PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JONATHAN “UTO” VELOSO Y RAMA, ACCUSED-APPELLANT.

G.R. No. 188849. February 13, 2013

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before this Court is an appeal of the March 30, 2009 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03132[2] affirming with modification the March 6, 2007 Decision[3] of the Regional Trial Court (RTC), Branch 20, Naga City in Crim. Case Nos. RTC'02-0102-A and RTC 2002-0103, entitled People of the Philippines v. Jonathan "Uto" Veloso y Rama, which found appellant Jonathan Veloso guilty beyond reasonable doubt of two counts of rape as defined in Article 266-A of the Revised Penal Code for violating AAA,[4] a 12-year old minor.

Against Women and their Children.

On April 6, 2002, the following informations were filed against appellant by AAA’s mother, BBB, acting on her behalf:

> Criminal Case No. RTC’02-0102-A[5]
>
> That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.
>
> Criminal Case No. RTC’02-0103[6]
>
> That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did, then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.

In addition, appellant was also charged with two other offenses: rape by sexual assault[7] under Criminal Case No. RTC 2002-0104 and frustrated homicide[8] under Criminal Case No. RTC 2002-0106.

On arraignment, appellant pleaded not guilty to all the crimes charged.[9] After pre-trial was conducted, the cases were consolidated and trial ensued.

The following facts are culled from the respective records and decisions of the RTC and the Court of Appeals.

In order to establish its case, the prosecution presented the testimonies of Oscal Boral (Boral), a neighbor of BBB and appellant, Dr. Adelwisso Jesus Badong, Jr., Dr. Mayvelyn Talag, BBB, and AAA.

On the other hand, appellant served as the lone witness in his defense.

On April 4, 2002, at around 12:00 noon, appellant went looking for BBB’s brother. He went to BBB’s house

asking her to accompany him to her brother's house. Since BBB was indisposed, she declined. Appellant then insisted that AAA, BBB's daughter, accompany him instead. BBB consented. Thus, AAA with CCC, BBB's nephew, left the house with appellant. Instead of taking a padyak or tricycle, appellant opted to take a boat. It was while they were in the middle of the river that appellant threatened to hit CCC with a paddle if he would not jump off the boat. Immediately after CCC jumped off the boat, appellant steered the boat towards the riverbank and pulled AAA out of the boat. Thereafter, appellant made AAA lie in the water lily- and grass-covered banks and proceeded to violate her, all the while threatening to drown her. AAA tried to fight appellant but was unsuccessful. After satisfying his lust twice, appellant boxed AAA on her face, lips, stomach and thighs. Appellant kicked AAA on the stomach, slapped and smashed her face to the ground, and choked her until she became unconscious.

Boral found a conscious but dazed, naked, and bloodied AAA along the grassy portion of the riverbank. He shouted and called for BBB. Upon BBB's arrival, she saw her daughter's state. She asked AAA what happened. AAA, however, could only say "Uto." BBB then covered AAA's body with a shirt and brought her to a nearby hospital where she was advised to proceed to Bicol Medical Center. There, AAA was examined by Dr. Adelwisso Jesus Badong, Jr. and Dr. Mayvelyn Talag. The findings of the physical examination[10] of AAA dated April 4, 2002 at 2:35 p.m., are as follows:

> The following lesions/findings were noted:
>
> Surgery notes:
>
> Multiple abrasions secondary to Rape/Mauling
> R/O Blunt Abdominal Injury
>
> OB notes:
>
> NOI: Alleged Rape
> TOI: 1 pm
> POI: Riverside, Sabang, Naga City
> DOI: 4-04-02
>
> Findings:
>
> Grossly normal-looking external genetalia; (+) intact

fourchette

(+)Hyperemic borders of hymen
(+)Superficial, hyperemic laceration at 4 o'clock position
Admits one finger with ease

In his defense, appellant said that on April 4, 2002 he went to Pili, Camarines Sur to attend a birthday party with his cousin Francisco Rama. He left his house at 9:00 a.m. He arrived in Pili at 10:00 a.m. and returned to his house at 3:00 p.m. Upon his return, he was arrested by police officers on the charge of rape filed by BBB. On cross-examination, he admitted that he went to his neighbor, BBB's house, in the morning of April 4, 2002 to ask about the whereabouts of BBB's brother.

