

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL VERGARA Y CLAVERO, ACCUSED-APPELLANT.

G.R. No. 199226. January 15, 2014

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03772, which affirmed in toto the Decision[2] dated November 26, 2008 of the Regional Trial Court (RTC), Branch 17, Cavite City, in Criminal Case No. 297-04, finding accused-appellant Roel Clavero Vergara guilty beyond reasonable doubt of the crime of simple statutory rape.

Consistent with the ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] the Court withholds the real names of the private offended party and her immediate family members, as well as such other personal circumstances or any other information tending to establish or compromise their identity. The initials AAA shall represent the private offended party.

In the Information dated September 15, 2004, accused-appellant was charged before the RTC with the rape of AAA, thus:

That on or about September 12, 2004, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of one [AAA], a minor, 9 years of age, with force and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said minor, [AAA], without her consent and against her will.[5]

When arraigned on October 13, 2004, accused-appellant pleaded not guilty to the charge.[6]

The prosecution presented the testimonies of AAA,[7] the private offended party herself, and Dr. Remigio R. Camerino (Camerino),[8] the physician who physically examined AAA for signs of sexual abuse. The prosecution also submitted several documentary exhibits, particularly: AAA's Certificate of Live Birth,[9] issued by the Office of the City Civil Registrar of Cavite City, stating that AAA was born on October 20, 1994; AAA's Sworn Statement[10] dated September 14, 2004 in which AAA recounted how, where, and when accused-appellant raped her; the Letter-Request[11] for AAA's Medico-Legal Examination dated September 14, 2004; Dr. Camerino's Medico-Legal Report[12] dated September 15, 2004; the result of AAA's Pregnancy Test[13] conducted on September 15, 2004 confirming her pregnancy at only nine years of age; the Certificate of Live Birth[14] of AAA's son, issued by the Office of the City Civil Registrar of Manila, stating that AAA's son was born on January 16, 2005; and a picture[15] of AAA's son.

The totality of the prosecution's evidence established the following version of events:

AAA was born on 20 October, 1994. Her parents were not married and got separated when she was five (5) years old. Her mother then lived-in, and begot a child, with [accused-appellant]. Unlike her two other siblings by her biological father, AAA lived with her mother and [accused-appellant].

[Accused-appellant] began abusing AAA as soon as she had her first menstruation in May 2003. By the time AAA was nine (9) years old, [accused-appellant] had sexually molested her five (5) times.

The last incident of rape, which is the subject of this case, happened around 3:00 o'clock in the afternoon of 12 September 2004. The 9-year old AAA was left alone in the house with [accused-appellant] and the latter's 2-year old daughter because AAA's mother was away working as a cook in a restaurant in a nearby place. [Accused-appellant] ordered AAA to go inside his bedroom. When there, he ordered her to embrace him and remove her shirt, pants and panty. Afraid, AAA complied. [Accused-appellant] forced himself on AAA, who pleaded, "Tama na po!" (Enough, please). Despite AAA's pleas, however, [accused-appellant] persisted, telling her, "Eto na ang huli, pumayag ka na." (Do as I say because this will be the last.) [Accused-appellant] inserted his penis into AAA's vagina and made a pumping motion for twenty (20) minutes. AAA cried and resisted by punching [accused-appellant] on his shoulders, but to no avail. After satisfying his lust, [accused-appellant] ordered AAA to put on her clothes and warned her not to tell anyone about what happened.

AAA confided her ordeal to her mother's friend, Tita, who helped her report the incident to the police authorities. AAA was also examined by Dr. Remigio R. Camerino, whose findings revealed the following:

">Thin circular hymen with rough edges and previous healed lacerations.

>(-) vaginal lacerations

>(-) bleeding/discharge

>positive pregnancy test (9/15/04)

>uterus enlarged to 4 months age of gestation."

On 16 January 2005, AAA gave birth to a baby boy.[16] (Citations omitted.)

Accused-appellant[17] took the witness stand in his own defense, denying that he raped AAA and offering an alibi for the afternoon of September 12, 2004. Accused-appellant's testimony, in sum, was as follows:

In his defense, [accused-appellant] interposed the lone defense of alibi, alleging that he was not in their house on the day of the incident but was at work as a cook in a restaurant, less than a kilometer or about a 30-minute walk away from their house. [Accused-appellant] testified that he never had the chance to be with the victim on the day in question since his work was from 3:00 o'clock in the afternoon to 2:00 o'clock in the morning of the following day.

On cross-examination, [accused-appellant] denied having any previous misunderstanding with the victim and admitted that he could not think of a reason why AAA would impute such a serious accusation against him.[18] (Citations omitted.)

