

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROD FAMUDULAN Y FEDELIN, ACCUSED-APPELLANT.

G.R. No. 212194. July 06, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is an appeal[2] from the October 3, 2013 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05447 which affirmed with modification appellant Rod Famudulan's conviction for the crime of statutory rape as defined under Article 266-A(1)(d)[4] of the Revised Penal Code, as amended, (RPC) in Criminal Case No. P-7904 before the Regional Trial Court (RTC), Branch 41, Pinamalayan, Oriental Mindoro.

Appellant, a 42-year-old man, was accused and charged with the crime of statutory rape against AAA,[5] who, with her mother[6] and father,[7] filed an Information[8] with the provincial prosecutor which reads:

That on or about the 1[ST] day of January, 2010 at around 12:00 o'clock noon, in Barangay [XXX], Municipality of [YYY], Province of Oriental Mindoro, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, ROD FAMUDULAN y Fedelin, with lewd and unchaste designs, by means of violence, force and intimidation, did lie and succeeded in having sexual intercourse of one [AAA], a six (6) year-old-girl minor, against the latter's will and without her consent, acts which affects her moral, psychological and emotional growth, to her damage and prejudice.

CONTRARY TO ART. 335 of the RPC as amended by R.A. 7659, in relation to R.A. 7610.

Appellant pleaded not guilty on arraignment.[9] After pre-trial terminated, trial on the merits ensued.

The prosecution presented AAA and Dr. Adelaido Malaluan as its witnesses.

AAA,[10] a six-year-old girl,[11] testified that the appellant was her aunt's neighbor. She stated that on January 1, 2010, at around noon, she was cornered and ordered by the appellant to fellate him while he inserted his finger in her vaginal orifice. Thereafter, accused inserted his organ in her orifice. Accused threatened to kill her if she told anybody of what had happened. She positively identified accused as her assailant in open court.[12]

Dr. Malaluan, a Rural Health Physician, examined AAA and affirmed that he executed a Medico-Legal Report[13] with the following findings:

FINDINGS:

- > Contusion hematoma left frontal area;
- > Fresh complete laceration at 6 and 9 o'clock position on the part of the hymen.

LABORATORY REPORT:

GRAM STAIN (CERVICO-VAGINAL SMEAR) - No Sperm cell seen.

Dr. Malaluan stated that the injuries sustained by AAA, i.e., hematoma, contusion and fresh lacerations, may have

been caused by a blunt object such as a hard penis.[14]

For its part, the defense presented appellant as its lone witness. Appellant denied the charge against him. He claimed that on January 1, 2010, at noontime, he went to his cousin Joel Falame's house to borrow P500.00 as bus fare to Batangas. Thereafter, he boarded a van bound for Calapan. Deciding that it was too late in the day for him to take the trip all the way to Batangas, appellant alighted in Banus and spent the night at the house of one Evelyn Rosas. The following day, he boarded the bus going to Batangas and arrived there the day after. He testified that he did not know of any reason why AAA or her family would file the case against him.

In its January 12, 2012 Decision,[15] the RTC found appellant guilty beyond reasonable doubt of the crime of statutory rape. The RTC gave credence to AAA's testimony since she was a child of tender years, AAA being only seven years old. Moreover, the testimony was delivered in a spontaneous and straightforward manner. On the other hand, appellant's defense of denial and alibi was left unsubstantiated by evidence. The RTC noted that Bansud is not too far from Banus. In light of the credible testimony and positive identification of the appellant by AAA and appellant's unsubstantiated defense, the RTC found appellant guilty beyond reasonable doubt of the crime of statutory rape. Thus:

ACCORDINGLY, premises considered, the court hereby finds ROD FAMUDULAN y Fedelin guilty beyond reasonable doubt of the crime of Statutory Rape and hereby sentences him to suffer the penalty of Reclusion Perpetua. To pay the offended party the amount of Fifty Thousand ([P]50,000.00) Pesos as civil indemnity; Fifty Thousand ([P]50,000.00) Pesos as moral damages; and to pay the costs.

