

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENNY CONDE Y GOTA, ACCUSED-APPELLANT.

G.R. Nos. 138445-50. April 03, 2002

Ponente: MELO, J.

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MELO, J.:

Appellant Benny Conde appeals from the decision dated March 26, 1999 of the Regional Trial Court of the 10[th] Judicial Region (Branch XIX, Cagayan de Oro City, Misamis Oriental) finding him guilty of six counts of rape.

On April 24, 1997, six complaints for rape were filed against appellant with the Regional Trial Court of Misamis Oriental, docketed therein as Criminal Cases No. 97-935 and 97-945-949. The complaint in Criminal Case No. 97-935 alleged:

That on or about April 19, 1997, at Brgy. 24, Capt. V. Roa Street (particularly at accused's residence), Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with undersigned complainant victim, Noveliza C. Radaza, then 10 years of age and against her will.

(p. 1, Original Record.)

The other complaints were similarly worded as the above, except that they respectively charged that the offenses therein charged had allegedly been committed on or subsequent to October 1996.

Upon arraignment, appellant pleaded not guilty to each charge. The six criminal cases were thereafter consolidated and jointly tried.

The evidence for the prosecution established the following facts:

Noveliza Radaza was born on November 6, 1986 and she lived at Captain Vicente Roa Street, Barangay 24, Cagayan de Oro City. Noveliza had known appellant since October 1996 because he was her neighbor and his house was only 50 meters away from hers (tsn, August 10, 1998, pp. 4-14).

Five days after their first meeting in October 1996, while Noveliza was outside playing, she was called by appellant, who was in his house that time. He asked her to buy some biscuits. Noveliza bought five pieces of biscuits and brought them to appellant. Once inside appellant's house, he began to undress Noveliza. Thereafter, appellant instructed her to lie down on his bed, which she did. Appellant then took off his clothes, placed himself on top of Noveliza and inserted his penis in her vagina for about 5 minutes. Noveliza felt pain in her vagina. Afterwards, appellant, without a word, gave her P50.00 which she accepted (ibid., pp. 14-22).

A similar incident took place in the afternoon of November 1996. While Noveliza was strolling near their house, appellant, who was then in his house, called her. Then, appellant brought her to his room. As what happened the first time, appellant undressed Noveliza, undressed himself, went on top of Noveliza and did pumping motions.

Noveliza felt pain in her vagina as appellant's penis was quite hard. Appellant gave Noveliza P30.00 and instructed her not to tell her mother about the incident (*ibid.*, pp. 24-32).

Again, sometime in December 1996, appellant called Noveliza into his house. Inside, appellant inserted his penis into Noveliza's vagina for about two minutes. Appellant again gave Noveliza P60.00 while warning her not to tell her parents about what had happened (*ibid.*, pp. 33-38).

In January 1997, appellant called Noveliza while playing. As in the three previous incidents, appellant had sexual intercourse with Noveliza, which lasted for three minutes. After molesting her, appellant gave her P50.00 (*ibid.*, pp. 40-44).

In the afternoon of February 1997, Noveliza was strolling near appellant's house when the latter called to her. Once inside his house, appellant sexually abused Noveliza. Afterwards, he gave Noveliza P50.00 (*ibid.*, pp. 46-50).

On April 19, 1997, while Noveliza was playing about nine meters away from appellant's house, the latter called to her anew. Noveliza obliged and went inside the house of appellant. Thereafter, appellant removed her clothes and performed the sexual act on Noveliza for five minutes. After that, appellant gave Noveliza P50.00 and told her not to reveal what had occurred to her parents (*ibid.*, pp. 52-57).

Like all dastardly deeds, appellant's malefic actions would ultimately be brought to light. On April 22, 1997, appellant called Noveliza while the latter was strolling near their house. Inside his room, appellant undressed the latter and inserted his right forefinger into Noveliza's vagina, while his other hand fondled her breasts. In the meantime, however, Noveliza's brother, Clifford, had informed his mother, Severa Radaza, that Noveliza was inside appellant's house. Severa went to appellant's house and called on Noveliza to come out of the house. Appellant replied that Noveliza was not in his house. Immediately thereafter, appellant told Noveliza to hide under the bed, after which appellant came out of his room. When Severa saw appellant, who was then wearing only his long pants, she asked him whether her daughter Noveliza was in his room, to which query appellant answered in the negative. Someone, however, peeped into appellant's room and saw Noveliza hiding under the bed. April, the elder sister of Noveliza, kicked and forcibly opened the door of appellant's room. Seeing Noveliza crying under the bed, April helped Noveliza up. Severa embraced Noveliza upon seeing her. Severa then ran out of the room to look for appellant but he was gone (*tsn*, August 19, 1997, pp. 9-11). Severa asked her husband, her brother, and Barangay Tanod Felipe Ubalde to look for appellant.

