PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL “ANJOY” BUCA, ACCUSED-APPELLANT.

G.R. No. 209587. September 23, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

On appeal is the June 17, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00888-MIN convicting accused-appellant Joel "Anjoy" Buca of the crime of rape.

We state the antecedents as summarized by the CA[2]:

> On December 24, 2002 at around 1:00 o'clock in the afternoon AAA,[3] a seven (7) year old girl, together with her younger siblings CCC, DDD and EEE were in their house at Taal 2, Royal Valley, Bangkal, Davao City. Accused-appellant Joel "Anjoy" Buca (Anjoy for brevity), a neighbor of their family, entered the house and ordered AAA's siblings to go to another room to sleep. When Anjoy and AAA were all alone, Anjoy placed AAA on his lap, pulled down her panties and forcibly inserted his penis into her vagina. He began to have sex with AAA. CCC, the younger brother, who was at that time hiding below a bench, saw what was happening. CCC came out and pulled AAA away from Anjoy. Then, Anjoy warned AAA not to tell anyone of what he did or else he will kill her parents.
>
> BBB, the mother of AAA[,] came home after buying food. CCC met her at the door and told her, "Mie, Mie, si Ate (referring to AAA) gani no ky gibastos ni Anjoy". BBB pretended to ignore the information relayed by CCC as Anjoy was still inside their house. BBB was scared that Anjoy might notice her reaction. About ten minutes after, Anjoy left their house. AAA then disclosed that Anjoy did the same thing to her many times already.
>
> On the same day, AAA and her mother BBB reported the incident to the police. They also went to a physician to have her examined. The medical examination revealed thus:
>
> PROVISIONAL MEDICAL CERTIFICATE[4]
>
> x x x x
>
> ANOGENITAL EXAM
>
> Genitalia
>
> (+) Erythema, perihymenal area
> (+) Whitish and yellowish discharge
>
> Anus
>
> Normal
>
> CONCLUSION

1. Genital findings are suspicious for sexual abuse

On January 7, 2003, BBB executed an Affidavit-Complaint. Three (3) Informations were filed against accused-appellant Anjoy. The accusatory portions of the three (3) Informations state:

- In Criminal Case No. 52,260-2003:

"That sometime in the months prior to December 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned [accused], by means of force and intimidation, did then and there willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW";

- In Criminal Case No. 52,261-2003

"The undersigned accuses the above-named accused of the crime of Rape under Article 266-A of the Revised Penal Code as Amended by R.A. 8353, committed as follows:

That sometime before December 24, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did there and then willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW"; and

- In Criminal Case No. 52, 262-2003

"That sometime in the months after December 25, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did there and then willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW."

On August 24, 2004, accused-appellant was arraigned and entered his pleas of not guilty. Thereafter, trial ensued.

As regards Criminal Case No. 52,260-2003, the trial court dismissed it during the trial on May 28, 2007 after Prosecutor Dayanghirang manifested that the prosecution will not present evidence because "during his interview with the witness, she could not recall the dates x x x it was between 2001 and 2002 but she could not recall, so [the prosecution] will not anymore present"[5].

During his examination, accused-appellant vehemently denied the accusations against him. He insisted that on December 24, 2002 at about 5:45 in the morning, he passed by AAA's house. AAA called him as Uncle Joel and requested that he look after her younger brother who was crying. When asked where their mother was, AAA answered that she left to buy food. When he was about to leave, AAA called him again because her younger sibling was crying and she requested if he could watch over them. Accused-appellant declined as he was about to go to his work. He further testified that there was no unusual incident that happened on the day of December 24, 2002. Furthermore, he insisted that he has no knowledge whatsoever of the other accusations of AAA and BBB against him.