SO ORDERED.[16]

Appellant moved for reconsideration, but the same was denied in the RTC's January 26, 2012 Order.[17]

On appeal, the CA affirmed the RTC's ruling but modified the award of damages. The CA stated that all the elements of the crime of statutory rape were proven by the prosecution. It also stated that AAA's age was established by a certified true copy of her Certificate of Live Birth,[18] the best evidence to prove age. Moreover, the CA sustained the RTC's finding that AAA was a credible witness owing to her clear, candid and spontaneous testimony. Absent any iota that the trial court overlooked or arbitrarily disregarded facts and circumstances of significance, the appellate court will not disturb the credence placed by the trial courts to the testimony of witnesses, the RTC being in the best position to assess the credibility of witnesses. The CA thus affirmed the conviction, but increased the award of damages. The CA ruled:

WHEREFORE, the appeal is DENIED. The assailed Decision and Order in Criminal Case No. P-7904 is AFFIRMED with the MODIFICATION that accused-appellant ROD FAMUDULAN y FEDELIN is ordered to indemnify AAA the amount of [P]75,000.00 as civil indemnity, [P]75,000.00 as moral damages, [P]30,000.00 as exemplary damages and that all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of the judgment until fully paid.

The sentence of imprisonment is maintained.

IT IS SO ORDERED.[19]

Hence, this appeal.

On January 14, 2015, this Court required the parties to file their supplemental briefs, but both parties manifested that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.[20]

The issue for our consideration is whether the CA erred in affirming appellant's guilt beyond reasonable doubt.

We dismiss the appeal but modify the penalty imposed.

The crime of statutory rape is defined by Article 266-A(l)(d) of the RPC which reads:

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:

x 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 (Emphasis supplied.)

Sexual congress with a girl under 12 years old is always rape.[21] We have thus ruled that in the prosecution of statutory rape the following elements must exist: (1) the victim is a female under 12 years of age or is demented; and (2) the offender had carnal knowledge of the victim.[22] In order to successfully convict an accused for statutory rape therefore, it is imperative that the prosecution prove that the woman is under 12 years of age and carnal knowledge took place.[23]

Here, we agree with both the CA and the RTC that appellant is guilty beyond reasonable doubt of the crime of statutory rape.

One, appellant's objection that AAA's birth certificate was not offered in evidence is unfounded. That AAA was six years old at the time of the incident was proven when her Certificate of Live Birth[24] was introduced in evidence.[25]

Two, we agree that appellant had carnal knowledge of AAA.

In the recent case of *People of the Philippines v. Jose Estalin Prodenciano*,[26] we reiterated the guidelines in addressing the issue of credibility of witnesses. First, this Court gives the highest respect to the RTC's evaluation of the testimony of the witness, it having the distinct opportunity of observing the witness' demeanor on the stand.[27] Second, absent substantial reasons, i.e., significant facts and circumstances, affecting the outcome of the case, that are shown to have been overlooked or disregarded, which would warrant the reversal of the RTC's evaluation, the appellate court is generally bound by the lower court's findings.[28] Lastly, the rule is stringently applied when the CA affirms the lower court's ruling.[29]

Here, appellant presents no compelling reason to disturb the RTC and the CA's assessment of AAA's credibility. He merely attacks AAA's testimony for its supposed lack of detail. We disagree.

AAA testified that appellant ordered her to perform fellatio on him while simultaneously inserting his fingers in her genitals whereafter he had sexual relations with her. At this point in the court proceedings, AAA testified in the following manner:

Q.-

[AAA], do you know Rod Famudolan?

A.-

Yes, sir.

Q.-

Why do you know Rod Famudolan?

A.-

Because he was residing in our place.

Q.-

Do you know the house of Rod Famudolan?

A.-

Yes, sir.

Q.-

Where is it situated?

A.-

He is a neighbor of my Auntie.

Q.-

You are a victim in this case and you executed an affidavit?

A.-

Yes, sir.

Q.-

What did Rod Famudolan did (sic) to you?

WITNESS:

A.-

He ordered me to sack (sic) his penis and he inserted his finger inside my vagina.

PROS. DE LOS REYES:

Q.-

Then what else happened?

A.-

And he made a pumping motion, sir.

x x x x x x x x

Q.-

A.-

What did he tell you if any?

He will kill and he will not let me live.[30[]]

It has been held that when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity.[31] Besides, no sane woman, least of all a child, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.[32] Given AAA's immaturity and the injuries as found in the medical report, consistent with sexual abuse, this Court finds no reason to reverse the CA and the RTC decisions.

