

## **RICARDO NACARIO Y MENDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

*G.R. No. 222387. June 08, 2020*

Ponente: GAERLAN, J.

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### **GAERLAN, J.:**

Before this Court is a petition for review on certiorari[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated April 24, 2015 of the Court of Appeals (CA) Cagayan De Oro City Station in CA-G.R. CR HC No. 01042-MIN, and its Resolution[3] dated November 9, 2015 denying the motion for reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision[4] dated August 3, 2011 of the Regional Trial Court (RTC) of Cagayan De Oro City, Branch 37 in Criminal Case Nos. 2005-081, 2005-082, and 2005-083, which found the petitioner guilty beyond reasonable doubt of the crime of rape in all three (3) cases.

### **The Antecedents**

Petitioner Ricardo Nacario y Mendez (petitioner) was charged with three (3) counts of rape, allegedly committed as follows:

#### **Criminal Case No. 2005-081**

That more or less at 11:00 o'clock in the evening of September 9, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA,[5] a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

#### **Criminal Case No. 2005-082**

That at 1:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

#### **Criminal Case No. 2005-083**

That at 4:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.[6]

Upon arraignment, the petitioner, assisted by counsel, entered a plea of not guilty to each charge. During pre-trial, the parties stipulated on the identities of the parties, that AAA was previously molested by her maternal uncle but no case had been filed in relation thereto, and that from February 2004 to September 2004 AAA was staying in

the house of the petitioner.[7]

During trial, the prosecution presented as witnesses AAA, SPO4 Remos S. Lagonera of the Claveria Police Station, Department of Social Welfare and Development (DSWD) Employee Belen Razalo (Razalo), and Dr. Sittienor M. Gumaos-Casip (Dr. Gumaos-Casip).[8]

The evidence for the prosecution tends to establish that AAA is a minor having been born on September 30, 1989. Sometime in February 2004, AAA, who was then 15 years old, stayed in the house of the petitioner and his wife Ledelma Nario at Poblacion, Claveria, Misamis Oriental. AAA helped in the household chores, and in return, the petitioner shouldered her school expenses.[9]

On September 9, 2004, at around 11:00 p.m., AAA was sleeping alone in her room when she was awakened as she felt someone touching her breasts. She then saw the petitioner who told her "that he would be the one to break her vagina, and told her not to tell his wife about it." [10] At this point, AAA felt helpless and terrified, being reminded of the time when she was previously sexually assaulted by her maternal uncle who threatened to kill her with a dagger. The petitioner proceeded to suck AAA's breast and to kiss her lips. He then removed her pants and underwear, licked her vagina, and then inserted his penis into her vagina. Afterward, the petitioner undressed her, while AAA lay down crying.[11] Two hours later, the petitioner again approached AAA, undressed her and proceeded to ravish her. When the petitioner was done he told AAA not to go out. AAA was left crying and shivering until she fell asleep. The petitioner again had carnal knowledge with AAA at around 4:00 a.m. of September 10, 2004. He began by touching her breast and chest, then he sucked her mouth, removed her undergarments and had sexual intercourse with AAA who no longer showed any reaction throughout the ordeal. Thereafter, petitioner told her that he would again have sexual intercourse with her whenever his wife was not around. Petitioner then instructed AAA to get up and cook rice. AAA then performed her usual household chores. When she was done, she went to school. When AAA returned home, she asked permission from the petitioner to go out.[12]

AAA then went to her friend's house, and recounted to her and the latter's mother what happened. They helped AAA by relating the matter to Razalo, a social worker of DSWD Claveria, Misamis Oriental. AAA was brought to the Claveria Police Station on September 11, 2004, to give her statement. That same day, AAA was medically examined at the Northern Mindanao Medical Center (NMMC) by Dr. Gumaos-Casip.[13]

Based on the "Living Case Report"[14] issued by Dr. Gumaos-Casip, AAA's genitalia sustained the following:

- Introitus. - Hymen healed lacerations, 3 & 9 o'clock positions
- Spec exam Cx - Closed, smooth, with mucoid discharge, minimal.
- B P E CX - closed, firm, non tender, U - not enlarged, A- no mass/non tender.[15]

