PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO D. MISA III, ACCUSED-APPELLANT.

G.R. No. 212336. July 15, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is an appeal[1] from the September 30, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 00781 finding appellant Arsenio D. Misa III guilty beyond reasonable doubt of the crime of simple rape. Appellant was originally found guilty of statutory rape by the Regional Trial Court (RTC), Branch 14, Cebu City in its September 18, 2007 Decision[3] in Crim. Case No. CBU-72202.

On January 14, 2005, the City Prosecutor filed the following Information[4] for rape in relation to Republic Act (RA) No. 7610 against appellant Arsenio D. Misa III:

> That on or about the 18[th] day of October 2004 at about 12:00 p.m. more or less, in the City of Talisay, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and by means of force and intimidation, did then and there have carnal knowledge with one [AAA],[5] a minor, 8 years of age, without the consent and against the will of the latter, thus committing other acts of child abuse or other conditions prejudicial to the child's development.
>
> CONTRARY TO LAW.[6]

The Information was later on amended changing AAA's age to eleven years old.[7]

On arraignment, appellant pleaded not guilty to the charge.[8] After pre-trial, trial on the merits ensued.

The prosecution presented AAA, her sister BBB,[9] Dr. Naomi Poca and RRR.[10]

AAA testified that on October 18, 2004 as she and BBB, her younger sister, were walking back to school after taking their lunch at home, appellant called out to the sisters. Appellant told them that he would tell AAA's fortune by reading her palm. He then grabbed AAA's hand and examined her palm. He told AAA that any person who would court her will die. When AAA asked why that was so, appellant ignored the question and told her to shut up. Appellant then handed AAA twenty pesos and BBB five pesos. After handing BBB the money, the appellant then told her to go to class and threatened to hit her forcefully on the head if she disobeyed. Out of fear, BBB obeyed.[11]

Appellant then grabbed AAA's hand and dragged her to the back portion of the school compound. There being a lot of children, the appellant hailed a trisikad[12] and forced AAA to board with him. AAA sat beside appellant and felt something sharp pricking her back.[13]

They disembarked near a farm lot. Appellant dragged AAA to an area where several banana trees grew. Appellant thereafter ordered AAA to lie down on the ground. He undressed her and proceeded to take liberties on her person. He took off her underwear and licked her vagina. Appellant then removed his pants and had carnal

knowledge with AAA making her bleed. Throughout the ordeal appellant held a sharp pointed object to coerce her into submission.[14]

After appellant was done, he left AAA in the middle of the banana farm. AAA then went to the house of the barangay tanod, a friend of her father, to seek help. The barangay tanod assisted and escorted AAA to the police station and informed AAA's parents of what had just transpired. They reported the incident then proceeded to the hospital for examination.[15]

BBB corroborated AAA's testimony up to the point where she was ordered by the appellant to enter her classroom.

Dr. Poca, the representative of the hospital where AAA was examined, verified the contents of the Medical Certificate[16] issued by the Women and Children Friendly Center of the Vicente Sotto Memorial Medical Center where it was found that AAA was "DEFINITE FOR SEXUAL ABUSE" due to the victim's swollen genital area, abrasions and semen found thereat. In addition, the medical report noted that AAA sustained a 10-cm. abrasion at her back.[17] She explained that based on the findings the linear abrasion at the back was caused by a sharp instrument. There was also definite blunt trauma to the hymen and external genitalia.[18] The vaginal swab taken during the examination came out positive for the presence of spermatozoa.[19]

RRR, AAA's mother, testified that while she and her husband were tending to the shells that they had gathered, a barangay tanod came to their house and informed them that their daughter had been raped. RRR immediately went to the police station, where she filed an affidavit, and brought her daughter to the hospital to be examined.[20]

While the defense presented appellant, Rocel dela Cruz and Benedicta dela Victoria as its witnesses, only the testimony of appellant had substance.

