

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. VILLARIN CLEMENO, ACCUSED-APPELLANT.

*G.R. No. 215202. March 14, 2018*

Ponente: MARTIRES, J.

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### MARTIRES, J.:

Before this Court is an Appeal filed by accused-appellant Villarin Clemeno (accused-appellant) assailing the Decision[1] dated 26 November 2012 of the Court of Appeals (CA) in CA-G.R. CR HC No. 04792.

The CA affirmed the decision of the Regional Trial Court (RTC) in Criminal Case No. 14007 and No. 14008, finding accused-appellant guilty beyond reasonable doubt of two counts of rape, defined and penalized under Article 266-A, par. 1, in relation to Article 266-B of the Revised Penal Code (RPC), committed against AAA.[2]

In Criminal Case No. 14007, accused-appellant was charged as follows:

That [on] or about June 2003 at night at Brgy. [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, through force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on one [AAA], against the latter's will.

That the aggravating circumstance of relationship, the victim being the daughter of the accused, is attendant in the commission of the offense.[3]

In Criminal Case No. 14008, accused-appellant was charged as follows:

That [on] or about June 2004 at night at Brgy. [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, through force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge on one [AAA], against the latter's will.

That the aggravating circumstance of relationship, the victim being the daughter of the accused, is attendant in the commission of the offense.[4]

Upon arraignment, accused-appellant pleaded not guilty of the crimes charged.

### Version of the prosecution

The prosecution presented the testimonies of AAA, social worker Charity Nuñez (Nuñez), and forensic chemist Aida R. Vilorio-Magsipoc (Viloria-Magsipoc).

AAA narrated that accused-appellant, her father, used to beat her and her siblings, sometimes chasing them with a bolo. Sometime in June 2003, at around 11:00 o'clock in the evening, AAA was sleeping on the bed while her two siblings slept on the floor. She was awakened when accused-appellant suddenly laid on top of her. Accused-appellant was able to remove AAA's shorts and panties despite her resistance. AAA tried to push him away with her hands, but accused-appellant overpowered her. AAA was afraid to do anything because she was

afraid of him.[5]

Accused-appellant held AAA's hands, parted her legs, and inserted his penis into her vagina. Thereafter, accused-appellant threatened to kill the whole family if she reported the incident. AAA's mother was not around at the time because she was working as her sister's housemaid in San Juan, Batangas. AAA kept silent about the ordeal because she believed her father was capable of carrying out his threat.[6]

The same incident occurred in June 2004, when accused-appellant woke up AAA, laid on top of her, and made a push and pull motion, which caused AAA great pain. Because of this incident, AAA became pregnant and subsequently gave birth to a baby boy on 6 April 2005.[7]

AAA then revealed to her mother her ordeal with accused-appellant. Thereafter, a social worker, Nuñez, visited the house of AAA after receiving a call regarding the rape incident. Nuñez invited AAA to undergo a medical examination at the Batangas Regional Hospital.[8] Dr. Rex B. Rivamonte (Dr. Rivamonte), who conducted a physical examination on AAA, concluded in his medico-legal certification that she had recently given birth because her uterus was still enlarged.[9]

Viloria-Magsipoc, Forensic Chemist III of the DNA Analysis Laboratory of the National Bureau of Investigation, conducted two DNA tests to determine the filiation of AAA's child. The tests confirmed a 99.999999% probability that accused-appellant was the biological father of AAA's child.[10]

#### Version of the defense

The defense presented accused-appellant as sole witness.

Accused-appellant denied the charges against him. He contended that he loved his children and was in good terms with them. He asserted that AAA was merely influenced by her uncle, accused-appellant's brother-in-law, to file the rape charges against him because of his long-standing feud with his brother-in-law involving a property.[11]

In his brief,[12] accused-appellant questioned AAA's credibility and posited that the following circumstances militate against a finding of rape: first, AAA's act of resistance was insufficient to prove that the sexual intercourse was against her will because she did not shout or ask for help; and lived with accused-appellant without attempting to run away to seek help in order to prevent further abuse; second, AAA's delay in reporting the rape, despite several opportunities to do so, was unnatural and contrary to human experience. Consequently, AAA's rape charge is doubtful.