In its Decision dated November 26, 2008, the RTC convicted accused-appellant for simple statutory rape, and not for qualified rape as charged. The trial court reasoned that it could not appreciate the aggravating or qualifying circumstance of relationship alleged in the Information, particularly, accused-appellant being AAA's stepfather, because, as admitted by the parties and proved during trial, accused-appellant was not legally AAA's stepfather, but merely the common-law spouse of AAA's mother. Hence, the RTC decreed:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ROEL VERGARA y CLAVERO guilty beyond reasonable doubt of the crime of RAPE as defined and punished under paragraph (1), (d) Article 266-A of the Revised Penal Code, as amended by RA 8363, and accordingly sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim [AAA] in the amount of P50,000.00 as civil indemnity, the amount of P50,000.00 as moral damages, and the amount of P25,000 as exemplary damages.[19]

Accused-appellant sought recourse from the Court of Appeals, anchoring his appeal on a lone assignment of error,

to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[20]

The Court of Appeals promulgated its Decision on March 31, 2011, wholly affirming the judgment of conviction rendered by the RTC against accused-appellant. The appellate court upheld the assessment by the RTC of the witnesses' credibility, as well as the conclusion of said trial court that the prosecution was able to establish, beyond reasonable doubt, accused-appellant's guilt for the crime of simple statutory rape.

Aggrieved, accused-appellant comes before this Court through the instant appeal.

The appeal is bereft of merit.

Under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act No. 8353,[21] the crime of rape is committed by a man having 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 otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (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.

In *People v. Teodoro*,[22] the Court clearly explained the elements of statutory rape committed under Article 266-A(1)(d):

Rape under paragraph 3 of this article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve (12) years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil. (Citations omitted.)

In the case at bar, the prosecution was able to establish beyond reasonable doubt that accused-appellant had carnal knowledge of AAA in the afternoon of September 12, 2004, when AAA was just nine years old.

In her Sworn Statement dated September 15, 2004 to Senior Police Officer 4 Eloisa B. Ocava, AAA narrated how accused-appellant had been raping her since 2003, and described in great detail the last rape that occurred on September 12, 2004.

AAA subsequently took the witness stand during trial and personally recounted her ordeal in accused-appellant's hands, particularly, the last incident of rape on September 12, 2004. AAA, who was already starting to feel pregnant, finally gained courage soon after the last rape to tell her mother's friend about what accused-appellant was doing to her.

It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[23]

Herein, AAA's testimony is not only consistent and straightforward, but is further corroborated by other evidence. According to AAA's birth certificate, she was born on October 20, 1994, thus, establishing that she was nine years old on September 12, 2004. Dr. Camerino, after physical examination of AAA on September 15, 2004, found that AAA had "previous[ly] healed lacerations" in her vagina and that AAA's "uterus [was] enlarged to [four (4)] months age of gestation." AAA's pregnancy test, also conducted on September 15, 2004, confirmed

that she was pregnant. AAA later gave birth to a son on January 16, 2005, which was evidenced by her son's birth certificate.

Accused-appellant challenged AAA's credibility by pointing out that AAA often giggled and smiled while testifying before the trial court; AAA testified during direct examination that she was raped by accused-appellant on September 12, 2004 at home but later inconsistently declared during cross-examination that the rape took place in a room at accused-appellant's place of work; Dr. Camerino, who examined AAA on September 15, 2004, only three days after AAA's purported rape on September 12, 2004, did not find fresh lacerations on AAA's vagina, hence, indicating that AAA had no recent sexual activity; and AAA could not have been just nine years old at the time of her alleged rape as pre-teen ovulation was rare and as Dr. Camerino himself observed, AAA already had the built of an adolescent woman. Accused-appellant further denied raping AAA and insisted that he was at some other place at the time AAA was supposedly raped.

Accused-appellant's arguments were already considered and thoroughly addressed by the Court of Appeals. As the appellate court appropriately held:

Time-honored is the doctrine that the trial court's assessment of the credibility of a witness, is entitled to great weight on appeal. The reason therefor is that the trial judge enjoys the peculiar advantage of observing first-hand the deportment of the witnesses while testifying and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.

AAA's seemingly inconsistent behavior, such as smiling while narrating in open court about the rape, was properly explained by her, as follows:

Q (PROS. GARCIA): Now, a while ago, while you were testifying you kept smiling, could you please tell this Hon. Court why you were smiling?

A: I was just trying to be brave, sir.

Moreover, We consider the alleged inconsistency on the place where the crime happened as a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that [accused-appellant's] commission of the crime charged has been sufficiently proved.

