

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SALVADOR A.K.A. “FELIX”; ACCUSED-APPELLANT.

G.R. No. 207815. June 22, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is an appeal[1] from the January 9, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR No. 34484 which affirmed with modification appellant Jose Salvador's conviction for the crime of rape as defined under Article 266-A(2)[3] of the Revised Penal Code (RPC) in Criminal Case No. 4112.

AAA, BBB[4] and CCC are daughters of appellant, a tricycle driver. On February 5, 2009, appellant was charged with the crime of rape[5] against BBB before the Regional Trial Court (RTC), Branch 96, Baler, Aurora. The Information[6] read:

[CRIM. CASE NO. 4112 FOR RAPE IN RELATION TO R.A. No. 7610:]

The undersigned Asst. Provincial Prosecutor, upon the sworn complaint of [BBB], a 15 years (sic) old minor, assisted by her sister [AAA], Ms. Celestina Abellera of the MSWD and PO2 Myra Novilla of the WCPD of the PNP, Dipaculao, Aurora, accuses Jose Salvador @ Felix of the crime of Rape in relation to R.A. 7610, committed as follows:

That sometimes (sic) July 2007 and even prior thereto, in their house at Brgy. [XXX], Dipaculao, Aurora and within the jurisdiction of this Honorable Court, the above named accused, with carnal lust, force (sic) [BBB] to have sexual intercourse with him by inserting his finger and sexual organ into her, taking advantage of the latter[']s weakness, minority and moral ascendancy over the victim, being her father, feloniously, criminally, unlawfully, illegally had carnal knowledge upon said [BBB], such bestial act may impaired (sic) or tend to be prejudicial to the development of the child victim.

CONTRARY TO LAW.

Appellant was at the same time charged[7] with the crime of acts of lasciviousness against CCC.

On arraignment,[8] appellant pleaded not guilty for both crimes. Joint trial ensued after pre-trial.

The prosecution presented the testimonies of BBB, Celestina Abellera, PO3 Myra Novilla and Dr. Arturo A. Parilla, Jr. as evidence.

BBB[9] testified that she executed a Sinumpaang Salaysay[10] on July 11, 2007 when she was 15 years old and in 2[nd] year high school. BBB cried when she was asked to recount her experience and read her affidavit. She nonetheless affirmed the contents of her affidavit and identified appellant as the person who sexually assaulted her. In her affidavit, BBB stated that the appellant, her father, physically violated her when she was in Grade VI. She said that appellant touched and inserted his finger in her vagina and that she felt pain. The following day, appellant asked for a massage where he was only wearing his underwear. At this point BBB stated that appellant raped her inside his room. When asked why she delayed in reporting the incident, BBB answered that she was

afraid that appellant might kill them because appellant owned a "pamalo" and a gun. On cross-examination, BBB clarified that when she said that appellant raped her, appellant was not actually able to insert his penis in her vagina.

Abellera, the Municipal Social Welfare Officer testified that she aided PO3 Novilla in taking the statements of BBB and CCC. She affirmed that both BBB and CCC were minors and presented the certified true copies of their birth certificates[11] issued by the local civil registrar. She conducted further interview for a social case study report.[12]

PO3 Novilla, Women and Children Protection Desk Officer of the Philippine National Police, Dipaculao, Aurora, stated that she took and recorded the sworn statements of BBB and CCC. When the court clarified AAA's role in the whole proceeding, PO3 Novilla said that AAA filed a statement with the Department of Social Welfare and Development and with the police that she had also been raped by appellant and begot a child. AAA however for her own reasons did not file charges against appellant.[13]

Dr. Parilla, Jr., Municipal Health Officer of Dipaculao, Aurora, testified that he conducted the physical examination[14] of BBB and consequently issued a Medico-Legal Report[15] where he found "no evident injury at the time of exam" nor was there any discharge found.[16] On the lower portion of the report, he noted that the "medical evaluation does not exclude sexual abuse".[17]

The defense presented appellant as its lone witness. Appellant claimed that, while in prison, his daughter AAA came to visit him and confided that the complaints of BBB and CCC were fabrications. Appellant posited that AAA urged her sisters to file false complaints against him to extort money from him in order to fund her husband's overseas job application. He also said that AAA took particular advantage of BBB's resentment against him because of his strict attitude towards dating.