That very same day, Noveliza was brought to the Northern Mindanao Medical Center for a physical examination (*ibid.*, pp. 11-12). Conducted by Dr. Maria Orfa Alonsabe, Noveliza's physical examination revealed that she had old healed vaginal lacerations at the 3 and 9 o'clock positions, which, according to Dr. Alonsabe, could have been caused by the insertion of male organ into her vagina (*tsn*, August 4, 1997, pp. 8 & 12).

Appellant was arrested later that afternoon aboard a rural bus transit headed for Iligan City. He was detained at the Lumbia Detention Center at Cagayan de Oro City (*tsn*, January 29, 1998, pp. 8-9).

In denying criminal liability, the defense presented the following version: Appellant first arrived in Cagayan de Oro City in 1996 to work as a caretaker for Dr. Jacinto Tan, owner of several trucks hauling Coca-Cola products. He, together with six other workers, stayed in a small shanty at Camp Vicente Roa Street, Brgy. 24, Cagayan de Oro City, where he came to know the Radazas, including the complainant. Appellant denied sexually abusing the complainant on any of the six occasions testified to by Noveliza. Appellant testified that he heard Noveliza telling her friends that her father had touched her vagina. On April 22, 1997, when he was arrested by law enforcers, he was on his way to Iligan City to get the allowance of his co-workers. It was at the police station when he learned

for the first time that he was accused of raping Noveliza (tsn, Nov. 23, 1998, pp. 3-12).

Appellant further testified that he and Noveliza's father, Paulino, had a disagreement, first, when he refused to lend money to Paulino and then when he prohibited Paulino from parking his taxi in front of appellant's house (ibid., p. 26).

On March 26, 1999, the trial court promulgated its decision finding appellant guilty of the crimes charged. It debunked appellant's version of events, stating that appellant's claim of resentment and bad blood as the cause for the filing of rape charges against him lacked credibility. The decretal portion of the decision stated as follows:

WHEREFORE, the court hereby sentences him to six (6) reclusion perpetuas, to indemnify Noveliza Radaza the total sum of P300,000.00, pay her P300,000.00 in moral damages and to pay the costs.

His custodian is hereby ordered to ship his person to the national penitentiary without delay as required by law.

SO ORDERED.

(p. 46, Rollo.)

Appellant seasonably appealed the decision to this Court assailing the trial court's pronouncement on the following grounds:

- THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE UNBELIEVABLE AND INCREDIBLE TESTIMONY OF NOVELIZA RADAZA.
- THE COURT A QUO ERRED IN FINDING THAT THE GUILT OF APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.
- THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED TWICE FOR THE RAPE ALLEGEDLY COMMITTED ON APRIL 19, 1997.

(p. 1, Appellant's Brief.)

We find no merit in the appeal.

Appellant has been charged with the crime of statutory rape. Article 335 of the Revised Penal Code, the applicable law at the time the acts of rape were committed (the law has been subsequently amended by Republic Act No. 8353 reclassifying rape as a crime against persons punishable under Article 266-A of the Revised Penal Code) provides:

Article 335. When and how rape is committed. Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

x x x
x x x
x x x

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by reclusion perpetua.

The elements of the crime of statutory rape are the following: (1) That the offender had carnal knowledge of a woman; and (2) the act is committed on a woman under 12 years of age. Violence or intimidation is not a requisite nor is consent or acquiescence on the part of the under-age female a defense to the doer (People vs. Guamos, 241 SCRA 528 [1995]).

In the case at bar, the prosecution has more than satisfactorily proven these two elements. Firstly, a perusal of Noveliza's testimony on record clearly indicates that appellant had carnal knowledge of Noveliza for six times. The paramount issue in rape cases is the credibility of the witnesses. The determination thereof lies with the trial courts, which have the opportunity to observe the witnesses' deportment and manner of testifying. As a general rule, we do not disturb the findings and conclusions of the trial judge on the credibility of the witnesses unless there exists a fact or circumstance of weight and influence which has been ignored or misconstrued. Thus, the trial court's finding on the matter is accorded the highest degree of respect and will not be disturbed on appeal (*People vs. Grefaldia*, 273 SCRA 591 [1997]). In the instant case, the trial court ruled that Noveliza testified in a clear, candid, and straightforward manner that appellant sexually violated her six times. We see no cogent reason to deviate from that observation. Moreover, the Court finds it simply inconceivable for Noveliza, at 10 years of age, with all her naivete and innocence, to fabricate a story of defloration, allow an examination of her private parts, and thereafter submit herself to a public trial or ridicule, if she had not, in fact, been a victim of rape and deeply motivated by a sincere to have the culprit apprehended and punished (*People vs. Dado*, 244 SCRA 655 [1995]).

