

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE CANDELLADA, ACCUSED-APPELLANT.

G.R. No. 189293. July 10, 2013

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before this Court is the appeal of the Decision dated April 29, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00361-MIN,[1] which affirmed the Consolidated Decision[2] dated December 23, 2005 of the Regional Trial Court (RTC), Branch 7, Tubod, Lanao del Norte in Criminal Case Nos. 118-07-2005 and 159-07-2005 to 166-07-2005, acquitting accused-appellant Vicente Candellada of the charge of attempted rape but finding him guilty of eight counts of rape.

Accused-appellant was charged with attempted rape before the RTC under the following Information, docketed as Criminal Case No. 118-07-2005:

That on or about December 28, 2004, at about 7:00 o'clock in the evening at x x x, Lanao del Norte, Philippines an[d] within the jurisdiction of this Honorable Court, the above-named accused, who is father of [AAA[3]], a 14-year-old minor, did then and there willfully, unlawfully and feloniously with lewd design, and who was under the influence of liquor, wanted to have sexual intercourse with said [AAA], but the latter strongly refused, so that accused got mad and boxed, and battered [AAA], by the use of a piece of wood, but did not perform all the acts of execution which should have produced the crime of Rape as a consequence by reason of the fact that [AAA], shouted for help and the people of x x x, Lanao del Norte, were able to apprehend the aforesaid accused.[4]

Accused-appellant was likewise charged with eight counts of consummated rape committed on May 30, 2004,[5] June 2, 2004,[6] June 12, 2004,[7] July 10, 2004,[8] August 13, 2004,[9] November 5, 2004,[10] December 15, 2004,[11] and December 25, 2004[12] under eight Informations, docketed as Criminal Case Nos. 159-07-2005 to 166-07-2005. The Informations were similarly worded except for the different dates of commission of the crime and read as follows:

That on or about [date] at x x x, Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have (sic) carnal knowledge upon [AAA], the accused's own daughter, a minor 14 years of age, against her will and consent, which sexual abuse by the accused debases, degrades or demeans the intrinsic worth and dignity of said child as a human being.

CONTRARY to and in VIOLATION of R.A. 8353, otherwise known as the Anti-Rape Law in relation to R.A. 7610 otherwise known as the Anti-Child Abuse Law.

Accused-appellant was arraigned on May 17, 2005 with the assistance of counsel. He pleaded not guilty to the charges against him.[13]

During pre-trial, the defense admitted that accused-appellant is the father of private complainant AAA and that

AAA was 15 years of age at the time of the commission of the crimes charged and/or filing of the cases.[14]

Thereafter, the nine criminal cases were tried jointly.

The prosecution presented as witnesses Dr. Jovenal Magtagad (Magtagad),[15] the Municipal Health Officer who physically examined AAA on December 29, 2004; AAA,[16] the victim herself; Elsie Gemina (Gemina),[17] the owner of the house in Lanao del Norte where accused-appellant and AAA lived; and Senior Police Officer (SPO) 4 Rosa Bastigue (Bastigue),[18] Women's Desk Police Non-Commissioned Officer (PNCO), Magsaysay Police Station. It also presented the following documentary evidence: Gemina's Affidavit[19] dated January 3, 2005; AAA's Sworn Statement[20] dated January 3, 2005; Joint Affidavit[21] dated January 3, 2005 of SPO4 Bastigue, Police Investigator SPO3 Orlando Caroro, and Department of Social Welfare and Development (DSWD) Officer Virgilio Yaral (Yaral); and Dr. Magtagad's Medical Certificate[22] dated December 29, 2004.

