

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO BANAN Y LUMIDO, ACCUSED-APPELLANT.

G.R. No. 193664. March 23, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal from the March 31, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 03732 entitled *People of the Philippines v. Domingo Banan y Lumido*, which affirmed the November 24, 2008 Judgment[2] of the Regional Trial Court (RTC), Branch 4 in Tuguegarao City. The RTC found accused Domingo Banan y Lumido guilty of statutory rape and acts of lasciviousness.

The Facts

The charges against Banan stemmed from the following Informations:

CRIMINAL CASE NO. 10980
(Statutory Rape)

That on or about July 09, 2005, in the Municipality of [PPP],[3] Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design, did, then and there, willfully, unlawfully, and feloniously have sexual intercourse with the aforesaid offended party, [AAA] a minor under 12 years of age against her will.

Contrary to law.[4]

CRIMINAL CASE NO. 10995
(Acts of Lasciviousness)

That on or about July 18, 2005 in the Municipality of [PPP], Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design and by use of force and intimidation, did, then and there, willfully, unlawfully and feloniously embrace, kiss the lips and caress the vagina of the aforesaid offended party, [AAA] a minor under 12 years of age against her will, thereby degrading, debasing and demeaning the intrinsic worth and dignity of the complainant as a human being prejudicial to her physical, [psychological] and intellectual development.

Contrary to law.[5]

On January 26, 2006, Banan was arraigned, and he pleaded "not guilty" to the charges.[6] After pre-trial, trial on the merits ensued.

During trial, the prosecution presented as its sole witness the private complainant, AAA. On the other hand, the defense presented Banan and his wife, Florentina, as its witnesses.

The facts, culled from the records, are as follows:

AAA, born on March 30, 1994 as certified by her birth certificate, [7] is the daughter of BBB and CCC. AAA has two brothers, DDD and EEE.

Sometime in 2005, BBB, AAA's mother, worked as a laundrywoman in another place in Tuguegarao City. As a result, she left AAA, who was eleven (11) years old at that time, and AAA's two brothers in the care of her friend, Florentina Calagui, in PPP, Cagayan. Florentina had two houses that were adjacent to each other.[8] While AAA and her brothers stayed in one, the other was occupied by Florentina and her husband, accused Banan.[9]

On July 9, 2005, Banan asked permission from his wife, Florentina, to keep AAA and her brothers company in the other house. While AAA and her brothers were sleeping, Banan poked a knife at the neck of AAA.[10] He then removed the pants and underwear of AAA and kissed her.[11] Afterwards, he went on top of her and inserted his penis into her vagina.[12] She was not able to shout because Banan covered her mouth with his hand, but she was able to kick him.[13] She felt pain in her vagina thereafter.[14]

On July 12, 2005, Banan again decided to go to the house where AAA and her brothers were staying. However, Florentina cautioned him from doing so, telling him not to disturb them anymore.[15] As a result, Banan got angry and pushed Florentina.[16] Still, he proceeded to the other house and went up the stairs where AAA and her brother, DDD, were resting. Again, he poked a knife at AAA but it was parried by DDD, who got hit with the knife below the eye.[17] Because of this commotion, Banan was not able to push through with his intent to molest the complainant for the second time.

On July 18, 2005, at around 1:00 p.m., AAA was about to go to school with her friends when Florentina's mother, Ining Calagui, called her and told her that Banan was going to give her allowance in his house.[18] At first, AAA was reluctant to go to Banan but upon the advice of one of her friends, she went to his house. When AAA got there, Banan pulled her into the room of the house he shared with Florentina and suddenly kissed her lips and held her vagina.[19] He was armed with a long bolo tucked in his waist. However, nothing happened because AAA's friends barged in and were able to help her.[20]

AAA did not report these incidents immediately because she was afraid that Banan would kill her entire family.