In a Judgment[6] dated November 11, 2010, the [Regional Trial Court (RTC)] found accused-appellant guilty of the crime charged in Criminal Case No. 52,261-2003, the dispositive portion of which provides:

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> WHEREFORE, for failure of the prosecution to present evidence in Criminal Case No. 52,260-2003, the said Criminal Case is hereby ordered DISMISSED.
>
> As to Criminal Case [N]o. 52,262-2003, for failure of the prosecution to prove the guilt of the Accused beyond reasonable doubt, the said case is hereby ordered DISMISSED and the ACCUSED is hereby ACQUITTED of the crime charged in the Information.
>
> As to Criminal Case [N]o. 52,261-2003, the Court finds Accused guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and 266-B of the Revised Penal Code and hereby sentences the said Accused to suffer the penalty of RECLUSION PERPETUA and to pay AAA, the sum of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS, as civil indemnity and FIFTY THOUSAND (P50,000.00) PESOS as moral damages.
>
> Under Article 29 of the Revised Penal Code, the Accused, who is detained, is hereby entitled to full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the rules and regulation[s] imposed upon convicted prisoners. If he did not agree, he shall be entitled to 4/5 of his preventive imprisonment.
>
> SO ORDERED.

Accused-appellant appealed. The CA affirmed the RTC ruling and agreed that the testimony of AAA was sufficient to establish the crime. The fallo of the appealed CA Decision reads:

> WHEREFORE, the Judgment dated November 11, 2010 of the RTC, Branch 12, Davao City is hereby AFFIRMED with MODIFICATION. Accused-appellant Joel "Anjoy" Buca is hereby found GUILTY beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of reclusion perpetua, without the benefit of parole.
>
> Accused-appellant is ORDERED to pay AAA the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.
>
> SO ORDERED.[7]

Hence, this appeal.

The issues for our consideration are:

- Whether or not accused-appellant is guilty of rape; and

- Whether accused-appellant may be convicted of rape despite the failure to allege the exact date of the commission of the crime in the Information.

We affirm the conviction of accused-appellant.

Accused-appellant is guilty of rape.

Accused-appellant contends that his guilt was not proved as the credibility of AAA and CCC, whose testimonies were utilized to establish the elements of rape, is in serious doubt due to their lack of candor and forthrightness in testifying. Accused-appellant further points out that there are inconsistencies in the narrations of the prosecution's witnesses that cast doubt on their statements.

We do not agree.

Article 266-A, paragraph (1) of the Revised Penal Code, as amended, defines the crime of rape:

> 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 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 the case at bar, the lower courts found that the element of carnal knowledge was established by the testimony of the victim, AAA, to wit:

PROS. DAYANGHIRANG III:

This time we go to Crim. Case No. 52,261-03

Q:

On December 24, 2002, at around one o'clock in the afternoon, where were you at that time, Miss Witness, if you can recall?

[AAA]

A:

In our house.

Q:

Who were with you in your house, at that time?

A:

My siblings and younger brothers.

Q:

You are referring to your younger brothers named what?

A:

[CCC, DDD and EEE.]

Q:

Aside from you, the three other siblings, who else were there and in your house at that time?

A:

No more... Anjoy.

Q:

You mean, the accused was also in your house at that time?

A:

Yes.

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COURT:

Q:

Do you know why he was in your house?

A:

I don't know.

x x x x

Q:

According to you, you and your three siblings were there in your house at that time together with the accused, and your mother left to buy viand. Tell us, what happened?

A:

He again cuddled me and put me on his lap and pulled down my panty.

Q:

Who at that time again cuddled you? Where were your other siblings?

A:

He ordered my other siblings to go inside the room and put them to sleep.

x x x x

Q:

Now, according to you, the accused pulled down your panty and cuddled you. What did he do next?

A:

He inserted his penis on (sic) my vagina.

Q:

What did he do next after he inserted his penis on (sic) your vagina?

A:

He was pumping again.

Q:

What did you feel?

A:

Pain.

Q:

What part of your body was painful?

A:

My vagina.

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Q:

That incident of sexual abuse and molestation happened in what part of the house?

A:

Near, at the door.

Q:

What happened next?