The evidence for the prosecution presented the following version of events:

AAA was born in Davao on January 10, 1990. She was 15 years old when she testified before the RTC on August 24, 2005.[23]

AAA was the second of three daughters of accused-appellant and his deceased first wife. AAA lived with accused-appellant and the latter's second wife, while AAA's two sisters lived with accused-appellant's mother. While they were still living in Davao, accused-appellant impregnated AAA. When AAA was already five months pregnant, accused-appellant brought her with him to Lanao del Norte. Accused-appellant and AAA arrived in Lanao del Norte on May 30, 2004.[24]

Accused-appellant approached Gemina, who he came to know during a previous visit to Lanao del Norte in 1993. Accused-appellant asked permission if he could stay at Gemina's old house with his wife, introducing AAA to Gemina as his wife. Gemina immediately noticed that AAA was pregnant. She also commented that AAA was so young she could already be accused-appellant's daughter, but accused-appellant only laughed. Gemina and her husband allowed accused-appellant and AAA to stay at their old house on the condition that accused-appellant would pay for the electricity.[25]

While they were staying at Gemina's old house, accused-appellant had intercourse with AAA many times, but AAA could only remember eight specific dates, i.e., on May 30, 2004; June 2, 2004; June 12, 2004; July 10, 2004; August 13, 2004; November 5, 2004; December 15, 2004; and December 25, 2004. When asked to explain what "intercourse" meant, AAA stated that accused-appellant inserted his penis into her vagina. AAA further testified that she consistently resisted accused-appellant's bestial acts but he threatened to stab her with a knife. Lastly, AAA narrated that she delivered a baby boy with Gemina's help on September 24, 2004, but the baby died four days later, on September 28, 2004.[26]

On December 28, 2004, accused-appellant again made amorous advances on AAA. AAA refused so accused-appellant became violently angry. He mauled AAA and hit her head with a piece of wood, which rendered her unconscious.[27] Gemina, who saw what happened, asked help from the Barangay Captain. The Barangay Captain and civilian volunteers arrested the accused-appellant.[28]

According to Gemina, since accused-appellant and AAA arrived in Lanao del Norte, the two lived as husband and wife. However, sometime in December 2004, a drunk accused-appellant already admitted to Gemina's husband that AAA was his (accused-appellant's) daughter. Gemina further testified that the mauling incident that took place on December 28, 2004 was already the fourth time she saw accused-appellant maltreating AAA.[29]

After conducting a physical examination of AAA on December 29, 2004, Dr. Magtagad observed hematoma,

contusions, and abrasions on different parts of AAA's body, which were caused by a blunt object, possibly a piece of wood.[30] Dr. Magtagad estimated that AAA's injuries would heal in five to seven days. AAA did not mention being raped by accused-appellant to Dr. Magtagad.

SPO4 Bastigue, SPO3 Caroro, and DSWD Officer Yaral were assigned to AAA's case. They were initially investigating only the mauling of AAA, but during the course of their investigation, AAA claimed that she had been raped by accused-appellant at least eight times.[31] In their Joint Affidavit though, SPO4 Bastigue, SPO3 Caroro, and DSWD Officer Yaral reported only the mauling of AAA and did not mention her being raped by accused-appellant. SPO4 Bastigue reasoned on the witness stand that maybe the investigator merely forgot to include the rapes in the Joint Affidavit.

The sole evidence for the defense is accused-appellant's testimony, summarized as follows:

Accused-appellant acknowledged that AAA is his daughter with his deceased first wife.[32] Accused-appellant stated that AAA was born on January 10 but since he was unschooled, he could not remember the exact year of AAA's birth.

Accused-appellant recalled that AAA went to school in Davao. Accused-appellant and AAA had misunderstandings because he would admonish AAA for roaming around late in the evening. In 2004, AAA got pregnant and had to stop her studies. Accused-appellant did not inquire from AAA's sisters, friends, classmates, or teachers who impregnated AAA. Accused-appellant, upon the insistence of his second wife, brought AAA to Lanao del Norte to conceal AAA's pregnancy. Accused-appellant and AAA stayed at Gemina's old house while in Lanao del Norte. Accused-appellant denied introducing AAA to Gemina as his wife. He introduced AAA to Gemina as his daughter and said that AAA was impregnated by a classmate. By accused-appellant's account, AAA gave birth on October 10, 2004 but the baby died. Accused-appellant and AAA were planning to go back to Davao in January 2005 after accused-appellant had saved enough money from making charcoal and cutting grass.[33]

