1, 2004 at their living room. In her sworn statement (Exhibit B) which formed part of her testimony, she stated that this happened at 3:00 o'clock in the afternoon when her mother was out selling vegetables and while her two siblings went to the family house of their maternal grandparents. She narrated that she was suddenly pulled by her stepfather, removed her clothes and then raped her. He then warned her not to tell anybody or else he would kill all of them.

On February 8, 2004, the next Sunday, the accused again raped her at their living room in the same house. At that time, her mother was selling vegetables again in another barangay while the accused fended off her sisters to the family house of their maternal grandparents again. In her sworn statement, she observed that his breath even stank with alcohol when he was raping her. The accused also pointed a rifle at her to threaten her.

For the third time, the accused again raped her on April 4, 2004 at about 5:00 o'clock in the afternoon now inside a room at their house while her mother was out selling vegetables again. In her sworn statement, she also revealed that she did not report all the incidents to anyone because of her fear of her stepfather's repeated threats that he would kill all of them if she did. Her mother [BBB] only came to know that she has been repeatedly ravaged by him when she was hospitalized for three weeks due to her appendicitis. During her check-up, her attending doctor discovered that she was already about five months pregnant. She said that her pregnancy was a result of the rape. She eventually gave birth to a baby boy.[11]

For the defense, Tejero himself took the witness stand. The RTC gave the following gist of Tejero's testimony:

On the other hand, the defense presented accused Roger Tejero. He said that he is a widower and that after his first wife died, he and the mother of the complainant [BBB] have been living together as husband and wife for the past years. They have two other children. The private complainant, [BBB's] biological daughter [AAA], is only his stepdaughter. He said that he used to work as a jeepney driver for his sister DELIA TEJERO since March 28, 2002 every Sunday of the week since another driver drives a public utility jeepney from Mondays to Saturdays. He belied the allegation that he raped [his] stepdaughter on three separate occasions since all of these dates fell on a Sunday, the day that he was always scheduled to drive the jeepney.

On February 1, 2004, on the occasion of the first alleged rape, the accused recounted that at about 3:00 o'clock p.m., he was at the parking space in Bangued, Abra for jeepneys bound for Lagangilang, Abra waiting for passengers. The jeepney was loaded by 4:30 o'clock p.m. and he reached the jeepney stop at x x x at around 5:00 o'clock p.m. He traversed another six kilometers to reach their house at x x x which took about another thirty minutes. On February 8, 2004, on the occasion of the second alleged rape, at about 3:00 to 4:00 o'clock p.m., he was again at the same parking space in Bangued, Abra waiting for passengers and he was able to reach x x x at about 5:00 p.m. only. On April 4, 2004 on the occasion of the third alleged rape, at about 2:00 o'clock p.m., he was again at the same parking space in Bangued, Abra waiting for passengers. He concluded that the allegations of rape that happened on these dates were all lies and that he knew nothing about the criminal acts.[12]

On June 22, 2007, the RTC rendered its Decision giving credence to AAA's testimony and rejecting Tejero's defense of denial and alibi. The dispositive portion of the RTC judgment reads:

WHEREFORE, premises considered, the Court hereby finds accused ROGER TEJERO GUILTY beyond reasonable doubt of the commission of three counts of RAPE and hereby sentences him to the maximum penalty of RECLUSION PERPETUA for each COUNT of RAPE in the presence of the aggravating circumstances of minority and the relation of the victim to the accused as his step-parent. He is also ordered to pay the private complainant AAA the amount of Fifty Thousand Pesos (P50,000.00) in moral damages.[13]

As a result, the RTC issued an Order of Commitment[14] for Tejero on July 30, 2007, pursuant to which, Tejero was received at the New Bilibid Prison on August 4, 2007.[15]

Tejero subsequently filed an appeal with the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02905. The appellate court, though, in its Decision dated November 28, 2008, merely affirmed the judgment of conviction of the RTC, with the modification ordering Tejero to pay an additional amount of P50,000.00 as civil indemnity. The Court of Appeals decreed thus:

WHEREFORE, the appealed Decision dated June 22, 2007 of the trial court is affirmed, subject to the modification that accused-appellant is further ordered to pay fifty thousand pesos (P50,000.00) to AAA as civil indemnity.[16]

Thereafter, the Court of Appeals elevated Tejero's case to this Court in view of the penalty imposed. After both parties filed their separate manifestations in which they waived the filing of supplemental briefs, the Court submitted the case for resolution.