A:

One of my brothers saw it and he pulled me.[8]

We find the testimony of AAA sufficient to establish the element of carnal knowledge. We note that the RTC described the testimony of AAA as positive, credible, natural and convincing.[9] The Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[10]

Further, it is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[11] The Court observes restraint in interfering with the trial court's assessment of the witnesses' credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, more so, when the CA sustained such assessment, as in this case, where it affirmed the trial court's findings of fact, the veracity of the testimonies of the witnesses, the determination of physical evidence and conclusions.[12]

Furthermore, the narration of AAA is even more convincing as her testimony coincided with that of CCC, who witnessed the crime.[13] We note that the RTC also observed CCC's testimony to be positive, credible, natural and convincing.[14]

As to the alleged inconsistency in the testimony of AAA and that of her brother CCC, accused-appellant points out that AAA testified that her brother pulled her away from accused-appellant while CCC narrated that she was released by accused-appellant. In People v. Laog,[15] the Court clarified that minor inconsistencies are not enough to sustain the acquittal of an accused, to wit:

> xxx Nonetheless, this matter raised by appellant is a minor detail which had nothing to do with the elements of the crime of rape. Discrepancies referring only to minor details and collateral matters - not to the central fact of the crime - do not affect the veracity or detract from the essential credibility of witnesses' declarations, as long as these are coherent and intrinsically believable on the whole. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged. It cannot be overemphasized that the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony. (Emphasis supplied)

The minor inconsistency in this case is how AAA was released by accused-appellant which is not an element of rape. Such fact not being an element of the crime will not put to doubt the prosecution witnesses' testimony establishing the crime.

As to the element that the victim is under 12 years of age, the presentation of her birth certificate[16] confirming that she was indeed seven years old at the time the crime was committed on December 24, 2002 sufficiently established the second element of rape in this case.

In sum, we agree with the RTC and CA that the elements of rape were duly established.

The conviction of accused-appellant based on the Information stating that the crime was committed sometime before December 24, 2002, despite the fact that the crime was committed on December 24, 2002, is valid.

Accused-appellant argues that the statement in the Information[17] that the rape occurred sometime before December 24, 2002 despite the fact that the prosecution established that the crime was committed on December 24, 2002 violates Section 11,[18] Rule 110 of the Revised Rules of Criminal Procedure, as amended, on the requirement of stating the date of the commission of the offense and the right of the accused to be informed of the nature and cause of the accusation against him.

We do not agree.

The Court has already addressed this issue in People v. Lizada,[19] to wit:

> The Court does not agree with accused-appellant. It bears stressing that the precise date of the commission of the crime of rape is not an essential element of the crime. Failure to specify the exact date when the rape was committed does not render the Information defective. The reason for this is that the gravamen of the crime of rape is carnal knowledge of the private complainant under any of the circumstances enumerated under Article 335 of the Revised Penal Code, as amended, x x x Moreover, in People vs. Salalima,[20] this Court held that:
>
> Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. In previous cases, we ruled that allegations that rapes were committed "before and until October 15, 1994," "sometime in the year 1991 and the days thereafter," "sometime in November 1995 and some occasions prior and/or subsequent thereto" and "on or about and sometime in the year 1988" constitute sufficient compliance with Section 11, Rule 110 of the Revised Rules on Criminal Procedure. (Emphasis supplied)

Notably, Section 11, Rule 110 of the Revised Rules of Criminal Procedure, as amended, states that it is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. Such requirement is not applicable to the crime of rape where the date of the commission of the offense is not an essential element. Also, said Section 11 expressly permits that a crime may be alleged to have been committed on a date as near as possible to the actual date of its commission. The information charging accused-appellant of rape sometime before December 24, 2002 when the crime was committed exactly on December 24, 2002 is sufficiently compliant with said Section 11. In addition, as correctly pointed out by the CA, the Information is valid as under Section 6, Rule 110 of the 2000 Revised Rules of Criminal Procedure, an information is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[21]

The Court has also discussed the essence of the right of the accused to be informed of the nature and cause of accusation against him in Andaya v. People,[22] to wit:

> It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense,
> x x x (Emphasis supplied)