After considering the evidence presented by both parties, the RTC rendered the March 6, 2007 Decision finding appellant guilty of the crime of rape, to wit:

> WHEREFORE, premise in the foregoing (sic), [appellant] Jonathan "Uto" Veloso is hereby found guilty beyond reasonable doubt of the crime of rape as charged in Criminal Case Nos. RTC 2002-0102-A and RTC

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> 2002-0103 and sentenced him (sic) to suffer the penalty of RECLUSION PERPETUA for each case.
>
> [Appellant] is hereby ordered to pay the victim as follows:
>
> - One Hundred Thousand (P100,000.00) Pesos as moral damages for two (2) counts of rape;
>
> - One Hundred Thousand (P100,000.00) Pesos as civil indemnity for two (2) counts of rape;
>
> - Seventy Thousand (P70,000.00) Pesos as exemplary damages for two (2) counts of rape; and
>
> - To pay the costs.
>
> With respect to Criminal Case No. RTC 2002-0104, [appellant] is hereby ACQUITTED due to insufficiency of evidence. In Criminal Case No. RTC 2002-0106, the case is hereby ordered DISMISSED the same having been absorbed in Criminal Case Nos. RTC 2002-0102-A and RTC 2002-0103, all for rape.[11]

Appellant filed his notice of appeal on March 21, 2007.[12]

The Court of Appeals in its March 30, 2009 Decision found no merit in the appeal, taking note of the injuries that AAA sustained and the fact that she was 12 years old at the time of the incident. It found AAA to be a credible witness and stressed that the gravamen of the crime of rape is carnal knowledge of a woman under any of the circumstances provided by law.[13] It further noted that the defense of alibi interposed by appellant was never corroborated. He even admitted to being in BBB's house in the morning of April 4, 2002. The Court of Appeals, thus, affirmed the findings of the trial court but modified the award of damages by deleting exemplary damages due to the lack of any aggravating circumstance to justify its award, to wit:

> WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 20), dated 6 March 2007, in Criminal Cases Nos. RTC 2002-0102-A and RTC 2002-0103, is AFFIRMED with the MODIFICATION that the award of exemplary damages is DELETED.[14]

Appellant filed his notice of appeal before this Court on April 7, 2009.[15]

Both the Office of the Solicitor General and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.[16]

Appellant's lone assignment of error is stated as follows:

> THE COURT A QUO GRAVELY ERRED IN FINDING [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.[17]

Appellant argues that AAA's testimony that she was made to lie down on a water lily and thereafter raped her was improbable since it was impossible for the water lily to have supported their combined weights. Moreover, appellant questions AAA's non-resistance to the rape except by kicking. Lastly, appellant claims that the time of the physical examination preceded that of the rape incident. Thus, appellant claims that due to the inconsistencies in AAA's testimonies, his guilt for the crimes charged was not proven beyond reasonable doubt by the prosecution.

The appeal must be dismissed for lack of merit.

The applicable law in this case is Article 266-A of the Revised Penal Code, which states that:

> 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:
>
> - Through force, threat or intimidation;

- When the offended party is deprived of reason or is otherwise unconscious;

- By means of fraudulent machination or grave abuse of authority;

- When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

We have often reiterated the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. The trial judge is the one who hears the testimony of the witnesses presented firsthand and sees their demeanor and body language. The trial judge, therefore, can better determine if the witnesses are telling the truth being in the ideal position to weigh conflicting testimonies.[18] We also have stated that:

> Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals].[19] (Citation omitted, emphasis added.)

In dealing with cases for rape, this Court has often acknowledged that there is often a want of witnesses. In People v. Dion,[20] this Court said that:

> Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding. x x x. (Citations omitted, emphasis added.)

