

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE BUGHO Y ROMPAL, A.K.A. “JUN THE MAGICIAN”, APPELLANT.

G.R. No. 208360. April 06, 2016

Ponente: PERALTA, J.

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PERALTA, J.:

For review is the Decision[1] dated September 10, 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04123 which affirmed the conviction of appellant for statutory rape under Article 266-A of the Revised Penal Code and imposed the penalty of reclusion perpetua.

Appellant was charged in the Regional Trial Court (RTC) of Baguio City, Branch 59, with statutory rape in an Amended Information[2] dated October 29, 2004, the accusatory portion of which reads:

That on or about the 17[th] day of September 2004, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of cajolery, deceit and other fraudulent machinations, have carnal knowledge of complainant AAA,[3] a minor under twelve (12) years of age.

CONTRARY TO LAW.[4]

When arraigned,[5] appellant pleaded not guilty to the crime charged. Trial thereafter ensued.

The prosecution's evidence showed that in 2004, AAA was only 10 years old having been born on May 4, 1994,[6] and a grade 4 student.[7] She and appellant used to be neighbors.[8] On September 17, 2004, after her dismissal from school, AAA and her younger sister, BBB, went to the house of appellant, who was known in their neighborhood as a magician by occupation, to watch his magic tricks.[9] While AAA and BBB were inside appellant's house, the latter told BBB to leave the house as he was going to tell a secret to AAA.[10] BBB left the house and waited outside the gate.[11] Appellant brought AAA to his room and undressed her by removing her pants and panty and laid her on the bed.[12] Appellant then kissed her lips several times, licked her vagina and pressed his penis against it while on top of her.[13] AAA then felt a sticky liquid coming out from appellant's penis.[14] Later, appellant told AAA to put on her dress and gave her thirty pesos (P30.00).[15] AAA then left appellant's house and looked for BBB, who after a while came out from the direction of appellant's apartment carrying two school bags, that of AAA's and her sister's. Both sisters then went home together.[16]

CCC, the godfather of AAA's father, DDD, and also appellant's neighbor was approached by BBB on September 17, 2004 asking the whereabouts of her sister AAA.[17] CCC later saw that as BBB passed by appellant's house, the latter handed a school bag to BBB[18] which he later learned to belong to AAA.[19] CCC told DDD about what he saw.[20] As DDD got suspicious that appellant was doing something unpleasant to AAA, he had a heart to heart talk with AAA,[21] who told him what appellant did to her on that day.[22] AAA also divulged that appellant had abused her several times before only that she was afraid to tell her parents because of fear that they would spank her. The same evening, DDD, accompanied by his wife, brought AAA to the Baguio City Police Station and filed a complaint against appellant,[23] and later proceeded to the Baguio General Hospital and

Medical Center (BGHMC) for AAA's physical examination.[24]

Dr. Gwynette Dizon, the Chief Resident of the Pediatric Department of the BGHMC, conducted an ano-genital examination on AAA the following day the incident happened. She issued a medical certificate[25] which showed erythema and swelling of the urethra and periurethral area and erythema on the hymen. During trial, she testified that there was erythema or redness over the urethra and periurethral area and such erythema was fresh which implied a recent incident;[26] that erythema or redness and swelling may be caused by the pressing of the male sex organ to the victim's organ.[27]

Appellant denied the allegation saying that he was doing laundry chores outside his apartment when AAA approached him to collect the amount of P30.00 as payment for taking care of his doves and rabbits, which appellant then paid.[28] Appellant later saw AAA sliding down on the stairway railing with her hands and her two feet clipped over the pole.[29] By past noon, he was asked by BBB regarding AAA's whereabouts to which he replied that AAA had already gone home.

On June 10, 2009, the RTC rendered its Decision,[30] the dispositive portion of which reads:

WHEREFORE, premises all duly considered, the court finds that the prosecution has established the guilt of the accused of the crime of rape under par. 1 (d) of RA 8353 beyond reasonable doubt and hereby imposes upon him the penalty of Reclusion Perpetua and to indemnify the offended party the amount of P75,000.00 as civil indemnity, the amount of P25,000.00 as moral damages, and P25,000.00 as exemplary damages and to pay the costs.[31]

The RTC found that appellant's denial cannot prevail over AAA's clear and positive testimony. Appellant's admission that AAA went to his place and gave her P30.00 strengthened the prosecution's evidence; and that the findings of Dr. Dizon that the erythema and swelling found in AAA's genitalia supported the charge of statutory rape.

On September 10, 2012, the CA rendered its Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the Judgment dated 10 June 2009 issued by the Regional Trial Court of Baguio City, Branch 59, finding accused-appellant Felipe Bugho GUILTY beyond reasonable doubt of the crime of RAPE is hereby AFFIRMED with MODIFICATION as to the award of damages: Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages. Costs against the accused-appellant.[32]

Dissatisfied, appellant filed a Notice of Appeal. On September 30, 2013, we required the parties to submit Supplemental Briefs if they so desired.[33] The parties manifested that they were no longer filing supplemental briefs as they had already exhaustively argued their case in their respective briefs filed before the CA.