In its July 22, 2011 Decision,[18] the RTC found appellant guilty of rape by sexual assault but acquitted him of the crime of acts of lasciviousness. The RTC gave credence to BBB's testimony because it was delivered in a categorical, straightforward, spontaneous and frank manner. On the other hand, it noted that appellant's defense was unsupported by evidence. It also stated that while the medico-legal report did not contain any finding of injury, the same is not necessary to prove the commission of rape. There being uncertainty of whether there was actual touching of the penis to the labia, the RTC said that the crime committed was only sexual assault under Article 266-A, paragraph 2 of the RPC as amended, thus:

WHEREFORE, above premises considered, the Court hereby renders judgment as follows:

- For failure of the prosecution to establish the guilt of accused Jose Salvador @ "Felix", with the required quantum of evidence in Criminal Case No. 4113, the Court hereby ACQUITS him of the crime of Acts of Lasciviousness; and
- Finding accused JOSE SALVADOR @ "Felix" GUILTY beyond reasonable doubt in Criminal Case No. 4112 for RAPE defined under Article 266-A, paragraph 2 (sexual assault) and punished under 266-B of the Revised Penal Code, the Court hereby sentences him to suffer the indeterminate penalty of nine (9) years of prision mayor, as minimum, to fourteen (14) years and one (1) day to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum, and to pay [P]50,000.00 as civil indemnity, [P]50,000.00 as moral damages, and [P]25,000.00 as exemplary damages.

SO ORDERED.[19]

On appeal, the CA affirmed with modification the RTC's July 22, 2011 Decision.[20] The CA did not find any error in the RTC's appreciation of the facts and circumstances of the case since "exactness, detailedness and

flawlessness [of] recollection"[21] cannot be imposed on minor victims. Moreover, the CA stated that appellant's defense of denial cannot overcome BBB's affirmative and categorical declarations of his culpability. It, however, modified the penalty pursuant to Article 266-B[22] of the RPC.

Since it was established that appellant was BBB's father and that BBB was below 18 years of age, the CA concluded that the crime committed was qualified rape. Consequently, the CA increased the penalty imposed as well as the award of damages. The CA ruled:

WHEREFORE, in light of the foregoing, the instant appeal is DENIED. The July 22, 2011 Joint Decision of the Regional Trial Court, Branch 96, Baler, Aurora in CRIM. CASE No. 4112, finding the herein appellant Jose Salvador a.k.a. "Felix" guilty beyond reasonable doubt of rape committed against [BBB], is hereby AFFIRMED with the MODIFICATIONS that the penalty to be imposed upon him must be reclusion perpetua with no eligibility of parole and the award of civil indemnity is increased to P75,000.00. No costs.

SO ORDERED.[23]

Hence, this appeal.

The lone issue for our consideration is whether appellant's guilt was proven beyond reasonable doubt.

Appellant contests the finding of guilt beyond reasonable doubt by the RTC and CA contending that the prosecution failed to prove the elements of the crime of rape. Moreover, he states that the witnesses presented gave inconsistent testimonies. Lastly, appellant reiterates that the medico-legal report does not support the finding of rape.

We dismiss the appeal but modify the penalty imposed.

EVALUATION OF THE CREDIBILITY OF WITNESSES

IS BEST LEFT TO THE TRIAL COURTS

This Court has reiterated that the credibility of witnesses is a question best addressed by the trial court because of its opportunity to observe their demeanor while testifying on the stand: an opportunity denied to the appellate courts.[24] Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, especially when no significant fact nor circumstance is shown to have been overlooked or disregarded which when considered could affect the outcome of the case.[25] The rule is strictly applied when the appellate court affirms the finding of the lower court.