In the present case, defendant argues that AAA's testimony is improbable, especially her testimony under cross-examination where she stated that appellant placed her on top of a water lily floating on the water.

We agree with the Court of Appeals when it said:

> Contrary to appellant's submission, however, a careful scrutiny of the records would show that the water lilies on which AAA was made to lie down were on the riverbank and not on the river. x x x.[21]

As AAA herself testified:

> Q:
>
> Was there any unusual incident that happened while you were riding on the boat?
>
> A:
>
> When we were at the middle of the river, [appellant] forced [CCC] to jump into the river.
>
> Q:
>
> Did your cousin [CCC] [jump] into the river?

A:

Yes, because he was threatened that if he will not jump into the river [appellant] will strike him with a paddle.

Q:

After [CCC] jumped into the river, what happened next?

A:

He brought me to the riverbank which was grassy and filled with water lilies.

Q:

While on that situation, what else happened?

A:

[CCC] forced me to get out of the boat and he started to kiss my lips and he removed my clothes.

Q:

[D]id you not resist on what he was doing to you?

A:

I resisted but I could not because he threatened to drown me.[22]

The RTC remarked upon the demeanor of AAA when she took the witness stand in the following manner:

> [AAA's] testimony during the trial was straightforward, candid, clear and consistent. She was not moved nor cowed by the peroration of the cross-examiner. Her answers were direct and concise. She was unmoved by the slings and arrows of her misfortune. She was bold, determined and credible. The defense never broke her, in fact her answers enhanced her will to correct a wrong, her quest for the protective mantle of the law and her passion to punish the [appellant].[23]

We agree with the Court of Appeals when it found that the records show that AAA made attempts to resist the advances of appellant. The records would reveal that she tried to kick and stave appellant's attack. However, appellant's strength proved to be too much for AAA to fend off. We note that at the time of the occurrence of the rape, AAA was only 12 years of age. Appellant in contrast was a grown man of twenty-five.[24] As we have ruled in People v. Salazar[25]:

> In a litany of cases, this Court has ruled that the testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape, if what she claims is not true. Her candid narration of how she was raped bears the earmarks of credibility, especially if no ill will -- as in this case -- motivates her to testify falsely against the accused. It is well-settled that when a woman, more so when she is a minor, says she has been raped, she says in effect all that is required to prove the ravishment. The accused may thus be convicted solely on her testimony -- provided it is credible, natural, convincing and consistent with human nature and the normal course of things.

In any event, we have held that "the law does not impose a burden on the rape victim to prove resistance. What has to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim."[26]

We also note that appellant did not introduce any evidence other than his own testimony where he presented an

alibi. This Court has in a long line of cases consistently held that:

> Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.[27] (Citations omitted.)

Here, appellant claims that he, together with his cousin, was in Pili, Camarines Sur at the time of the incident. He hinges his claim on the testimony of Dr. Badong wherein the doctor testified that he had examined AAA at 11:00 a.m.[28] However, the medical certificate, which is the best evidence, clearly shows that AAA was actually examined by Dr. Badong at 2:35 p.m.[29] Besides appellant failed to present his cousin to buttress this claim. Moreover, he in fact admitted that he had visited the dwelling of BBB in the morning of April 4, 2002.[30]

In any event, the alleged inconsistencies in the testimony of AAA do not detract from her credibility as a witness. Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[31]

We, however, cannot agree with the Court of Appeals regarding its deletion of exemplary damages. This Court has said in People v. Alfredo[32]:

> Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages -- taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus –
>
> Also known as “punitive” or “vindictive” damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant -- associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud -- that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

Being corrective in nature, exemplary damages, therefore, 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. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. x x x Recently, in People of the Philippines v. Cristino Cañada, People of the Philippines v. Pepito Neverio and The People of the Philippines v. Lorenzo Layco, Sr., the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in People of the Philippines v. Dante Gragasin y Par, “[t]he application of Article 2230 of the Civil Code strictissimi juris in

such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages -- to set a public example or correction for the public good." (Citation and emphases omitted.)