The defense for its part presented as witnesses the petitioner's wife, Ledelma Nacario (Ledelma), their minor son, Renz Daren Nacario (Renz), and Maria Belen Racines (Racines), an employee of the Women and Children's protection unit of NMMC.[16]

Renz was 11 years of age in September 2004. He testified that on September 9, 2004, he was in the living room of their house doing his school project from 9:00 p.m. to around 4:00 a.m. of the following day. He stated that all the while he was with the petitioner who was sleeping in the living room, and that he noticed nothing unusual the entire time.[17]

Ledelma testified that she first knew AAA when the latter was brought to the Municipal Social Service and Development Office (MSSDO) of Claveria, Misamis, Oriental. Ledelma is an employee of the MSSDO. Ledelma related that AAA ran away from home because of maltreatment and abuse from her uncle. However, agencies

refused to admit AAA, and as a result, Ledelma was forced to bring AAA to her own home. She claims that she last saw AAA in the morning of September 9, 2004.[18]

Finally, defense witness Racines narrated that she was the one who attended to AAA and her companion at around 11:00 a.m. on September 10, 2004, at the women's desk of the NMMC, and also facilitated the medical examination of AAA.[19]

After trial, the RTC rendered its Decision[20] on August 3, 2011. The dispositive portion reads:

WHEREFORE, premises considered, this court finds accused Ricardo Nacario guilty beyond reasonable doubt of the crime of rape against the minor offended party in Criminal Case No. 2005-081, and in Criminal Case No. 2005-082, in Criminal Case No. 2005-083, and, accordingly, said accused is hereby sentenced to suffer the penalty of reclusion perpetua in each of the three cases. Moreover, said accused is sentenced to pay the minor offended party the sum of Fifty Thousand Pesos (P50,000.00) for civil indemnity, Fifty Thousand Pesos (P50,000.00), for moral damages, and Twenty Five Thousand Pesos (P25,000.00) for exemplary damages in each of the three cases.

SO ORDERED.[21]

His Motion for Reconsideration of the Decision having been denied by the RTC in its Order dated November 25, 2011, the petitioner elevated the matter to the CA.[22]

Acting on the appeal filed by the petitioner, the CA rendered the herein assailed Decision[23] affirming the RTC's judgment of conviction, viz.:

WHEREFORE, premises considered, the appealed decision dated August 3, 2011, and the Order dated November 25, 2011, are affirmed in toto.

SO ORDERED.[24]

In so ruling, the CA agreed with the RTC in holding that the testimony of AAA is credible in itself to sustain the petitioner's conviction. In addition, the CA refused to give credence to the testimony of Renz stating that "[i]t taxes credulity that a 10 year old child could stay awake the entire time he worked overnight on his school project." [25]

The petitioner sought reconsideration of the Decision but the CA denied it in its Resolution[26] dated November 9, 2015.

In the instant petition, the petitioner submits the following issues for the Court's resolution:

I.

WHETHER THE OPEN COURT TESTIMONY OF THE PRIVATE COMPLAINANT/VICTIM EXPRESSLY NARRATING THAT NO FORCE OR INTIMIDATION WAS EMPLOYED BY THE ACCUSED AGAINST HER WHEN THE ALLEGED COPULATION WAS CONSUMMATED IS TANTAMOUNT TO JUDICIAL ADMISSION WHICH DOES NOT REQUIRE ANY PROOF;

II.

WHETHER THE CRIME OF RAPE WILL PROSPER EVEN IF THE ELEMENT OF FORCE OR INTIMIDATION IS WANTING; AND

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING IN TOTO THE GUILTY

VERDICT OF THREE (3) COUNTS OF RAPE AGAINST HEREIN PETITIONER/ACCUSED WHEN THE PROSECUTION FAILED MISERABLY TO PROVE BEYOND REASONABLE DOUBT THE SECOND ELEMENT OF THE CRIME.[27]

Simply, the issue presented in this appeal is whether or not the elements of the crime of rape have been established beyond reasonable doubt.

#### Ruling of the Court

The petition is not meritorious. The Court affirms the petitioner's conviction for three (3) counts of rape.