In his Brief before the Court of Appeals, Tejero made a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[17]

Tejero's instant appeal is anchored on the catch-all argument that his guilt has not been proven beyond reasonable doubt. Tejero challenges AAA's credibility considering: (1) AAA's concealment of the alleged rapes for more than six months after they happened without a satisfactory explanation for the delay in reporting the same; (2) AAA's failure to take precautionary measures to prevent the successive rapes committed against her; and (3) AAA's untruthful account that Tejero pointed a gun at her during one of the rape incidents, meant only to ensure the latter's conviction.

The instant appeal has no merit.

Inarguably, Tejero wants the Court to inquire into the sufficiency of the evidence presented, including the credibility of the lone witness for the prosecution, AAA, a course of action which this Court will not do, consistent with its repeated holding that this Court is not a trier of facts. Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the findings.[18]

The trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witnesses were telling the truth.[19]

The Court finds no reason herein to depart from the general rule. Tejero fails to convince this Court that both the RTC and the Court of Appeals overlooked or misappreciated any fact or circumstance on record of weight and value that would have altered the results of the case. To the contrary, the evidence on record strongly supports the finding of guilt rendered by the RTC and the Court of Appeals against Tejero.

AAA was firm and unrelenting in pointing to Tejero as the one who raped her on three occasions. AAA knew Tejero very well as Tejero was cohabiting with BBB, AAA's mother, and AAA deemed Tejero as her stepfather. AAA's testimony was candid, spontaneous, and consistent as revealed in the following excerpts from the Transcript of Stenographic Notes (TSN):

Q

You claimed that you were raped by this Roger Tejero, will you tell this Honorable Court how you were raped by this person Miss Witness?

A

[He] suddenly pulled me, sir, he removed my clothes and then rape me.

Q

When was that Miss Witness?

A

February 1, 2004, inside our house at our living room, sir.

Q

And what else did he do on that date February 1, 2004?

A

He warned me, sir, not to tell to anybody because if I will tell this to anybody, he will kill us all.

Q

That happened after he raped you on February 1, 2004 is that correct Miss Witness?

A

Yes, sir.

Q

And while he was doing that act on you Miss Witness on February 1, 2004, did you feel anything?

A

I was feeling pain, sir.

Q

After that incident on February 1, 2004, are there other incident that happened Miss Witness?

A

Yes, sir.

Q

When is that Miss Witness?

A

February 8, 2004, sir.

Q

And what happened again on that date Miss Witness?

A

He again raped me, sir.

Q

How did he do that Miss Witness?

A

My mother went to [s]ell vegetable to the other barangay and my sisters went to our family house that time, sir.

Q

What else did you (sic) do on February 8, 2004?

A

He again raped me, sir, at the living room of our house.

Q

That is on February 8, 2004?

A

Yes, sir.

Q

After that rape on February 8, 2004 are there other incidents that happen to you again Miss Witness?

A

Yes, sir.

Q

When was that Miss Witness?

A

April 4, 2004, sir.

Q

Do you remember what time was that Miss Witness?

A

Yes, sir, 5:00 o'clock in the afternoon.

Q

How did he do that to you Miss Witness?