Accused-appellant outright called AAA a liar. He denied raping AAA eight times between May 30, 2004 to December 25, 2004. He also asserted that he could not have made an attempt to rape AAA on December 28, 2004 as he was already in jail by that time. Accused-appellant claimed that he was already arrested on December 23, 2004, a Tuesday, after he struck AAA.[34]

The RTC rendered its Consolidated Decision on December 23, 2005. The RTC found that there was not enough evidence to prove accused-appellant's culpability for the charge of attempted rape on December 28, 2004. Citing Article 6 of the Revised Penal Code,[35] the RTC pointed out that the overt acts committed by accused-appellant resulted only in AAA's physical injuries that took five to seven days to heal and slight physical injuries were not necessarily included in the charge of attempted rape. As for the charge of eight counts of consummated rape, the RTC pronounced that "[AAA's] down-to-earth testimony was convincing and straightforward that she was abused [by] her father in x x x Lanao del Norte." [36] In the end, the RTC adjudged:

WHEREFORE, in the light of the foregoing consideration, and by the weight or quantum of evidence, the Court renders judgment as follows:

- For failure of the prosecution to establish the [g]uilt of accused beyond reasonable doubt in Crim. Case No. 118-07-2005, for attempted rape in relation with Republic Act No. 9262, acquits him thereof;
- In Criminal Case Nos. 159-07-2005, 160-07-2005, 161-07-2005, 162-07-2005, 163-07-2005, 164-07-2005, 165-07-2005, and 166-07-2005, pursuant to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, in relation with Republic Act No. 7[6]10, otherwise known as Anti-Child Abuse Law, finding accused guilty beyond reasonable doubt of the

crime of rape as charged and committed against his minor daughter, [AAA], and sentences him to suffer the supreme penalty of DEATH in each of the 8 counts thereof;

- Accused is order[ed] to pay moral damages to complainant of P75,000.00 and exemplary damages of P25,000.00 in each of the 8 cases of rape;

- The [Bureau of Jail Management and Penology] warden of Tubod, Lanao de Norte is ordered to deliver the living body of accused to the National Penitentiary, Muntinlupa City, Metro Manila within 15 days from the promulgation of the decision.[37]

The records of the eight rape cases were then forwarded to the Court of Appeals for appellate review.

In his Brief, accused-appellant contended that the RTC erred in finding him guilty beyond reasonable doubt of eight counts of rape. AAA's short and simple answers during her testimony "were short of a mere allegation." Despite remembering the dates of the alleged crimes, AAA could not vividly describe how she was molested. AAA merely repeated that on all eight occasions, accused-appellant had intercourse with her by inserting his penis into her vagina. AAA's uniform manner of describing the alleged rapes created a strong suspicion that her testimony had been coached, rehearsed, or contrived. Accused-appellant also labeled AAA's testimony incredible because according to AAA, accused-appellant immediately inserted his penis into her vagina without even taking off their undergarments. Thus, accused-appellant argued that the presumption of innocence accorded to accused-appellant must prevail, for it could not be overcome by mere suspicion, conjecture, or probability. The standard has always been proof beyond reasonable doubt.[38]

Plaintiff-appellee, for its part, maintained that the RTC judgment of conviction against accused-appellant was consistent with prevailing jurisprudence. However, it prayed that the sentence imposed upon accused-appellant be modified in accordance with Republic Act No. 9346, An Act Prohibiting the Imposition of the Death Penalty in the Philippines.[39]

In its Decision dated April 29, 2009, the Court of Appeals affirmed the judgment of conviction against accused-appellant but modified the sentence and award of damages:

IN LIGHT OF ALL THE FOREGOING, the decision of the court a quo is modified, and after taking into account the qualified aggravating circumstances of minority of the victim and her relationship with accused-appellant Vicente Candellada, he (Vicente Candellada) is DIRECTED and ORDERED to serve the penalty of Reclusion Perpetua without the eligibility for parole for each rape committed under Criminal Cases Nos. 159-07-2005, 160-07-2005, 161-07-200[5], 162-07-2005, 163-07-200[5], 164-0[7]-200[5], 165-07-2005, and 166-07-2005. Accused-appellant Vicente Candellada is further DIRECTED and ORDERED to pay AAA the following for each rape committed:

P75,000.00 as Civil Indemnity;

P75,000.00 as Moral Damages;

P25,000.00 as Exemplary Damages.

Hence, the instant appeal.

Accused-appellant insists that the RTC erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

There is no merit in the appeal.

Qualified rape is defined and punished under the following provisions of the Revised Penal Code, as amended:

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;

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

c) By means of fraudulent machination or grave abuse of authority;

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

x x x x

ART. 266-B. Penalties. – x x x.

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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

For a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[40]

The fourth and fifth elements, minority and relationship, were admitted by accused-appellant during the pre-trial conference.

The existence of the first three elements was established by AAA's testimony. Relevant are the pronouncements of the Court in *People v. Manjares*[41] that:

In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in this case. There is a plethora of cases which tend to disfavor the accused in a rape case by holding that when a woman declares that she has been raped, she says in effect all that is necessary to show that rape has been committed and, where her testimony passes the test of credibility, the accused can be convicted on the basis thereof. Furthermore, the Court has repeatedly declared that it takes a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. For this reason, courts are inclined to give credit to the straightforward and consistent testimony of a minor victim in criminal prosecutions for rape. (Citations omitted.)

The Court will not disturb the finding of the RTC, affirmed by the Court of Appeals, that AAA's testimony deserves full faith and credence. In resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. The settled rule is that 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. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[42] No such facts or circumstances exist in the present case.

The uniform way by which AAA described the eight rape incidents does not necessarily mean that her testimony was coached, rehearsed, and contrived. Also, AAA's failure to mention that accused-appellant removed their undergarments prior to the rape does not destroy the credibility of AAA's entire testimony. Rape victims do not cherish keeping in their memory an accurate account of the manner in which they were sexually violated. Thus, errorless recollection of a harrowing experience cannot be expected of a witness, especially when she is recounting details from an experience so humiliating and painful as rape.[43] In addition, bearing in mind that AAA had been repeatedly raped by accused-appellant for a period of time (beginning in Davao, which resulted in AAA's pregnancy), it is not surprising for AAA to recall each incident in much the same way. What is important is that AAA had categorically testified that on eight specific dates, her father, accused-appellant, armed with a knife, successfully had sexual intercourse with her by inserting his penis into her vagina.

It is noteworthy to mention that even if accused-appellant did not use a knife or made threats to AAA, accused-appellant would still be guilty of raping AAA, for in rape committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[44]

Although Gemina did not personally witness the rapes of AAA by accused-appellant, she did confirm that accused-appellant had introduced AAA as his wife; and when Gemina stayed a week with accused-appellant and AAA at the old house, Gemina observed that the two apparently lived as husband and wife. Accused-appellant's imprudence in representing himself as AAA's husband to the public lends credence to AAA's assertions that accused-appellant took perverted liberties with her in private.

Accused-appellant's denial and alibi deserve scant consideration. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses, for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. It has been consistently held that denial and alibi are the most common defenses in rape cases. Denial could not prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[45]

Accused-appellant proffered a general denial of all eight rapes. Accused-appellant's alibi that he was arrested and imprisoned on December 23, 2004 is not supported by positive, clear, and satisfactory evidence. In fact, it was entirely uncorroborated. Moreover, he was charged of seven other counts of rape that happened on earlier dates. In contrast, prosecution witnesses AAA, Gemina, and SPO4 Bastigue consistently testified that accused-appellant was arrested only on December 28, 2004.