Preliminarily, the Court notes that the mode of appeal taken by the petitioner is erroneous. Pursuant to Rule 124, Section 3(c) of the Revised Rule on Criminal Procedure, an appeal from the ruling of the CA which imposes the penalty of "reclusion perpetua, life imprisonment, or a lesser penalty," shall be made through the filing of a notice of appeal before the CA. In this case, the petitioner clearly availed of the wrong mode of appeal when it filed the instant petition for review on certiorari. The Court could treat the instant appeal as an ordinary appeal and require the parties to file their respective briefs as demanded by the rules on procedure, nonetheless, records reveal that as early as August 17, 2016, the respondent has been required by the Court to file a comment.[28] Subsequently, in a Resolution[29] dated June 7, 2017, the petitioner was required to file a reply. With the submission of these pleadings,[30] and the requirements of due process accordingly met, the Court, in the greater interest of substantial justice, proceeds to resolve the substantive issue at hand. [31]

Notably, whether "or not" viewed as an ordinary appeal, the conclusion remains the same, that is, the petitioner is guilty beyond reasonable doubt of three (3) counts of rape.

Viewed as a petition for review for certiorari, it is clear that the issues raised are factual in nature and is beyond the ambit of this mode of appeal. As well, the errors assigned herein pertain to uniform factual findings of the RTC and the CA. These, as a rule, are "accorded the highest respect and are generally not disturbed on appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted." [32] None of these exceptions obtains in the case at bar.

Treated as notice of appeal, which opens the entire case wide open for review, the Court, evaluating the factual issues raised and examining the records of the case,[33] finds that the evidence presented by the prosecution supports the conviction of the petitioner.

Article 266-A (1) in relation to Article 266-B of the RPC provides the elements of the crime of rape, viz.: "(1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation."

Here, the Court is convinced that the petitioner, on three (3) occasions, had sexual intercourse with AAA, which he had accomplished through intimidation, that is against the latter's will.

The fact of sexual intercourse is established by the testimony of AAA and corroborated by the medico-legal report that she sustained lacerations in her vagina.[34]

The testimony of a minor who is a victim of rape is given full weight and credit, particularly in the absence of evidence showing that in making such statement, such minor is actuated by ill motive to falsely testify against the accused.[35] It is an oft-repeated doctrine that when a female minor alleges rape, she says in effect all that is necessary to mean that she has been raped." [36] As the Court enunciated in *People v. Menaling*: [37]

x x x No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo

the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[38]

Further, the testimony of a single eyewitness, when credible, convincing, and consistent with human nature and the normal course of things, is sufficient to support a conviction,[39] as rape is essentially an offense of secrecy.[40] Nonetheless, the Court must still scrutinize with great caution the testimony of the complainant, in line with the principle that the evidence for the prosecution must rise or fall on its own merits without regard to the weakness of the defense.[41]

The testimony of AAA was found by both the RTC and the CA as credible, straightforward and consistent, she was firm in identifying the petitioner as the perpetrator of the offense. AAA was then still a minor at the time she testified; nonetheless, she did not waver in narrating the details of her ordeal, she was firm even when subjected during the grueling cross examination.

Likewise, no ill motive can be attributed upon AAA. In fact, AAA had a lot to lose by implicating the petitioner, as she stands to lose the only person who provided her with education, relief, and shelter, i.e., Ledelma, the petitioner's wife. By identifying the petitioner as the perpetrator of the offense, AAA, then a minor at the time the offense was committed, must submit herself back to the system for referral to another agency to aid her.

Anent the element of force and intimidation, the Court likewise finds the present case at bar.

Jurisprudence instructs that the element of force and intimidation is present when it renders the victim defenseless, such that the element of voluntariness is absolutely lacking. Force need not be irresistible, but it must be sufficient to consummate the accused's purpose. Similarly, intimidation need not be in a particular form or gravity; it is enough that it produces fear on the part of the victim that something bad would happen to her if she does not yield to the demands of the accused.[42] Intimidation need not be actual or verbal when the accused wields moral influence or ascendancy over the victim.[43]

The element of "force and intimidation" is peculiar in this case. AAA avers that she did not resist the sexual advances as she was afraid that the petitioner would do what her uncle did to her. According to AAA, she recalled that her uncle, armed with a dagger, threatened her and almost killed her as he raped her.[44]

While the fear was ingrained by the thought of an act performed by a person other than the petitioner, it is undeniable that it is the petitioner's sexual acts toward AAA that triggered the fear that led her to submitting to his lewd desires. Overpowered by the memory and the fear, this rendered AAA defenseless to offer any resistance to the petitioner's advances; all AAA could do was to stay still as the petitioner undressed her as the petitioner performed the lewd acts and cry afterwards.