Nevertheless, AAA later related the events to her aunt, FFF, who brought her to the police station. On August 1, 2005, she gave her statement before Police Officer Jane Dalumay of the PPP Police Station. Likewise, she was examined by Dr. Mila Lingan-Simangan, Municipal Health Officer of PPP, Cagayan. Her findings are as follows:

Pelvic Examination:
Normal looking external genitalia
Healed hymenal laceration at 6 & 7 o'clock position
Vagina admits tip of index finger easily
Adnexae unremarkable.[21]

Subsequently, the testimony of Dr. Lingan-Simangan was dispensed with upon agreement by both parties. A similar stipulation was likewise made with respect to the testimonies of AAA's mother and brother.[22]

On the other hand, Banan interposed the lone defense of alibi. He alleged that he was employed as a caretaker of fighting cocks by a certain Ric Gammad in Tuguegarao City.[23] He testified that he did not go home from July 9, 2005 to July 19, 2005.[24] On cross-examination, he revealed that the travel time from his place of work to his house is only 15 minutes.[25]

Florentina, Banan's wife, corroborated his alibi.[26] But upon cross-examination, she testified that Banan came

home on July 12, 2005 to commemorate the death of her father and that they also quarreled.[27]

Ruling of the Trial Court

After trial, the RTC found Banan guilty. The dispositive portion of its Judgment reads:

ACCORDINGLY, this Court finds accused DOMINGO BANAN y LUMIDO, GUILTY BEYOND REASONABLE DOUBT of Rape in Criminal Case No. 10980 defined and penalized under Article 266-A, No. 1 in relation to Article 266 B No. 1 of Republic Act No. 8353 amending Article 335 of the Revised Penal Code, and imposes upon him the penalty of RECLUSION PERPETUA. He is likewise liable to pay AAA, the amount of Fifty Thousand (P50,000.00) Pesos as indemnity and Fifty Thousand (50,000.00) Pesos as moral damages. Accused is equally found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in Criminal Case No. 10995 and he shall suffer the indeterminate penalty of x x x ONE (1) MONTH and ONE (1) DAY OF ARRESTO MAYOR as minimum to SIX (6) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL as maximum.

No pronouncement as to costs.[28]

Ruling of the Appellate Court

On March 31, 2010, the CA affirmed the Judgment of the trial court. The dispositive portion of the Judgment reads:

WHEREFORE, the appealed Decision of the Regional Trial Court of Tuguegarao City, Branch 4, dated 24 November, 2008, is AFFIRMED with the MODIFICATION that, in Criminal Case No. 10995, appellant is sentenced to one (1) month and one (1) day of arresto mayor to two (2) years, four (4) months and one (1) day of prision correccional medium and is ORDERED to pay AAA Twenty Thousand (P20,000) as civil indemnity and Thirty Thousand (P30,000) as moral damages.

SO ORDERED.[29]

The Issue

Banan alleges the following lone issue in his Brief:[30]

The court a quo gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

The Court's Ruling

The appeal has no merit.

In his Brief, accused-appellant argues that the prosecution failed to prove his guilt beyond reasonable doubt. First, he contends that there were inconsistencies in the testimony of the complainant, particularly the date of the incident, that affected its veracity and credibility. Second, he maintains that there was no credible and admissible evidence that he had sexual congress with the private complainant, because the physician who conducted the medical examination did not testify in court. And lastly, he disputes private complainant's identification of him as her rapist considering the circumstances at the time of the incident. He points to her testimony where she stated that the room was very dark and that she could not see anything, nor could she recognize any person who would go upstairs to their room.

We are not convinced.

It is a time-honored doctrine that the trial court's assessment of the credibility of witnesses is "entitled to great weight and is even conclusive and binding, if it is not tainted with arbitrariness or oversight of some fact or

circumstance of weight and influence,"[31] the reason being the trial judge enjoys the peculiar advantage of observing firsthand the deportment of the witnesses while testifying, and is, therefore, in a better position to form accurate impressions and conclusions.[32]

In this case, the testimony of the private complainant was very clear on the events that transpired and the person who raped her. We quote the pertinent portions of her testimony:

Q

Why do you remember July 9, 2005?

A

Because that was the day Domingo Banan did something wrong to me.

Q

What did Domingo Banan do to you?

A

He touched (hinipuan) my leg, sir.

Q

Where did that happen?

A

At their house, sir.

Q

Around what time was that?

A

Night time, sir.

Q

Now, what were you doing when Domingo Banan did something wrong to you?

A

I was sleeping with my two brothers because Domingo told Floring Calagui that she will stay there first because she does not have any companion.