Moreover, appellant's defense of denial and alibi are inherently weak and self-serving, especially if uncorroborated.[33] Denial cannot prevail over complainant's direct, positive and categorical assertion. As between a positive and categorical testimony which has the ring of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[34]

However, we are constrained to modify the penalty imposed by the RTC and the CA. Article 266-B provides that in cases of qualified statutory rape the penalty imposed shall be death, viz.:

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:

x x x x x x x x

5. When the victim is a child below seven (7) years old.

However, Republic Act (R.A.) No. 9346[35] prohibited the imposition of the death penalty.[36] Sections 2 and 3 of R.A. No. 9346 instead prescribes that the penalty of reclusion perpetua without eligibility for parole be imposed in cases where the penalty imposed is reclusion perpetua or the sentence will be reduced to reclusion perpetua, to wit:

SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

x x x x x x x x

SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Here, AAA's age was proven to be six years old at the time of the abuse, therefore, the imposable penalty is reclusion perpetua without eligibility for parole. Further with respect to the damages awarded, we find that the same is in line with current jurisprudence.

WHEREFORE, the appeal is DISMISSED for lack of merit. The October 3, 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05447 is AFFIRMED with MODIFICATION. Appellant ROD FAMUDULAN y FEDELIN is hereby found GUILTY beyond reasonable doubt of Statutory Rape under Article 266-A(l)(d) of the Revised Penal Code, as amended by R.A. No. 8353, in relation to Article 266-B and is accordingly sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. He is ORDERED to pay AAA P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages with interest thereon at the rate of six percent (6%) per annum reckoned from the finality of this Decision until fully paid.

With costs against the accused-appellant.

SO ORDERED.

Peralta[*] (Acting Chairperson), Del Castillo,**] Perez,[***] and Perlas-Bernabe,[****]JJ., concur.

[*] Designated Acting Chairperson per Special Order No. 2071 dated June 23, 2015.

**] Designated additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated November 10, 2014.

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

****] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2072 dated June 23, 2015.

[1] Also referred to as Rod Famudolan in certain parts of the rollo and records.

[2] CA rollo, pp. 111-112.

[3] Rollo, pp. 2-14. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca de Guia-Salvador and Samuel H. Gaerlan, concurring.

[4] REVISED PENAL CODE, Art. 266-A(l)(d) provides:

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

x x x x x x x x

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x 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.

[5] The victim's name was substituted pursuant to Section 44 of R.A. No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, *People v. Cabalquinto*, 533 Phil. 703 (2006) and Section 40, A.M. No. 04-10-11-SC.

[6] Records, pp. 8-9.

[7] *Id.* at 10.

[8] *Id.* at 1. Filed on January 7, 2010.

[9] *Id.* at 29.

[10] AAA was seven years old at the time of testimony. TSN, November 2, 2010, p. 1.

[11] AAA's Certificate of Live Birth was used to prove victim's age. Records, p 48.

[12] TSN, November 2, 2010, pp. 2-3.

[13] Records, p.12. Dated January 7, 2010.

[14] TSN, July 29, 2010, pp. 3-5.

[15] CA rollo, pp. 72-77. Penned by Presiding Judge Winston V. Baldos.

[16] *Id.* at 77.

[17] Records, pp. 88-89.

[18] *Id.* at 48. Certificate of Live Birth states that AAA's date of birth is June 21, 2003.

[19] Rollo, p.13.

[20] *Id.* at 25-29 and 32-33.

[21] *People v. Sabal, Jr.*, G.R. No. 201861, June 2, 2014, 724 SCRA 407, 411.

[22] *People v. Besmonte*, G.R. No. 196228, June 4, 2014, 725 SCRA 37, 50.

[23] *Id.*

[24] Records, p. 48.

[25] RTC Order dated December 14, 2010, *id.* at 44.

[26] G.R. No. 192232, December 10, 2014.

[27] *Id.* at 7.

[28] *Id.*

[29] Id.

[30] TSN, November 2, 2010, pp. 2-3.

[31] *People v. Sabal, Jr.*, supra note 21, at 412.

[32] *People v. Barcelá*, G.R. No. 208760, April 23, 2014, 723 SCRA 647, 661.

[33] *People of the Philippines v. Jose Eslalin Prodenciano*, supra note 26, at 14-15.

[34] *People v. Bonaagua*, G.R. No. 188897, June 6, 2011, 650 SCRA 620, 636.

[35] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[36] R.A. No. 9346, Section 1, provides:

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659) otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

July 27, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on July 6, 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 27, 2015 at 11:30 a.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

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