Thus, we reinstate the RTC award for exemplary damages which should be Thirty Thousand Pesos (P30,000.00) for each count ofrape.[33]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[34]

WHEREFORE, the appeal is DISMISSED. The March 30, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03132 is AFFIRMED WITH MODIFICATION. Appellant Jonathan "Uto" Veloso is GUlLTY beyond reasonable doubt of two (2) counts of RAPE as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code. Appellant is ordered to pay AAA the following for each count of rape: civil indemnity of Fifty Thousand Pesos (P50,000.00), moral damages of Fifty Thousand Pesos (P50,000.00), and exemplary damages of Thirty Thousand Pesos (P30,000.00), and all monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

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[1] Rollo, pp. 2-15; penned by Associate Justice Ricardo R. Rosario with Associate Justices Estela Perlas-Bemabe (now a member of the Court) and Mariflor Punzalan-Castillo, concurring.

[2] Entitled People of the Philippines v. Jonathan "Uto" Veloso y Rama.

[3] CA rollo, pp. 10-29; penned by Presiding Judge Erwin Virgilio P. Ferrer.

[4] People v. Cabalquinto (533 Phil. 703 [2006]) and Resolution in A.M. No. 04-11-09-SC dated September 19, 2006 mandates that the Court shall use fictitious initials in lieu of the real names of the victim/s and immediate family members other than the accused, and delete the exact addresses of the victim to protect the privacy of the victim and their relatives. This policy is in line with Sec. 29 of Republic Act No. 7610, Sec. 44 of Republic Act No. 9262, and Sec. 40, Rule on Violence

[5] Records, Vol. 1, p. 1.

[6] Records, Vol. 2, p. 1.

[7] Criminal Case No. RTC 2002-0104 (CA rollo, p. 11).

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant] by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit RAPE BY SEXUAL ASSUALT against the person of [AAA], a minor, 12 years old, daughter of herein private complainant by then and there inserting his finger into her vagina, against her will, to the damage and prejudice.

[8] Criminal Case No. RTC 2002-0106 (CA rollo, pp. 11-12).

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], with intent to kill, without any justifiable cause or motive, did then and there

willfully, unlawfully and feloniously beat, assault, kick and strangle [AAA], a minor, 12 years old, daughter of the herein complaining witness, [BBB], who as a result thereof, suffered various injuries in the different parts of her body and which strangulation ordinarily would have caused the death of [AAA], thus, performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason or causes independent of his will, that is, by the timely rescue of said [AAA] which prevented her death, to her damage and prejudice.

[9] Records, Vol. 1, pp. 22-23.

[10] Id. at 106.

[11] CA rollo, p. 29.

[12] Records, Vol. 1, pp. 169-170.

[13] Rollo, p. 12.

[14] Id. at 14.

[15] Id. at 16-18.

[16] Id. at 32-35 and 36-39.

[17] Id. at 52.

[18] People v. Arpon, G.R. No. 183563, December 14, 2011, 662 SCRA 506, 523.

[19] Id.

[20] G.R. No. 181035, July 4, 2011, 653 SCRA 117, 133.

[21] Rollo, p. 11.

[22] TSN, September 24, 2004, p. 5.

[23] CA rollo, p. 24.

[24] TSN, March 15, 2005, p. 2.

[25] G.R. No. 181900, October 20, 2010, 634 SCRA 307, 318-319.

[26] People v. Adlawan, Jr., G.R. Nos. 100917-18, January 25, 1993, 217 SCRA 489, 498.

[27] People v. Arpon, supra note 18 at 529.

[28] TSN, January 9, 2003, p. 9.

[29] Records, Vol. 1, p. 106.

[30] TSN, February 22, 2006, p. 6.

[31] People v. Rubio, G.R. No. 195239, March 7, 2012, 667 SCRA 753, 762.

[32] G.R. No. 188560, December 15, 2010, 638 SCRA 749, 767-768.

[33] People v. Delabajan and Lascanu, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 868.

[34] People v. Dian, supra note 20 at 138.

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