This Court has acknowledged that it is difficult to have corroborating testimonies in rape cases since in majority of the cases only the offended party's testimony is available. The Court has affirmed a conviction of rape as long as it is supported by a conclusive, logical and probable testimony by the offended party.[26]

Here, BBB affirmed her Sinumpaang Salaysay in open court. There she narrated what started out as innocent teasing, escalated into a situation where appellant, her father, inserted his finger in her vagina. She stated that:

04.

T:

Maaari mo bang isalaysay ang buong pangyayari sa sinasabi mong panghahalay sa iyo ng iyong tatay na si JOSE SALVADOR @ FELIX.

S:

Ganito [po] yon, noong una binibiro-biro po ako ni tatay FELIX sa pamamagitan ng paghihihipo niya sa aking pepe (vagina) at suso (breast). Pagkatapos ay nagpapahilot na siya sa akin simula sa kamay hanggang sa katawan na nakabrief o nakashorts. Pagkatapos ay sinasabihan na niya ako na ipapasok na ang daliri niya sa ari ko at sabi ko ay hwag pero ipinasok na niya at umiiyak ako at nasaktan ako at hindi ko kaya. Pagkatapos ng ilang araw ay nagpahilot uli siya at doon na [nangyari] ang unang paghalay niya sa akin sa [loob] ng kwarto niya. Nasaktan ako at umiiyak ako at sinabi nya na huli na iyon. Pero naulit ng maraming beses sa tuwing hapon kapag nasa biyahe ang aking ina na si MARINA. Noong dumating ang aking ate na si [AAA] ay pinagtapat niya ako kung ano ang ginagawa ni Tatay FELIX sa akin ay nagsabi na ako sa kanya na ako ay hinahalay na ni tatay ng maraming beses.[27]

On cross-examination, BBB stated categorically what appellant had done to her. She recounted her experience:

ATTY. TORREGOSA

Can you recall how did he do that to you?

A He placed his finger into my vagina, Ma'am.

THE COURT:

And thereafter, what else did he do to you?

A After that, no more, your Honor.

THE COURT:

You mean to say, he did not place his penis into your vagina?

A Yes, Your Honor.

THE COURT:

How come you said awhile ago, and in fact it was stated in your affidavit that at first, your father placed his fingers into your vagina and thereafter he raped you many times. When you said "hinalay", did he place his penis into your vagina? Tell us the truth?

A He did not insert his penis, but he just "itinutok" (pointed) his penis into my vagina, Your Honor.

THE COURT:

You mean to say his penis was placed into your vagina although it was not inserted?

A Yes, Your Honor.[28]

The appellant's only defense was to deny that he had sexually abused his daughter. This Court has often stated that to be believed, denial must be buttressed by strong evidence of non-culpability otherwise, it is purely self-serving and without merit.[29] Here, appellant interposes an extortion scheme masterminded by his eldest daughter, AAA. However, he did not present any evidence to support his contention. Thus, in the face of a categorical testimony by BBB, appellant's defense of denial must fail absent any evidence of his non-culpability.

Crime committed was Rape by Sexual Assault

This Court has stated that under Article 266-A of the RPC there are two ways by which the crime of rape may be committed: by sexual intercourse or by sexual assault.[30]

Rape by sexual intercourse is defined under Article 266-A(1) where it is committed by a man who shall have carnal knowledge with a woman under a certain set of circumstances enumerated in the provision. When a person

is found guilty of rape by sexual intercourse, the perpetrator is ordinarily punished by reclusion perpetua.[31]

Rape by sexual assault, on the other hand, is committed by any person who, under the same set of circumstances in Article 266-A(1), inserts his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. Article 266-A(2) provides:

ART. 266-A. Rape, When and How Committed. - Rape is committed -

x x x x x x x x

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. (Emphasis supplied)

Unlike rape by sexual intercourse, Article 266-B prescribes prision mayor as the penalty if found guilty of rape by sexual assault or reclusion temporal if there are qualifying circumstances present.