#### The RTC Ruling

After trial, the RTC found accused-appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused VILLARIN CLEMENO y LOZANO guilty beyond reasonable doubt of two counts of Rape penalized under Article 266-A, par. 1 in relation to Article 266-B of the Revised Penal Code, under Criminal Case Nos. 14007 and 14008, and sentencing him in each case to suffer the penalty of reclusion perpetua without eligibility for parole and to indemnify [AAA] for each count of rape the amounts of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages.

Costs of suit must also be paid by the accused.[13]

#### The CA Ruling

On appeal, the CA affirmed accused-appellant's conviction. According to the CA, with regard to appreciating the

credibility of witnesses, "the trial court is in a better position than the appellate or reviewing court because the former had the full opportunity to observe directly the witness' deportment and manner of testifying." [14] Moreover, "delay in reporting an incident of rape is not necessarily an indication that the charge was fabricated, particularly when the delay can be attributed to fear instilled by threats from one who exercises ascendancy over the victim." [15] On the issue of the alleged influence exerted by his brother-in-law over AAA, the CA observed that such a reason was "too flimsy and insignificant for a daughter to falsely charge her father with a serious crime and to publicly disclose that she had been raped and then undergo the concomitant humiliation, anxiety, and exposure to public trial unless it was true." [16]

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the APPEAL of accused-appellant Villarin L. Clemeno is hereby DENIED. Accordingly, the assailed Decision dated October 19, 2010, rendered by the Regional Trial Court, Fourth Judicial Region, Branch VII, Batangas City, in Criminal Cases No. 14007 and 14008 are hereby AFFIRMED. [17]

OUR RULING

The Court finds no reason to reverse the conviction.

Considering that only two persons are usually involved in rape cases, even the lone uncorroborated testimony of the victim is enough to prove the crime as charged, as long as the testimony is clear, positive and probable. [18] Here, the trial court found AAA's testimony to be clear, straightforward, and convincing, unflawed by any material or significant inconsistency.

A well-entrenched doctrine where the issue is one of credibility is that the trial court's assessment is given great weight and is deemed conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. This is because the trial court has the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position than the appellate court to properly evaluate testimonial evidence. [19]

On accused-appellant's contention that AAA put up insufficient resistance to warrant a finding that the sexual intercourse was against her will, the Court takes judicial notice that rape victims may have differing reactions to the shock and trauma of a sexual assault. No standard form of reaction is expected from a victim in the face of such a horrific event, because the workings of the human mind placed under emotional stress are unpredictable. Indeed, some may offer strong resistance while others none at all. [20]

More importantly, however, this is a case of a father sexually assaulting his child. The force or violence necessary in rape depends on the age, size, and strength of the persons involved and their relationship to each other; and what is essential is that the act was accomplished against the will and despite the resistance of the victim. [21] The Court has ruled that "in rape committed by a father against his own daughter, the father's parental authority and moral ascendancy over his daughter substitutes for violence and intimidation." [22]

In *People v. Rodriguez*, [23] the Court even had occasion to say that "it would be plain fallacy to say that the failure to shout or to offer tenacious resistance makes voluntary the victim's submission to the criminal act of the offender. It is quite enough that she has repeatedly tried, albeit unsuccessfully, to resist his advances."

Here, AAA testified that she tried to push her father away but was overpowered. Moreover, in the face of her father's moral ascendancy and parental authority, it is not contrary to human experience that AAA would resign to her father's wicked deeds.

On the issue of delay in reporting the incident, accused-appellant's contention deserves scant consideration. It is settled that long silence and delay in reporting the crime of rape are not necessarily indications of a false accusation and cannot be taken against the victim unless the delay or inaction in revealing its commission is unreasonable and unexplained.[24] Again, the delay may be owed to the observation that victims of a horrific crime tend to react differently.

Here, AAA offered a reasonable explanation for her long silence - she was afraid that her father would carry out his threat to kill her family if she reported the incident. With her believing that the lives of her loved ones depend on her silence, it is not inconceivable that she would keep quiet about it, even at great cost to herself.

As against AAA's positive and credible testimony, accused-appellant merely offered the defense of denial. The Court has held time and again that alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused." [25] AAA confirmed, through her clear and credible testimony, the identity of the perpetrator, the accused-appellant. Such testimony is bolstered by DNA evidence showing the 99.999999% statistical probability that accused-appellant is the father of AAA's child.