A

My mother went again to sell vegetables because she was the one providing us, sir.[20]

The RTC observed that the defense failed to shake AAA's credibility even during cross-examination:

The defense could not even shake the credibility of the young victim when they subjected her to a rigorous cross-examination nor even point to any malicious motivation by the defendant's stepdaughter or her mother

why they would say brazen lies that could destroy not just any ordinary man but their very own stepfather and husband, respectively. It is simply improbable that the private complainant who is of a tender age, innocent and guileless, would brazenly impute a crime so serious as rape to a man she consider as stepfather, if these were simply lies.[21]

AAA was just 14 years old when she was raped. The Court explains in *People v. Bonaagua*[22] why it gives credence to testimonies of young girls who allege being raped:

It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[23]

What is more, in the case at bar, Dr. Bañez's physical examination of AAA on July 24, 2004 revealed AAA's old healed vaginal lacerations and confirmed AAA's five-month pregnancy, which were consistent with AAA's allegations of rape in February and April 2004:

Abdomen: positive abdominal mass

S/P appendectomy

Enlarged to about five months age of gestation

Extremities: no edema

Perineal Examination:

Old healed superficial lacerations at 2, 4, 7 o'clock positions

Old healed deep laceration at 3 o'clock position

Internal Examination:

Introitus admits two fingers with ease

Cervix – soft, closed

Uterus – enlarged to 5 months AOG

Positive bleeding, negative tenderness

Laboratory Examination:

Urinalysis:

Pus cells - 0-3

Epith Cells - +

Bacteria - + + + +

Pregnancy Test - Positive[24]

AAA's delay in reporting the rapes does not undermine her credibility. In a long line of cases, the Court pronounced that the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge.[25] It is quite understandable how AAA's tender age, AAA's regard for Tejero as her stepfather, Tejero's threat to kill AAA and her whole family, and Tejero's physical proximity to AAA and her family (Tejero lives in the same house with AAA and her family) could all have easily convinced AAA that Tejero's threat was real and discouraged AAA from immediately reporting the rapes to anyone. AAA's plight is similar to that of the rape victim in *People v. Casil*,[26] wherein the Court recognized that:

The threats of appellant to kill her and all members of her family should she report the incidents to anyone were etched in her gullible mind and sufficed to intimidate her into silence. Add to this the fact that she was living with appellant during the entire period of her tribulation, with her mother often away working for a living, and one can readily visualize the helplessness of her plight.[27]

The Court further held in *People v. Manuel* [28] that:

One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threat on their lives, more so when the rapist is living with her.[29]

Equally unsuccessful is Tejero's attempt to destroy AAA's credibility by questioning the latter's failure to take precautionary measures to prevent the successive rapes. Again, AAA is a young girl who had been raped and threatened by someone she considers her stepfather and who lives with her and her family in the same house. The Court need not require AAA to prove that she fought back or protected herself in some way to stop the rape or to keep the rape from happening again. It is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.[30]

Besides, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective. Barely out of childhood, there was nothing AAA could do but resign to appellant's evil desires to protect her life. Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.[31]

In comparison to the evidence for the prosecution, Tejero proffered denial and alibi as his defense. For an alibi to prosper, it should be satisfactorily shown that the accused was at some other place during the commission of the crime and that it was physically impossible for him to have been then at the site thereof.[32] Tejero insists that he was plying a jeepney on the days when AAA was raped, and was at a parking lot in Bangued, Abra, waiting for passengers at the exact time when the rapes occurred. Without corroborating witnesses, however, Tejero's testimony is essentially self-serving. Also, since Tejero had access to a vehicle, it was not improbable that he could have been at AAA's house at some time during the days of the rape incidents.

Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[33]

When AAA was raped, Republic Act No. 8353 or the Anti-Rape Law of 1997 (which repealed Article 335 of the Revised Penal Code and classified rape as a crime against persons) was already effective. The new provisions on rape, particularly, Articles 266-A and 266-B of the Revised Penal Code, read:

Art. 266-A. Rape; When and how committed. - Rape is committed—

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

a) Through force, threat, or intimidation[.]

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

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying 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.

Under the above provision, one way to commit rape is having carnal knowledge of a woman using force or intimidation. Tejero herein was able to have carnal knowledge of AAA thrice by threatening to kill AAA and her family. Furthermore, Tejero also exercised moral ascendancy over AAA since Tejero was then cohabiting with BBB, AAA's mother, and AAA considered Tejero as her stepfather. Such moral ascendancy sufficiently qualifies as intimidation.