Appellant contends that his conviction is patently erroneous as it was merely based on the corroborative testimony of Dr. Dizon that AAA suffered erythema on her urethra and periurethral areas; and that AAA's credibility is questionable considering her unexplained continued visits to appellant's apartment until September 17, 2004 despite her allegation that the latter raped her in the same place and manner for several times; and also her failure to justify her non-immediate and voluntary reporting of any molestations to her parents. Appellant further argues that the prosecution failed to prove his guilt as there was no showing that appellant had a penile penetration to consummate the crime of rape.

We find no merit in the appeal.

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, defines statutory rape as follows:

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

1) By a man who shall have carnal knowledge of a woman x x x:

x x x x

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

Thus, two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Thus, proof of force, intimidation and consent is unnecessary since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[34]

In this case, AAA was only 10 years old when appellant had carnal knowledge of her on September 17, 2004 as she was born on May 4, 1994. AAA's age was stipulated and admitted by appellant and his counsel during the pre-trial conference.[35]

AAA had narrated in a positive and categorical manner how she was sexually abused by appellant. She testified that appellant brought her to his room, removed her pants and panty and laid her on the bed. He kissed her lips, licked her vagina and pressed his penis against her vagina while he was on top of her. She later felt a warm sticky liquid coming out from appellant's sex organ. Thereafter, appellant asked her to put on her dress and gave her P30.00.

The Medical Certificate issued by Dr. Dizon lends credence to AAA's testimony that appellant had pressed his sex organ on her vagina. The medical certificate showed that there was erythema or redness and swelling of the urethra and periurethral area and also erythema of the hymen. During the trial, Dr. Dizon explained her findings in this wise:

Q.

Now I call your attention to an entry under the heading Ano-Genital Examination after the phrase urethra and periurethral area of the entry reads (+)erythema(+) swelling. Now can you tell the court in layman's term what these findings are?

A.

The urethra is the area where the urine comes out and periurethral area is the area around the urethra. I saw erythema meaning redness over there and there was also swelling.

Q.

And was this erythema fresh at that time?

A.

Yes, sir. Difficult to determine the age sir, but usually presence of redness would imply an acute incident.

Q.

Meaning?

A.

Meaning recent incident.

x x x x

Q.

Now can the pressing of a male penis on the sex organ of the victim cause erythema?

A.

Yes, possible sir.

Q.

And can the pressing of the male penis on the private part of the victim cause also swelling.

A.

Possible sir.[36]

x x x x

Q.

Now, you said you took down the brief history of the patient's complaint?

A.

Yes, sir.

Q.

And after that, you conducted the ano-genital examination on the said person?

A.

Yes, sir.

Q.

Were your findings as embodied in "Exhibit C" consistent with the history which you took from the patient?

A.

Yes, Sir.[37]

To the court's clarificatory questions, Dr. Dizon stated, to wit:

COURT:

Q.

In your examination on the patient, you do interview, you do external as well as internal examinations. As an expert witness, is there sufficient evidence to show that that particular patient had been sexually abused?

A.

Your honor, that is why we wrote in the impression that the ano-genital findings seen in this patient are to be expected in a child who describes this type of molestation because it's how she describes how she was abused.

May I read it?

Court:

Yes.

Witness

"Dinala ako sa kwarto niya at tinanggal ang t-shirt at pantalon ko. Hinawakan nya pekpek ko at dinikit ari nya. Hinalikan din ako sa lips at sa pekpek ko."

Based on the history, the perpetrator did not put inside (sic) or did not penetrate.

COURT:

Q.

Based on the interview?

A.

Yes, your honor.

Q.

Would that interview be consistent with your findings?

A.

Yes, your honor, because in this interview the victim describes that the perpetrator held and placed his penis over her external genitalia and also the perpetrator kissed her private part.

Q.

So in that particular examination, therefore, finding redness and swelling over the internal part of the vagina there was pressure applied to that?

A.

Yes, your honor, it's possible.

Q.

And there was no external injury outside of the vaginal premises?

A.

Yes, your honor, over the external, the covering.

Q.

None, the covering none?

A.

None.

Q.

But inside, there was?

A.

Yes, your honor.[38]

In *People v. Campuhan*,[39] we stated that:

x x x touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.[40]

Indeed, there is no doubt that appellant's sex organ had gone beyond AAA's mons pubis and had touched the labia of the pudendum as established by the erythema or redness of the urethra and hymen and swelling of the periurethral area, which are of recent incident. The said areas are located in the internal part of the vagina and for the penis to touch those areas is to attain a degree of penetration beneath the surface of the female genitalia. Penile invasion necessarily entails contact with the labia and even the briefest of contacts without laceration of the hymen is deemed to be rape.[41] Moreover, Dr. Dizon's finding that the erythema and swelling found in the internal part of the vagina are of recent incident further bolstered AAA's claim of rape the day before.

Appellant also attacks AAA's credibility because of her continued visits to appellant's house despite her allegations of several rapes earlier committed against her.