Q

Can you please name your brothers who slept with you that night?

A

[DDD] and the old man, sir.

Q

Where did you sleep witness?

A

In front of the stairs.

x x x x

Q

So while you were sleeping, what happened?

A

Domingo Banan went up at the second floor of the house and instructed me that if I will not follow his order he will kill me.

Q

After that what did Domingo Banan do if there was any?

A

He was holding a knife, sir.

Q

What did he do with the knife?

x x x x

A

Domingo Banan pointed the knife at my neck, sir.

Q

While pointing the knife at your neck, what did he do?

A

When Domingo Banan pointed the knife at my neck, my brother [DDD] parried it and it was my brother who was hit.

COURT:

Why, where was your brother at that time?

A

My brother was just beside me, your honor.

Q

Now, what part of the body of your brother was hit?

A

Below his eye.

PROSECUTOR Now after that, what did Domingo Banan do?

A

Domingo Banan covered my mouth, sir.

Q

What else did he do to you?

A

He removed my pants, sir.

x x x x

Q

What else did Domingo Banan take off?

x x x x

A

He also removed my underwear, sir.

Q

After removing your short pants and underwear, what else did Domingo Banan do to you?

A

He inserted his penis, sir.

Q

Where did he insert his penis?

A

He inserted his penis into my vagina, sir.

COURT

Was your brother present at that time?

A

Yes, your honor.

Q

What did your brother do?

A

My brother was also sleeping at that time.

Q

Was he not awoken when he was hit with the knife at his eye?

A

He woke up, your honor.

Q

So, he saw what happened to you?

A

Domingo Banan covered his eyes.

Q

With what did Domingo Banan [use] to cover the eyes of your brother?

A

He got a cloth and tied it at his eyes?

Q

Now, how old was your brother?

A

Nine (9) years old, sir.

Q

Now, how old are you?

A

Eleven (11) years old.

COURT Make it of record that the witness is crying while testifying.

PROSECUTOR Now, when the penis of Domingo Banan was inserted into your vagina, what did Domingo Banan do if there was any?

A

He kissed me, sir.

Q

Where did he kiss you?

A

At my mouth, sir.

Q

Other than kissing you, what else did Domingo Banan do?

A

He covered my mouth, sir.

x x x x

Q

What was your position when Domingo Banan inserted his penis into your vagina?

A

I was kicking him but I could not stop him, sir.

Q

Aside from kicking him, what else did you do?

A

I kicked his stomach.

Q

What did he do when you were able to kick his stomach?

A

He held my shoulders, sir.

Q

And what else happened?

A

It was already morning and he [fell] asleep.

Q

So, he slept also in the place where you and your brother were sleeping?

A

Yes sir, but Domingo Banan left the place where I was sleeping.

Q

While Domingo Banan was inserting his penis into your vagina, what did you feel witness?

A

I felt pain, sir.[33]

Under Article 266-A of the Revised Penal Code, rape may be committed under different circumstances, as follows:

- 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 (Emphasis supplied.)

The one relevant to this case is when a man has carnal knowledge of a woman who is under twelve (12) years of

age. Such has been proved in the instant case.

Contrary to accused-appellant's contentions, the date of the rape is not important. It is not even an element of the crime of rape. In *People v. Bunagan*, We held that "the exact date of the sexual assault is not an essential element of the crime of rape; what should control is the fact of the commission of the rape or that there is proof of the penetration of the female organ."^[34] In fact, if a minor inconsistency existed, such as the date, it "strengthens rather than diminishes the credibility of complainant as it erases suspicion of a contrived testimony."^[35] Again, the date of the crime is not an essential element of the crime of rape; it is merely a minor inconsistency which cannot affect the credibility of the testimony of the victim.

What is more, the trial court even noted that the victim was crying while answering questions about the details of her rape.^[36] We find it proper to reiterate that "when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that the crime was committed."^[37]

Likewise, the non-presentation of the doctor who conducted the medical examination is of no concern. The records readily reveal that the testimony of Dr. Lingan-Simangan was dispensed with upon agreement by both parties.^[38]

It is well-settled in rape cases that "the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction."^[39] This is especially true in rape cases where, oftentimes, only two (2) persons are involved—the offender and the offended party.