Although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on Tejero because his relationship was not what was alleged in the Informations.[34] Thus, Tejero is guilty only of three counts of simple rape, punishable by reclusion perpetua for each count.

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Based on prevailing jurisprudence, the award of P50,000.00 as civil indemnity and another P50,000.00 as moral damages for each count of simple rape are proper.[35]

Conformably with the ruling in *People v. Esperanza*,[36] when either one of the qualifying circumstances of relationship or minority (for qualified rape under Article 266-B of the Revised Penal Code) is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. Consequently, AAA is entitled to the additional award of exemplary damages in the amount of P30,000.00 for each count of simple rape.[37]

WHEREFORE, the Decision dated November 28, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02905

is AFFIRMED with MODIFICATIONS. Accused-appellant Roger Tejero is found GUILTY beyond reasonable doubt of three (3) counts of SIMPLE RAPE and is sentenced to suffer the penalty of reclusion perpetua and ordered to pay the victim AAA the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages for every count. All damages awarded in this case should be imposed with interest at the rate of six percent (6%) per annum from the finality of the judgment until fully paid.[38]

No pronouncement as to costs.

SO ORDERED.

Bersamin, Del Castillo, Villarama, Jr., and Perlas-Bernabe,[**] JJ., concur.
Leonardo-De Castro,[*]J., (Acting Chairperson).

[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1227 dated May 30, 2012.

[1] Rollo, pp. 2-14; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

[2] CA rollo, pp. 70-74; penned by Judge Charito B. Gonzales.

[3] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] CA rollo, pp. 10-11.

[5] *Id.* at 8-9.

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

[7] *Id.* at 10-11.

[8] Records (Crim. Case No. 2004-202), p. 13; (Crim. Case No. 2004-203), p. 11; and (Crim. Case No. 2004-204), p. 12.

[9] Records (Crim. Case No. 2004-202), p. 7.

[10] *Id.* at 20.

[11] CA rollo, p. 71.

[12] *Id.* at 72.

[13] *Id.* at 73-74.

[14] Rollo, p. 18.

[15] *Id.* at 22.

[16] *Id.* at 13.

[17] CA rollo, p. 58.

[18] *Lateo v. People*, G.R. No. 161651, June 8, 2011, 651 SCRA 262, 272.

- [19] *People v. Dollano, Jr.*, G.R. No. 188851, October 19, 2011.
- [20] TSN, September 20, 2005, pp. 5-7.
- [21] CA rollo, p. 73.
- [22] G.R. No. 188897, June 6, 2011, 650 SCRA 620.
- [23] *Id.* at 632.
- [24] Records (Crim. Case No. 2004-202), p. 7.
- [25] *People v. Espinoza*, 317 Phil. 79, 86-87 (1995); *People v. Plaza*, 312 Phil. 830, 838 (1995); *People v. Abendano*, 312 Phil. 625, 636 (1995); *People v. Casil*, 311 Phil. 300, 309 (1995).
- [26] *Id.*
- [27] *Id.* at 310.
- [28] G.R. Nos. 107732-33, September 19, 1994, 236 SCRA 545.
- [29] *Id.* at 552.
- [30] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 343.
- [31] *People v. Castro*, G.R. No. 172691, August 10, 2007, 529 SCRA 800, 809.
- [32] *People v. Villaraza*, 394 Phil. 175, 195 (2000).
- [33] *People v. Amatorio*, G.R. No. 175837, August 9, 2010, 627 SCRA 292, 304-305.
- [34] *Id.*, citing *People v. Fraga*, 386 Phil. 884, 909-910 (2000).
- [35] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 398.
- [36] 453 Phil. 54 (2003).
- [37] *People v. Cañada*, *supra* note 35 at 398.
- [38] *People v. Bulagao*, G.R. No. 184757, October 5, 2011.

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