AAA testified that she found appellant's magical tricks fun to watch[42] and because he had rabbits, snakes and doves in his house.[43] The joy that appellant's magic and his animals brought to an innocent child did not deter the latter from going back to appellant's house. Sadly, however, appellant took the opportunity to satisfy his carnal desires on the innocent child. It bears stressing that mere sexual congress with a woman below twelve years of age consummates the crime of statutory rape. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.[44] The law presumes that a woman of tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[45] The child victim's consent is immaterial because of her presumed incapacity to discern evil from good.[46]

Appellant's claim that AAA's failure to report the sexual abuse to her parents also casts doubt on the credibility of her charge is not meritorious. AAA explained that she did not report the sexual abuse to her parents for fear that the latter might get angry with her and might scold or whip her[47] since she and her sister had been forbidden by their parents to go to appellant's house to watch magic' tricks as it disturbed their schooling.[48] Thus, as the Office of the Solicitor General correctly stated, "the prospect of experiencing physical pain and verbal abuse from her parents, in the mind of a ten-year-old girl, is enough reason for the delay in exacting the truth from her."[49] Notably, it was only after AAA's father had a heart-to-heart talk with her on the night of September 17, 2004 and assured her of the latter's understanding that AAA started to talk on what appellant had done to her.[50]

The alleged inconsistency as to the amount AAA received from appellant after the rape incident, whether P15.00 or P30.00, refers to a minor matter which is irrelevant to the elements of the crime of rape.

The RTC correctly rejected appellant's denial which is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testify on affirmative matters.[51] AAA's positive testimony, coupled with the medical findings, deserves more persuasive weight than the bare denial of appellant.

We find that the RTC, as affirmed by the CA, correctly imposed the penalty of reclusion perpetua upon appellant

for the crime of statutory rape in accordance with Article 266-B[52] of the Revised Penal Code, as amended.

The CA's modification of the RTC's awards of civil indemnity and moral damages to the amounts of P50,000.00 each, as well as the increase of the exemplary damages to the amount of P30,000.00, are likewise affirmed. In addition, the amount of damages awarded should earn interest at the rate of 6% per annum from the finality of this judgment until said amounts are fully paid.[53]

WHEREFORE, the petition is DISMISSED. The Decision dated September 10, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04123 is hereby AFFIRMED. Appellant Felipe Bugho y Rompal is further ORDERED to PAY legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.

SO ORDERED.

Velasco, Jr., (Chairperson), Perez, Mendoza,[*] and Reyes, JJ., concur.

[*]Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 29, 2016.

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S. E. Veloso and Eduardo B. Peralta, Jr., concurring; rollo, pp. 2-16.

[2] Records, p. 18.

[3] The real names of the victim and her immediate family members, as well as any information which could establish or compromise her identity, are withheld, pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] See note 2.

[5] Id. at 28.

[6] TSN, May 25, 2005, p. 6

[7] TSN, May 17, 2005, p. 3.

[8] Id. at 5.

[9] Id. at 6-8.

[10] Id. at 9.

[11] Id.

[12] Id. at 9-10.

[13] Id. at 10-11.

[14] Id.

[15] Id. at 12.

[16] TSN, May 25, 2005, pp. 2-3.

[17] TSN, July 25, 2005, p. 7.

[18] Id. at 8.

- [19] TSN, August 1, 2005, p. 4.
- [20] TSN, July 25, 2005, p. 9.
- [21] TSN, June 15, 2005, p. 7.
- [22] Id. at 8.
- [23] Id. at 9.
- [24] Id. at 11.
- [25] Records, p. 163.
- [26] TSN, October 25, 2005, pp. 8-9.
- [27] Id. at 9.
- [28] TSN, September 26, 2006, pp. 4-6.
- [29] Id. at 6-7.
- [30] CA rollo, pp. 38-45; Per Judge Iluminada P. Cabato; Docketed as Criminal Case No. 23626-R.
- [31] Id. at 45.
- [32] Rollo, p. 15.
- [33] Id. at 22.
- [34] *People v. Garbida*, 639 Phil. 107, 116 (2010), citing *People v. Sarcia*, 615 Phil. 97, 118 (2009).
- [35] Records, pp. 31, 35-37.
- [36] TSN, October 25, 2005, pp. 8-9.
- [37] Id. at 10.
- [38] TSN, January 24, 2006, pp. 8-9.
- [39] 385 Phil. 912 (2000).
- [40] *People v. Campuhan*, supra, at 920-921. (Emphasis omitted)
- [41] *People v. Aguiluz*, 406 Phil. 936, 944 (2001), citing *People v. Dimapilis*, 360 Phil. 466, 495 (1998).
- [42] TSN, May 30, 2005, p. 15.
- [43] Id.
- [44] *People v. Jalosjos*, 421 Phil. 43, 93 (2001), citing *People v. Quinagoran*, 374 Phil. 111, 121 (1999).
- [45] Id.
- [46] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 315.
- [47] TSN, May 25, 2005, pp. 3-4.
- [48] TSN, May 30, 2005, p. 3.
- [49] Rollo, p. 121.

[50] TSN, June 15, 2005, pp. 7-8.

[51] *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 379, citing *People v. Alvero*, 386 Phil. 181, 200 (2000); see *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587, 596.

[52] Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

[53] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

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