The alleged inconsistency is also understandable considering that AAA was only ten (10) years old at the time she testified before the trial court. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot thus be considered a ground for acquittal. In this case, the alleged inconsistency in AAA's testimony regarding the exact place of the commission of rape does not make her otherwise straightforward and coherent testimony on material points, less worthy of belief.

Significantly also, AAA's testimony is supported by the medical evidence on record, which showed that she had scars in her hymen and was thus in a non-virgin state. That no fresh lacerations were found in her hymen is no indication that she was not raped on 12 September 2004. Contrary to [accused-appellant's] contention, the old lacerations on AAA's hymen confirm and strengthen her allegation that she had been repeatedly raped by [accused-appellant] not only on 12 September 2004, but even before. As the victim was no longer a virgin when she was raped on 12 September 2004, no new injury on her hymen could be expected. It is settled that healed lacerations do not negate rape. In fact, lacerations, whether healed or fresh, are the best physical evidence of defloration.

On the issue of AAA's age, We quote the Supreme Court's consistent ruling that "in this era of modernism and rapid growth, the victim's mere physical appearance is not enough to gauge her exact age." Hence, the best evidence to prove AAA's age is her Certificate of Live Birth, which indicates that she was born on 20 October 2004 and was thus nine (9) years of age on 12 September 2004, when she was raped by [accused-appellant].

In *People v. Pruna*, the Supreme Court stated that in appreciating age, either as an element of the crime or as a qualifying circumstance, "[t]he best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party."

A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar).

As such, it is *prima facie* evidence of the fact of one's birth and can only be rebutted by clear and convincing evidence to the contrary. Obviously in this case, no such controverting evidence was adduced by the defense to question AAA's Certificate of Live Birth.[24] (Citations omitted.)

In contrast, accused-appellant's bare denial and uncorroborated alibi deserve scant consideration. The defense of alibi should be considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated.[25] Denial and alibi constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[26] AAA's positive testimony that she was sexually ravished by accused-appellant, coupled with the appalling fact that she got pregnant at her tender age, certainly deserve more credence and greater evidentiary weight than that of accused-appellant's uncorroborated defenses.

Moreover, for alibi to prosper, accused-appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the locus criminis at the time of the incident.[27] In the present case, however, accused-appellant himself admitted that his place of work was less than a kilometer or a mere 30-minute walk away from his house, where AAA was raped. Given the short distance between these two places, it was not physically impossible for accused-appellant, in the afternoon of September 12, 2004, to have left his work for a short while to go home and commit the rape of AAA.

The sentence of reclusion perpetua imposed upon accused-appellant by the RTC, affirmed by Court of Appeals, for the crime of statutory rape, without any aggravating or qualifying circumstance, is in accordance with Article 266-B of the Revised Penal Code, as amended. The awards of civil indemnity and moral damages in favor of AAA by the trial and appellate courts, in the amounts of P50,000.00 each, are also proper. However, the Court increases the amount of exemplary damages awarded to AAA from P25,000.00 to P30,000.00, in line with the latest jurisprudence.[28]

WHEREFORE, in view of the foregoing, the Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03772 is **AFFIRMED** with **MODIFICATION**, increasing the award of exemplary damages to P30,000.00 and ordering accused-appellant to pay the private offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.

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

[1] Rollo, pp. 2-13; penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser, concurring.

[2] CA rollo, pp. 22-28A; penned by Judge Melchor Q.C. Sadang.

[3] 533 Phil. 703 (2006).

[4] 550 Phil. 176 (2007).

[5] Records, p. 1.

[6] Id. at 9.

[7] TSN, June 30 and December 7, 2005.

[8] TSN, June 21, 2006 and January 17, 2007.

[9] Records, p. 86.

[10] Id. at 88.

[11] Id. at 91.

[12] Id. at 65.

[13] Id. at 89.

[14] Id. at 90.

[15] Id. at 90A.

[16] Rollo, pp. 3-5.

[17] TSN, August 2, 2007.

[18] Rollo, p. 5.

[19] CA rollo, p. 28A.

[20] Id. at 42.

[21] An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes.

[22] G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314-315.

[23] *People v. Oliva*, G.R. No. 187043, September 18, 2009, 600 SCRA 834, 839.

[24] Rollo, pp. 7-10.

[25] *People v. Carpio*, 538 Phil. 451, 476 (2006).

[26] *People v. Nachor*, G.R. No. 177779, December 14, 2010, 638 SCRA 317, 333.

[27] *People v. Carpio*, *supra* note 25.

[28] *People v. Pacheco*, G.R. No. 187742, April 20, 2010, 618 SCRA 606, 618.

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