It is evident in this case that accused-appellant was able to testify about the incident on December 24, 2002[23] because the date alleged was not vague or covering an unreasonable period as to deprive him the opportunity to prepare his defense which is the essence of the right allegedly violated. It is worthy to note that the records are bereft of any objection by the accused-appellant about the date of the commission of the crime at the time of arraignment,[24] during the formal offer of exhibits[25] and at the time the prosecution put AAA on the witness stand[26] to establish the rape committed on December 24, 2002. In People v. Gianan,[27] the Court held that an accused-appellant's failure to raise a timely objection that the time difference alleged in the information covered a broad period constitutes a waiver of his right to object. We further observe that accused-appellant did not even disavow knowledge of the incident on that date but, in fact, admitted that he spoke with AAA at their house on December 24, 2002[28] and even entered AAA's house.[29] The testimony of accused-appellant leads us to conclude that the allegation was sufficient to inform him of the date the crime charged occurred which enabled him to prepare his defense. Thus, we find the allegations in the Information and the subsequent conviction of accused-appellant by the lower courts valid and lawful under the circumstances.

Proper use of the phrase "without eligibility for parole" in indivisible penalties.

The CA, in the dispositive portion of its Decision, sentenced accused-appellant to suffer the penalty of reclusion perpetua, without the benefit of parole.[30] A.M. No. 15-08-02-SC31 is instructive on the matter of using the phrase without eligibility for parole to qualify indivisible penalties, to wit:

> II.
>
> In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":
>
> (1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of reclusion perpetua; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and
>
> (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify reclusion perpetua in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

In the instant case, since the accused-appellant committed simple rape, a crime penalized by reclusion perpetua only, the dispositive portion of this decision should plainly state that he is sentenced to suffer the penalty of reclusion perpetua without any qualification.

WHEREFORE, in light of all the foregoing, the appeal is hereby DISMISSED. The Decision dated June 17, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 00888-MIN is AFFIRMED with a clarification that the

accused-appellant is sentenced to suffer the penalty of reclusion perpetua.

Costs against accused-appellant.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez,[*] and Jardeleza, JJ., concur.

October 13, 2015

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___September 23, 2015___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 13, 2015 at 2:54 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[1] Rollo, pp. 3-16. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez concurring.

[2] Id. at 3-7.

[3] Fictitious names are used in place of the names of the private complainant and her family members to protect her privacy pursuant to the case of People v. Cabalquinto, 533 Phil. 703 (2006) and Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules.

[4] Records, p. 5.

[5] TSN, May 28, 2007, pp. 16-17.

[6] Records, pp. 190-208. Penned by Judge Pelagio S. Paguican.

[7] Rollo, pp. 15-16.

[8] TSN, May 28, 2007, pp. 11-14.

[9] Records, p. 206.

[10] People v. Perez, 595 Phil. 1232, 1251-1252 (2008).

[11] People v. Buclao, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 377; People v. Gani, G.R. No. 195523, June 5, 2013, 697 SCRA 530, 537.

[12] People v. Galicia, G.R. No. 191063, October 9, 2013, 707 SCRA 267, 276. .

[13] TSN, May 28, 2007, pp. 26-29.

[14] Records, p. 206.

[15] 674 Phil. 444, 462-463 (2011).

[16]

[17] Id. at 1.

[18] SEC. 11. Date of commission of the offense. - It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

[19] 444 Phil. 67, 86-87 (2003).

[20] Records, p. 6.

[20] 415 Phil. 414,425 (2001).

[21] Rollo, p. 8.

[22] 526 Phil. 480, 497 (2006).

[23] TSN, March 5, 2009, pp. 4-6.

[24] Records, pp. 18-19, 40-41.

[25] Id. at 145-146, 151-152.

[26] TSN, May 28, 2007, pp. 3-4,11.

[27] 394 Phil. 822, 835 (2000), citing People v. Garcia, 346 Phil. 475 (1997). See also People v. Lizada, supra note 19, at 83.

[28] TSN, March 5, 2009, pp. 5-6.

[29] Id. at 6.

[30] Rollo, p. 15. Emphasis supplied.

[31] Issued by the Court on August 4, 2015.

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