In both cases either in rape by sexual intercourse or rape by sexual assault, only the fact of penetration need be established under either. It must be stated though that under rape by sexual intercourse, there must be proof that his penis touched the labia of the victim or slid into her female organ, and not merely stroked the external surface thereof, to ensure his conviction.[32]

In *Flordeliz v. People*,[33] this Court affirmed the conviction of the accused for the crime of rape by sexual assault committed by a father who inserted his finger in his minor daughter's vagina. There we noted that it is "not uncommon x x x for the accused to claim that the case is a mere fabrication, and that the victim was moved by familial discord and influence, hostility, or revenge." [34] We said:

xxx when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true.[35]

Here, what was established by the testimony of BBB was that appellant inserted his finger in her vagina. By his act of inserting his finger in BBB's organ, the crime of rape by sexual assault has been consummated. The RTC and the CA therefore correctly ruled that appellant should be found guilty of rape as defined in Article 266-A, paragraph 2 of the RPC. Thus the fact that there were no injuries found in the medical exam deserves scant attention. As correctly stated by the RTC and the CA, the finding of any injury as yielded by the physical exam is not a requirement in rape cases.[36]

Penalty and Damages

As mentioned, Article 266-B of the RPC imposes different penalties for rape committed under paragraph 1 or rape by sexual intercourse and under paragraph 2 or rape by sexual assault. Article 266-B prescribes:

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

x 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, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the

parent of the victim.

x x x x x x x x

Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

x x x x x x x x

Reclusion temporal shall also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphasis supplied)

It is clear from Article 266-B that generally the penalty for rape through sexual assault is prision mayor. If qualifying circumstances have attended the crime and the same have been properly alleged in the information the penalty imposed would be increased to reclusion temporal.

In this case, the crime committed was rape through sexual assault. It having been established that BBB was under 18 years of age at the time of the crime and that appellant is her father, a qualifying circumstance, the proper penalty to be imposed should be reclusion temporal. We are, therefore, constrained to modify the penalty imposed by the CA since it imposed the penalty suited for the crime of qualified rape by sexual intercourse as opposed to qualified rape by sexual assault. In this respect, the penalty that must be imposed is an indeterminate penalty of nine (9) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

We also agree with the RTC and the CA that BBB is entitled to damages. Indeed, in *People v. Buclao*,^[37] we reiterated that in rape cases, the award of civil indemnity is mandatory upon proof of the commission of rape, whereas moral damages are automatically awarded without the need to prove mental and physical suffering and that exemplary damages are also imposed, as example for the public good and to protect minors from all forms of sexual abuse. However, to conform with current jurisprudence on the award of damages respecting the crime of qualified rape by sexual assault, we modify the award to BBB of P30,000.00 as civil indemnity upon the finding of the fact of rape, P30,000.00 as moral- damages automatically awarded in rape case without need of proof and P30,000.00 as exemplary damages.^[38]

WHEREFORE, the appeal is DISMISSED for lack of merit. The January 9, 2013 Decision of the Court of Appeals in CA-G.R. CR No. 34484 is AFFIRMED with MODIFICATION. Appellant Jose Salvador a.k.a "Felix" is hereby found GUILTY beyond reasonable doubt of Rape under Article 266-A(2) of the Revised Penal Code, as amended by R.A. No. 8353, and is accordingly sentenced to suffer the indeterminate penalty of nine (9) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, and to pay BBB P30,000.00 as civil indemnity, P30,000.00 as moral damages and P30,000.00 as exemplary damages.

With costs against the accused-appellant.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,^[*] and Reyes, JJ., concur.

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on June 22, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in

the above-entitled case, the original of which was received by this Office on July 2, 2015 at 2:00 p.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated additional Member per Raffle dated October 22, 2014.