Intimidation is a state of mind, which cannot, with absolutely certainty, be discerned. Whether a person has been intimidated can only be inferred from the simultaneous or subsequent acts of the person subjected thereto. To conclude that intimidation is employed as a means of committing rape, it is sufficient that the accused, through his acts, causes the victim to feel fear that is strong enough to wield her into complete submission to his will. The inherent predisposition of the victim is beside the point, inasmuch as the workings of the human mind, based on the product of one's experiences and genetic predisposition, naturally varies from person to person. In the prosecution of rape cases, emphasis must be placed on the acts of the accused and on whether these acts tend to cause the victim to surrender to his will, taking into consideration the victim's personal circumstances.

Intimidation is subjective. As such, it should be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. In the prosecution of rape cases, it is sufficient that the victim is cowed to submission as a result thereof.[45]

In the same way, AAA's seeming insensibility during the occurrence of rape does not necessarily amount to consent. People react differently when placed under emotional stress – some may resist violently, others may faint or be shocked into insensibility, and there may be a few who may openly welcome the intrusion.[46] In this case, AAA manifested her objection to the sexual acts committed when she cried after the first two incidents of sexual intercourse. During the last incident, while AAA remained stoic all throughout the ordeal and proceeded with her usual household chores immediately thereafter, the Court agrees with the RTC that the absence of consent is clearly manifest by AAA's subsequent acts, viz.:

That the minor offended party did not consent to the sexual intercourse perpetrated by the accused on three occasions was shown by the fact that on the very day that she was sexually assaulted, the minor left and [fled] the house of the accused and went to her classmate, and started telling other persons of the incident.[47]

With these, the element of intimidation is clearly attendant in this case.

Among the petitioner's defenses during trial is that it was impossible for him to have committed the offense since he was asleep in the living room, where his son, Renz, was working on his project. Petitioner claims that he could not have left without his son noticing. Renz testified that he was awake from 9:00 p.m. to 4:00 a.m., and attested that he did not notice anything unusual during this time.[48]

The testimony of the petitioner's son does not negate that rape could have been committed as AAA alleged. For alibi to prosper, the accused "must adduce clear and convincing evidence that he was in a place other than the situs criminis at the time when the crime was committed, which renders him impossible to have been in the scene of the crime when it was committed." [49] In this case, the defense admits that the petitioner was in the house with AAA at the date and time the crime was committed. In fact, the petitioner was sleeping in the living room, barely a short distance from AAA's room where the crime occurred. Therefore, the petitioner's alibi cannot be considered exculpatory.

Furthermore, the Court is unprepared to deviate from the RTC and the CA's determination that the testimony of the petitioner's son, Renz, is not credible.[50] The trial court's determination proceeds from its unique position to assess the credibility of the witnesses while on the stand and to appreciate their truthfulness, honesty, and candor.[51]

The Court finds that Renz, in testifying in favor of his father, herein petitioner, is biased. The Court's ruling in *Tarapen v. People*[52] is instructive:

x x x A witness is said to be biased when his relation to the cause or to the party is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or pervert the truth, or state what is false. To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.[53] (Emphasis supplied)

The relationship between the petitioner and Renz per se does not impair the latter's credibility. However, when evaluated on the basis of its intrinsic merits, the testimony must be excluded as it is inconsistent with human nature, as ruled by the RTC:

This court is not prepared to accept his testimony that he has been awake from 9:00 p.m. of September 9, 2004 up to 4:00 a.m. of September 10, 2004 doing his school project. In other words, he did not sleep during the entire night of September 9, 2004 and September 10, 2004. The witness was eleven years old during that time. And his testimony that he had been awake the entire night, which was a Friday night, is unpersuasive even if he was doing a school project. He did not even specifically mention what the school project was, and why it should be done on a Friday night when the following days was a Saturday and a Sunday.[54]

Finally, under Article 266-B, when rape is committed through force, threat, or intimidation, the penalty shall be reclusion perpetua. The penalty shall be imposed for each count. The RTC and the CA was therefore correct on this score.