In the instant case, the records clearly show AAA's candor and spontaneity in testifying on the events that transpired. As We held in *People v. Caratay*, when a witness' testimony is straightforward, candid, and "unflawed by inconsistencies or contradictions in its material points, the same must be given full faith and credit."^[40] More importantly, no woman, especially one who is young and immature, "would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished."^[41]

In *People v. Blazo*, this Court held that "[l]acerations of the hymen, while considered as the most telling and irrefutable physical evidence of the penile invasion, are not always necessary to establish the commission of rape, where other evidence is available to show its consummation."^[42] Thus, a medical examination or medical certification is only corroborative and not indispensable to the prosecution of a rape case.

Also, the crime of acts of lasciviousness has been proved by the prosecution. The elements of this crime under Article 336 of the RPC are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex.^[43] All elements are present in this case as testified to by the private complainant, thus:

Q

Now, how about July 18, 2005. Do you still remember that day?

A

Yes, sir.

Q

Why do you remember that day?

A

Domingo Banan told me that that would be the day that he is going to touch me.

Q

Who told you that?

A

Domingo Banan, sir.

Q

Where did he tell you that?

A

Inside the house, sir.

Q

Around what time?

A

Afternoon, sir.

Q

Why were you in the house of Domingo Banan at that time?

A

Because the mother of auntie Floring called for me, sir.

x x x x

Q

While inside their house what did Domingo Banan do to you?

x x x x

A

He held my arm and pulled me inside the room, sir.

COURT

Whose room?

A

His room and auntie Floring.

Q

And when he brought you inside the room, what did he do?

A

My friends saw me and they whipped my uncle.

Q

Who is that uncle of yours that you are referring to?

A

Domingo Banan, sir.

x x x x

Q

After holding your arms what did Domingo Banan do to you inside the room?

A

He kissed me, sir.

Q

What else did he do to you?

A

He held my vagina, sir.

x x x x

Q

You said a while ago that Domingo Banan kissed and held your vagina while you were inside their room, is that correct?

A

Yes, sir.

Q

And you also said a while ago that Jadelyn and Jennalyn whipped Domingo Banan, is that correct?

A

Yes, sir.

Q

Now, what was Domingo Banan doing when he was whipped by Jadelyn and Jennalyn?

x x x x

A

Because he kissed me.

Q

Now, what part of your body did he kiss?

A

My mouth and my lips.

Q

When he was whipped by Jadelyn and Jennalyn, what did Domingo Banan do?

A

He did not let go of my arm, sir.

Q

What did you do also?

A

I was whipping him, sir.

Q

And were you able to free yourself from Domingo Banan?

A

Yes, sir.

Q

Where did you proceed after that?

A

At the place of my auntie [FFF].[44]

The above testimony clearly shows all of the elements of the crime of acts of lasciviousness. First, accused-appellant intentionally performed lascivious or lewd acts on AAA when he kissed her and touched her vagina. Second, AAA was less than twelve (12) years old at the time of the incident. Also, accused-appellant employed force and intimidation on her after pulling her inside the room. Again, in cases of acts of lasciviousness, just like in cases of rape, "the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused." [45]

Against all this evidence, accused-appellant's alibi cannot stand. In order for alibi to prosper, accused-appellant must prove two things: first, that he was present at another place at the time of the perpetration of the crime; and second, that it was physically impossible for him to be at the scene of the crime. [46] Physical impossibility is defined as "the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." [47] Alibi fails "where, owing to the short distance as well as the facility of access between the two places involved, there is least chance for the accused to be present at the crime scene." [48]

In the instant case, accused-appellant himself, during his cross-examination, revealed that his place of work, where he claimed to be the entire time, is only 15 minutes away. Thus, it was not physically impossible for him to be present at the place of the incident. Moreover, the testimony of his wife exposed the untruthfulness in his defense when she contradicted his testimony and said that he indeed went home on July 12, 2005. His alibi must, therefore, fail.

More importantly, the defense of alibi cannot prevail over the positive declaration of the private complainant, who

clearly identified accused-appellant as the person who raped her. No evidence was ever put forth to subscribe any ill motive on the part of the private complainant against accused-appellant. Hence, her testimony is entitled to full faith and credit.