Appellant denied knowing AAA and raping her. He alleged that he could not have been the perpetrator because on the day of the supposed incident he was working as a conductor plying the Tabunok-Carcar route and that he did not match the cartographic sketch of the alleged rapist.[21]

In its September 18, 2007 Decision, the RTC found appellant guilty beyond reasonable doubt of statutory rape. It noted that AAA was below 12 years old at the time of the incident and that carnal knowledge was proven. It thus ruled:

> WHEREFORE, in view of the foregoing premises, JUDGMENT is rendered finding accused, ARSENIO D. MISA III, of Rape in relation to Violation of R.A. 7610 as is sentence[d] to a penalty of imprisonment of reclusion perpetua. Accused is also ordered to pay [AAA], private complainant the following amounts:
>
> 1) P50,000.00, for and as moral damages;
>
> 2) P25,000.00, for and as exemplary damages.
>
> SO ORDERED.[22]

On appeal,[23] the CA in its September 30, 2013 Decision affirmed the RTC's findings. The CA noticed that while the prosecution presented AAA's birth certificate as Exhibit 'H' in its formal offer of exhibits, no such document was surrendered by the prosecution to the trial court. In its May 13, 2013 Resolution, the CA required the Clerk of Court of the RTC to submit Exhibit 'H'. In her June 7, 2013 affidavit, the Court Interpreter alluded that the said exhibit was never attached to the prosecution's formal offer.[24] It however stated that while it agreed with the RTC that appellant had carnal knowledge of AAA, he could only be found guilty of simple rape because AAA's minority was not proven in evidence in accord with this Court's ruling in People v. Lupac[25] reiterating

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People v. Pruna.[26] The CA thus held:

> IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS and [MODIFIES] the assailed Judgment dated September 18, 2007, of the Regional Trial Court, Branch 14, Cebu City in Criminal Case [No.] CBU-72202. Accused-Appellant ARSENIO D. MISA, III is found GUILTY of the crime of simple rape and is sentenced to suffer the penalty of Reclusion Perpetua. Accused-Appellant is ordered to pay AAA the amount of Fifty Thousand Pesos (Php 50,000.00) as civil indemnity; Fifty Thousand Pesos (Php 50,000.00) as moral damages; and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages, plus legal interest on all damages awarded at the rate of six percent (6%) from the date of the finality of this decision until fully paid.
>
> SO ORDERED.[27]

Hence, this appeal.[28]

In its December 10, 2014 Resolution, this Court informed the parties that they may file their respective supplemental briefs.[29] Both parties decided to forego the filing of the pleadings and adopted the briefs they submitted before the CA.[30]

Appellant assailed AAA's credibility as a witness and pointed out her inconsistent statements during testimony. He questioned the scant consideration given to his defense of denial and alibi.

We affirm the CA's decision in toto.

A person commits rape when he sexually assaults another who does not consent or is incapable of giving consent to a sexual act.[31] The crime of rape is defined and punished under Article 266-A and Article 266-B of the Revised Penal Code, as amended, (RPC). It provides:

> 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 is 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.
>
> x x x x

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

x x x x

After careful review of the records, appellant does not present any compelling reason for this Court to overturn the decision of the courts a quo.

We have consistently said that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts - and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."[32]

Here, AAA's testimony was found by the lower courts to be credible. Absent any compelling reason brought forth

by appellant, this Court does not see any need for it to deviate from their finding. In any event, it is evident from the transcript that AAA narrated what had happened to her in a clear and straight forward manner. The sequence of events from the appellant reading her palm-fortune, to the trisikad ride, to appellant's dragging her to a secluded area so that he may accomplish the dastardly deed. When we take all of the prosecution's evidence, i.e., the injuries AAA sustained, the corroborating testimony of AAA's mother and sister and AAA's categorical identification of appellant as her violator, and stack it up against the appellant's weak defense of denial and alibi, we find no compelling reason to overturn the finding of rape and the identification of the culprit. Verily, we have already ruled that mere inconsistencies in testimony are not fatal to the witness' credibility.[33] Nor can an alibi prevail over the positive identification of the accused by a credible witness.[34]

For a successful prosecution for the crime of statutory rape there are two elements which must be proven: (1) that the victim was under 12 years of age at the time of the incident and (2) carnal knowledge by the assailant of the victim. Both must be proven before an accused may be found guilty of statutory rape.

This Court has held that for minority to be considered as an element of a crime or a qualifying circumstance in the crime of rape, it must not only be alleged in the Information, but it must also be established with moral certainty.[35] Under Rule 130 of the Rules on Evidence, it is inferred that the victim's birth certificate is the best evidence of her age. We are guided by the guidelines set in People v. Pruna[36] in appreciating age as an element of the crime or as an aggravating or qualifying circumstance:

> 1. The 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.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[37] (Citations omitted)

Absent AAA's certificate of live birth and other means by which her age as alleged in the Information could have been ascertained beyond doubt, this Court is constrained to agree with the CA and deem the crime committed as simple rape.