However, in view of *People v. Jugueta*,<sup>[55]</sup> the amount of damages should be modified. For every count of rape, the amount of civil indemnity, moral damages, and exemplary damages should be increased to P75,000.00 each. In addition, the monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.<sup>[56]</sup>

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on certiorari is DENIED. However, to conform with recent jurisprudence, the Decision dated April 24, 2015 and Resolution dated November 9, 2015 of the Court of Appeals, Cagayan de Oro City in CA-G.R CR HC No. 01042-MIN, convicting the petitioner Ricardo Nacario y Mendez of the crime of rape under Article 266-A(1) in relation to Article 266-B of the Revised Penal Code, are hereby AFFIRMED WITH MODIFICATION. Accordingly, petitioner is hereby sentenced to suffer the penalty of reclusion perpetua, for each count of rape. Furthermore, for every count of rape, the award of civil indemnity, moral damages, and exemplary damages are increased to P75,000.00, each. All monetary awards shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

**SO ORDERED.**

Leonen (Chairperson), Gesmundo, Carandang, and Zalameda, JJ., concur.

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[1] Rollo, pp. 27-50.

[2] Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring; id. at 153-158.

[3] Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting (now a Member of this Court), concurring; id. at 166-170.

[4] Rendered by Judge Jose L. Escobido; id. at 51-65.

[5] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), the name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

[6] Id. at 51-52.

[7] Id. at 52.

[8] Id.

[9] Id. at 53, 154.

[10] Id. at 53.

[11] Id.

[12] Id. at 53-54.

[13] Id. at 53-55.

- [14] Id. at 55-56.
- [15] Id. at 56.
- [16] Id. at 52.
- [17] Id. at 56.
- [18] Id. at 57.
- [19] Id. at 57-58.
- [20] Id. at 51-65.
- [21] Id. at 64-65.
- [22] Id. at 153.
- [23] Id. at 153-158.
- [24] Id. at 158.
- [25] Id. at 157.
- [26] Id. at 166-170.
- [27] Id. at 36.
- [28] Id. at 194-195.
- [29] Id. at 231-232.
- [30] Id. at 201-217, 241-246.
- [31] Ramos, et al. v. People, 803 Phil. 775, 783 (2017).
- [32] People v. Paraiso, 402 Phil. 372, 388-389 (2001).
- [33] Ramos v. People, supra note 31.
- [34] See People v. Prodenciado, 749 Phil. 746, 765 (2014).
- [35] People v. Taguilid, 685 Phil. 571, 581-582 (2012).
- [36] People v. Fernandez, 403 Phil. 803, 816 (2001).
- [37] 784 Phil. 592 (2016).
- [38] Id. at 605.
- [39] People v. Pareja, 724 Phil. 759, 776 (2014).
- [40] People v. Manalili, 716 Phil. 762, 771 (2013).
- [41] Id. at 771-772.
- [42] People v. Bayani, 331 Phil. 169, 193 (1996).
- [43] People v. Servano, 454 Phil. 257, 280 (2003) citing People v. Miranda, 435 Phil. 806, 817-818 (2002).
- [44] Rollo p. 62.

- [45] *People v. Bayani*, supra note 37.
- [46] *People v. Taguilid*, supra note 30 at 581.
- [47] *Rollo*, p. 62.
- [48] *Id.* at 56.
- [49] *People v. Amoc*, 810 Phil. 257, 261 (2017).
- [50] *Rollo*, pp. 63, 157.
- [51] *Jamaca v. People*, 764 Phil. 683, 693-694 (2015).
- [52] 585 Phil. 568 (2008).
- [53] *Id.* at 585-586.
- [54] *Rollo*, p. 64.
- [55] 783 Phil. 806 (2016).
- [56] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

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