With respect to the award of damages, in line with our ruling in *People v. Sanchez*,^[49] the following amounts are to be imposed when the imposable penalty is reclusion perpetua: PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. In addition, interest at the rate of six percent (6%) should likewise be added.^[50]

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. C.R. No. 03732 finding accused-appellant Domingo Banan y Lumido guilty of the crimes charged is AFFIRMED with MODIFICATION. In Criminal Case No. 10980, in addition to the sum of PhP 50,000 as civil indemnity and PhP 50,000 as moral damages, accused-appellant is likewise sentenced to pay the victim the amount of PhP 30,000 as exemplary damages. Six percent (6%) interest per annum shall be applied to the civil indemnity and moral and exemplary damages awarded in Criminal Case No. 10980 and to the civil indemnity and moral damages awarded by the CA in Criminal Case No. 10995. The interest shall run from finality of this Decision until said damages in the two criminal cases are fully paid by accused-appellant to the victim, AAA.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 2-15. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla.

[2] CA rollo, pp. 14-19. Penned by Judge Lyliha L. Abella-Aquino.

[3] Any information to establish or compromise the identity of the victim, as well as those of her immediate family or household members, shall be withheld, and fictitious initials are used, pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

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

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

[6] Records, Vol. 1, p. 25; records, Vol. 2, p. 16.

[7] Exhibit "F" (AAA's Certificate of Live Birth), Records, Vol. 1, p. 5; Records, Vol. 2, pp. 14 and 89.

[8] TSN, August 7, 2007, p. 3.

[9] *Id.* at 4.

[10] TSN, September 19, 2007, pp. 3-4.

[11] *Id.* at 4.

- [12] Id. at 4-5.
- [13] Id. at 5-6.
- [14] Id. at 6.
- [15] TSN, November 15, 2007, p. 4.
- [16] Id.
- [17] TSN, September 19, 2007, pp. 4-5.
- [18] Id. at 6-7.
- [19] Id. at 7-8.
- [20] Id. at 7-9.
- [21] Records, Vol. 1, p. 11.
- [22] Id. at 88, Order dated April 10, 2008.
- [23] TSN, July 30, 2008, p. 2.
- [24] Id. at 3.
- [25] Id. at 4.
- [26] Id. at 4-5.
- [27] Id. at 5-6.
- [28] CA rollo, p. 19.
- [29] Rollo, pp. 14-15.
- [30] CA rollo, pp. 65-81.
- [31] *People v. Garchitorena*, G.R. No. 131357, April 12, 2000, 330 SCRA 613, 622.
- [32] *People v. Ahmad*, G.R. No. 148048, January 15, 2004, 419 SCRA 677, 685; *People v. Tuppal*, G.R. Nos. 137982-82, January 13, 2003, 395 SCRA 72, 79.
- [33] TSN, September 19, 2007, pp. 3-6.
- [34] G.R. No. 177161, June 30, 2008, 556 SCRA 808, 813.
- [35] *People v. Hernandez*, G.R. Nos. 134449-50, October 25, 2001, 368 SCRA 247, 255.
- [36] TSN, September 19, 2007, p. 5.
- [37] *People v. Atop*, G.R. Nos. 124303-05, February 10, 1998, 286 SCRA 157, 173.
- [38] *Supra* note 22.
- [39] *People v. Malana*, G.R. No. 185716, September 29, 2010.
- [40] G.R. Nos. 119418 & 119436-37, October 5, 1999, 316 SCRA 251, 257.
- [41] *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 232.

[42] G.R. No. 127111, February 19, 2001, 352 SCRA 94, 103.

[43] *Flordeliz v. People*, G.R. No. 186441, March 3, 2010.

[44] TSN, September 19, 2007, pp. 6-9.

[45] *People v. Bon*, G.R. No. 149199, January 28, 2003, 396 SCRA 506, 515.

[46] *People v. Saban*, G.R. No. 110559, November 24, 1999, 319 SCRA 36, 46; *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[47] *People v. De Labajan*, G.R. Nos. 129968-69, October 27, 1999, 317 SCRA 566, 575.

[48] *People v. Achas*, G.R. No. 185712, August 4, 2009.

[49] G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[50] See *People v. Tabongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727.

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