With the guilt of accused-appellant for the eight rapes already established beyond reasonable doubt, the Court of Appeals was correct in imposing the penalty of reclusion perpetua, without eligibility of parole, instead of death, for each count of rape, pursuant to Republic Act No. 9346. Section 2 of Republic Act No. 9346 imposes the penalty of reclusion perpetua in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.[46]

As for the damages, the Court affirms the award to AAA of P75,000.00 civil indemnity and P75,000.00 moral damages for each count of rape. However, in line with jurisprudence,[47] the Court increases the amount of exemplary damages awarded to AAA from P25,000.00 to P30,000.00 for each count of rape; and imposes an interest of 6% per annum on the aggregate amount of damages awarded from finality of this judgment until full payment thereof.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00361-MIN is AFFIRMED with MODIFICATION that the amount of exemplary damages awarded to AAA shall be increased to P30,000.00 for each count of rape, and all damages awarded shall be subject to interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid. No costs.

SO ORDERED.

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

[1] Rollo, pp. 3-16; penned by Associate Justice Edgardo T. Lloren with Associate Justices Romulo V. Borja and Jane Aurora C. Lantion, concurring.

[2] CA rollo, pp. 23-43; penned by Presiding Judge Alan L. Flores.

[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, p. 26.

[5] Records, Criminal Case No. 159-07-2005, pp. 1-2.

[6] *Id.*, Criminal Case No. 160-07-2005, pp. 1-2.

[7] *Id.*, Criminal Case No. 161-07-2005, pp. 1-2.

[8] *Id.*, Criminal Case No. 162-07-2005, pp. 1-2.

[9] *Id.*, Criminal Case No. 163-07-2005, pp. 1-2.

[10] *Id.*, Criminal Case No. 164-07-2005, pp. 1-2.

[11] *Id.*, Criminal Case No. 165-07-2005, pp. 1-2.

[12] *Id.*, Criminal Case No. 166-07-2005, pp. 1-2.

[13] *Id.*, Criminal Case No. 159-07-2005, p. 24.

[14] *Id.*, p. 4 (Preliminary Conference dated May 23, 2005) and p. 42 (Pre-trial Order dated July 22, 2005).

[15] TSN, August 24, 2005, pp. 1-5.

[16] *Id.* at 6-23.

[17] TSN, August 31, 2005, pp. 1-20.

[18] *Id.* at 20-30.

[19] Records, Criminal Case No. 159-07-2005, p. 8.

[20] *Id.* at 6.

[21] *Id.* at 7.

[22] *Id.* at 10.

[23] TSN, August 24, 2005, pp. 6-7.

[24] Id. at 7-8.

[25] TSN, August 31, 2005, pp. 26-29.

[26] TSN, August 24, 2005, pp. 9-14.

[27] Id. at 16-17.

[28] TSN, August 31, 2005, p. 12.

[29] Id. at 8-9.

[30] TSN, August 24, 2005, pp. 3-4.

[31] TSN, August 31, 2005, pp. 22-23.

[32] TSN, September 14, 2005, pp. 5-6.

[33] Id. at 3-9.

[34] Id. at 4.

[35] ART. 6. Consummated, frustrated, and attempted felonies. – x x x.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

[36] CA rollo, p. 40.

[37] Id. at 42.

[38] Id. at 19-21.

[39] Id. at 69.

[40] People v. Iroy, G.R. No. 187743, March 3, 2010, 614 SCRA 245, 252.

[41] G.R. No. 185844, November 23, 2011, 661 SCRA 227, 243.

[42] People v. Padilla, G.R. No. 167955, September 30, 2009, 601 SCRA 385, 399.

[43] People v. Bejic, 552 Phil. 555, 577 (2007).

[44] People v. Viojela, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 256.

[45] People v. Bonaagua, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 636.

[46] People v. Padilla, G.R. No. 182917, June 8, 2011, 651 SCRA 571, 595-596.

[47] Id.; People v. Ogarte, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 415.

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