[1] CA rollo, pp. 151-153.

[2] Rollo, pp. 2-13. Penned by Associate Justice Franchito N. Diamante with Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang concurring.

[3] REVISED PENAL CODE, Art. 266-A provides:

ART. 266-A. Rape, When and How Committed. - Rape is committed -

x x x x x x x x

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.

[4] Pursuant to the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006), Section 40, A.M. No. 04-10-11-SC, and Section 44, R.A. No. 9262 or the "Anti-Violence Against Women and Their Children Act of 2004," the victim's real name and personal circumstances or any other information tending to establish or compromise her identity as well as those of her immediate family are withheld.

[5] Docketed as Crim. Case No. 4112.

[6] Records (Crim. Case No. 4112), p. 1.

[7] Docketed as Crim. Case No. 4113. The Information for the crime of acts of lasciviousness read:

CRIM. CASE NO. 4113 - FOR ACT OF LASCIVIOUSNESS IN RELATION TO R.A. 7610

The undersigned Asst. Provincial Prosecutor, upon the sworn complaint of [CCC], [a] 9 years (sic) old minor, assisted by her sister [AAA], Ms. Celestina Abellera, the MSWD Officer of Dipaculao and PO2 Myra Novilla, Women's and Children Protection Desk Officer of PNP Dipaculao, Aurora, accuses Jose Salvador @ Felix of the crime of act of lasciviousness in relation to R.A. No. 7610, committed as follows:

That sometime in July 2007 and even prior thereto, in the morning and afternoon of said date, at their house at Barangay [XXX], Dipaculao, Aurora, said accused, with lewd design, did then and there willfully and feloniously commit acts of lasciviousness upon the person of [CCC], by touching her sex organ, against her will, taking [advantage] of her tender age and their relationship being the father of the victim, such acts and condition may tend to be prejudicial to the child[s] normal development.

CONTRARY TO LAW. [Records (Crim. Case 4113), p. 1.]

[8] July 8, 2010, records (Crim. Case No. 4112), p. 11; id. at 22.

[9] BBB was 19 years old when she testified. TSN, January 26, 2011, p. 9.

[10] Records (Crim. Case No. 4113), p. 11.

[11] Id. at 77-78.

[12] Id. at 4-6.

[13] TSN, January 25, 2011, pp. 7-9.

[14] Medical examination was conducted on July 11, 2007, 10:30 a.m. when AAA was 15 years old. Records (Crim. Case No. 4113), p. 10.

[15] Id.

[16] Id.

[17] Id.

[18] CA rollo, pp. 12-21. Penned by Presiding Judge Corazon D. Soluren.

[19] Id. at 21.

[20] Supra note 2.

[21] Rollo, p. 8.

[22] REVISED PENAL CODE, Art. 266-B in part provides:

ART. 266-B. Penalties. - x x x

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

x x x x x x x x x

[23] Rollo, p. 12.

[24] See *People v. Quintos*, G.R. No. 199402, November 12, 2014, p. 7.

[25] *People v. Laog*, G.R. No. 178321, October 5, 2011, 658 SCRA 654, 665-666.

[26] See *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 151.

[27] Records (Crim. Case No. 4113), p. 11.

[28] TSN, January 26, 2011, p. 17.

[29] *People v. Macapanas*, 634 Phil. 125, 146 (2010).

[30] *People v. Olaybar*, 459 Phil. 114, 116 (2003).

[31] See REVISED PENAL CODE, Article 266-B.

[32] *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 499.

[33] 628 Phil. 124 (2010).

[34] Id. at 135.

[35] Id.

[36] See *People v. Castillo*, G.R. No. 193666, February 19, 2014, 717 SCRA 113, 125-126.

[37] G.R. No. 208173, June 11, 2014, p.10.

[38] See *People v. Castillo*, supra note 36, at 135 and *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 643.

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