WHEREFORE, the appeal is DISMISSED for lack of merit. The September 30, 2013 Decision of the Court of Appeals in CA-G.R. CR HC No. 00781 is AFFIRMED.

With costs against the accused-appellant.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro,[*] Peralta, and Perez,[**] JJ., concur.

August 14, 2015

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on July 15, 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 August 14, 2015 at 9:35 a.m.

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

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[*] Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2095 dated July 1, 2015.

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

[1] CA rollo, pp. 120-121.

[2] Rollo, pp. 4-26. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy concurring.

[3] CA rollo, pp. 17-21. Penned by Presiding Judge Raphael B. Yrastorza, Sr.

[4] Records, pp. 1-2.

[5] To protect the privacy of the victim and the immediate members of her family, their real names are withheld and fictitious initials are used instead to represent them, pursuant to Section 44 of R.A. 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, p. 1.

[7] Id. at 22 The Amended Information reads:

> That on or about the 18th day of October 2004 at about 12:00 p.m. more or less, in the City of Talisay, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and by means of force and intimidation, did then and there have carnal knowledge with one [AAA], a minor, 11 years of age, without the consent and against the will of the latter, thus committing other acts of child abuse or other conditions prejudicial to the child's development.

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[8] Id. at 26.

[9] Supra note 5.

[10] Id.

[11] Rollo, p. 6; TSN, February 28, 2006, pp. 4-7.

[12] Colloquial term for a bicycle fitted with a side-car for passengers usually used as a means of public transportation.

[13] Rollo, pp. 6-7; TSN, February 28, 2006, pp. 7-8.

[14] Id. at 7; id. at 8-9.

[15] Id. at 7-8; id. at 9-11.

[16] Records, p. 16. The Medical Certificate reads:

> GENERAL PHYSICAL FINDINGS
>
> General Survey awake, ambulatory
>
> Mental Status conscious, coherent
>
> Pertinent Findings/Physical Injuries hematoma upper lip reddish discoloration surrounding both nipple, 10 cm abrasion anterior chest
>
> ANO-GENITAL EXAMINATION
>
> External Genitalia Tanner I, edematous vulva
>
> Urethra and Penurethral Areal Edematous
>
> Perihymenal Area and Fossa navicularis abrasion 3-4, 5-6 oclock position at perihymenal area, inner labia minora and labia majora
>
> Hymen Tanner I, annular hymen hymenal avulsion at 4-5 oclock position, (+) soli particles surrounding the hymen
>
> Perineum normal
>
> Discharge minimal bleeding
>
> Internal and Speculum Exams not done
>
> Anal Examination normal
>
> DIAGNOSTIC AND EVIDENCE GATHERING
>
> Forensic Evidence and Laboratory Results pictures taken sperm ID = positive for spermatozoa
>
> IMPRESSIONS
>
> MEDICAL EVALUATION DEFINITE FOR SEXUAL ABUSE.

[17] Id.

[18] TSN, April 18, 2006, p. 9.

[19] Id. at 12.

[20] TSN, May 23, 2006, pp. 5-7.

[21] Rollo, p. 9; TSN, October 3, 2006, pp. 2-4.

[22] CA rollo, pp. 20-21.

[23] Id. at 22.

[24] Rollo, p. 16.

[25] G.R. No. 182230, September 19, 2012, 681 SCRA 390.

[26] 439 Phil. 440 (2002).

[27] Rollo, pp. 25-26.

[28] Supra note 1.

[29] Rollo, p. 37.

[30] Id. at 38-39 and 42-44.

[31] People of the Philippines v. Enrique Quintos y Badilla, G.R. No. 199402, November 12, 2014, p. 1.

[32] People v. Pareja, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 147.

[33] See People v. Mahinay, 462 Phil. 53, 69 (2003).

[34] People v. Navales, 392 Phil. 213, 227 (2000).

[35] People v. Flores, 653 Phil. 313, 321 (2010).

[36] Supra note 26.

[37] Id. at 470-471.

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