Accused-appellant harps on case law saying that a rape victim's pregnancy and resultant childbirth are irrelevant in determining whether or not she was raped; [26] therefore, the DNA test showing that accused-appellant fathered AAA's child is of no moment. While it is true that they are not essential elements to prove the fact of rape, proof of paternity of a rape victim's child establishes the fact that the accused-appellant, who is a biological match with the victim's child, had carnal knowledge of the victim, which is an element of rape when it is done against the latter's will and without her consent.

Under the Rules on DNA evidence, if the value of the probability of paternity is 99.9% or higher, there shall be a disputable presumption of paternity. [27] Notably, accused-appellant failed to dispute this presumption. This DNA result corroborates AAA's testimony that accused-appellant had carnal knowledge with her, and she sufficiently established that such was done by force, threat, and intimidation.

Further, for a defense of alibi to prosper, the accused-appellant must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of its commission. Since accused-appellant did not present even an iota of evidence proving physical impossibility that he committed the crime, his defense cannot prevail over AAA's categorical testimony.

However, this Court modifies the award of damages, conformably with *People v. Jugueta*, [28] where the Court ruled that "when the circumstances surrounding the crime call for the imposition of reclusion perpetua only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be P75,000.00 as civil indemnity, P75,000.00 as moral damages and P75,000.00 exemplary damages."

Thus, the Court increases the award of civil indemnity, moral damages, and exemplary damages to P75,000.00. In line with current policy, [29] the Court also imposes interest at the legal rate of six percent (6%) per annum on all monetary awards for damages, from the date of finality of this Resolution until fully paid.

WHEREFORE, the appeal is DISMISSED. The 26 November 2012 Decision of the Court of Appeals in CA-G.R. CR HC No. 04792 is AFFIRMED WITH MODIFICATION as to the amount of damages. Accused-appellant Villarin Clemeno is GUILTY BEYOND REASONABLE DOUBT of two counts of rape as defined in Article 266-A and penalized in Article 266-B of the Revised Penal Code and is ORDERED to pay AAA the following amounts for each count of rape: civil indemnity of P75,000.00, moral damages of P75,000.00, and exemplary

damages of P75,000.00. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

**SO ORDERED.**

Velasco, Jr. (Chairperson), Bersamin, Leonen, and Gesmundo, JJ., concur.

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[1] Rollo, pp. 2-13; penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

[2] The complete name of the victim in this case is replaced with fictitious initials, in compliance with Supreme Court Administrative Circular 83-2015.

[3] Records (Criminal Case No. 14007), p. 1.

[4] Records (Criminal Case No. 14008), p. 1.

[5] TSN, 13 February 2006, pp. 3-9 and 11-13.

[6] Id.

[7] Id. at 8-10.

[8] TSN, 24 November 2006, pp. 3-5.

[9] Records (Criminal Case No. 14007), p. 7.

[10] TSN, 23 June 2010, pp. 3-14; id. at 259-260.

[11] TSN, 5 August 2008, pp. 13-15.

[12] CA rollo, pp. 69-80.

[13] Records (Criminal Case No. 14007), p. 295.

[14] Rollo, p. 10.

[15] Id. at 11.

[16] Id.

[17] Id. at 12.

[18] *People v. Tubat*, 680 Phil. 730, 737 (2012).

[19] *People v. Bosi*, 689 Phil. 66, 73 (2012).

[20] *People v. Palanay*, G.R. No. 224583, 1 February 2017.

[21] *People v. Viajedor*, 449 Phil. 292, 317-318 (2003).

[22] Id. at 318.

[23] 425 Phil. 848, 860 (2002).

[24] *People v. Cabungan*, 702 Phil. 177, 185 (2013).

[25] *People v. Manigo*, 725 Phil. 324, 334-335 (2014).

[26] CA rollo, p. 78 citing *People v. Bejic*, 552 Phil. 555, 573 (2007).

[27] A.M. No. 06-11-5-SC, or the Rule on DNA Evidence, Section 9(c).

[28] G.R. No. 202124, 5 April 2016, 788 SCRA 331, 383.

[29] *People v. Dion*, 668 Phil. 333, 353 (2011).

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