Further, we have held that the testimony of rape victims who are young and of tender age are credible, especially if they are without any motive to testify falsely against the accused (*People vs. Ibalang*, 286 SCRA 387 [1998]). Appellant's contention that the victim's family was motivated by resentment and revenge in filing the charges against him, is blatantly baseless and preposterous. No parent will, in any event, voluntarily and without compelling reasons put his or her own daughter to shame and humiliation (*People vs. Deleverio*, 289 SCRA 547 [1998]). In fact, when Severa learned that her daughter, Noveliza, was brought by appellant to his house, Severa immediately went to appellant's house and almost caught appellant in flagranti delicto. Right away, Severa lodged a complaint for rape against appellant. This particular behavior clearly manifests the veracity and truthfulness of the charge. Likewise, the presumption is that a witness is not actuated by any improper motive absent any proof to the contrary and that the testimony must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witness would prevaricate and cause the damnation of one who brought him no harm or injury (*Naval vs. Panday*, 321 SCRA 290 [1999]).

In fact, in order to evade criminal liability, appellant can only point to the allegedly incredible behavior of Noveliza after the supposed rapes. He claims that after an assault, no rape victim would continue roaming and playing, as Noveliza did, near the shanty of her supposed rapist. We are not convinced by appellant's assertion that the victim's conduct after each assault casts serious doubts on the credibility of her testimony. We have had occasion to state and reiterate that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience (*People vs. Montefalcon*, 243 SCRA 617 [1995]).

Suffice it to stress that one should not judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons. The range of emotion shown by rape victims is yet to be captured even by the calculus. It is thus unrealistic to expect uniform reactions from rape victims (*People vs. Remoto*, 244 SCRA 506 [1995]).

It can be gleaned from the record of this case that Noveliza agreed to go to appellant's house because she was enticed by the money given by appellant after the commission of each sexual act. This is understandable considering that Noveliza was only nine years old at that time, and she was undeniably gullible and naive and could easily be deceived by appellant who obviously took advantage of her innocence. Likewise, Noveliza testified that she did not realize that appellant was actually molesting her (tsn, August 27, 1998, p. 33).

Furthermore, the failure of the complainant to immediately report the rape incidents to the immediate members of her family does not, in this jurisdiction, detract from her credibility, her hesitation being mainly attributable to her

age, as well as to the fear that was successfully instilled by appellant upon the victim. This was adequately explained by Noveliza in her testimony, to wit:

Q:

The previous six (6) incidents of rape allegedly committed on you, did it not occur to you to reveal the matter to your mother and father?

A:

No sir.

Q:

Why?

A:

Because I was afraid.

Q:

Afraid of whom?

A:

Afraid of Benny Conde.

(tsn, August 10, 1998, p. 69)

Adding credence to Noveliza's testimony are the medico-legal findings where Noveliza's hymen was found to have old lacerations which, as testified to by Dr. Alonsabe, were probably inflicted more than a month prior to the date of physical examination. Further, Dr. Alonsable declared that said lacerations could have been caused by the insertion of male organ to the victim's vagina (tsn, August 4, 1997, pp. 8-9). Unmistakably, the results of the medical examination conducted upon Noveliza are consistent with the charge that she had been sexually assaulted.

Again, appellant claims that the lack of bleeding or pain in urination on the part of Noveliza after the alleged sexual assaults prove that no such rape incidents occurred. That the victim did not bleed during her first sexual intercourse with appellant should not be taken against her. Vaginal bleeding is not an element of rape as what is important is that the rape victim testified that appellant sexually abused her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof (*People vs. Lazaro*, 249 SCRA 234 [1995]).

The defense of denial put up by appellant cannot prevail over the positive identification by Noveliza Radaza of appellant as the perpetrator of the rape. Courts have always understandably received the defense of denial with considerable caution, because such is inherently a weak and unreliable defense, one too easily put forward (*People vs. Guamos*, *supra*).

Moreover, appellant's behavior after he was caught with Noveliza in his house does not sit well with his posture of innocence. As testified to by Noveliza's mother, appellant was gone immediately after she managed to get inside appellant's house (tsn, August 19, 1997, p. 11). Likewise, appellant was already on his way to Iligan City

on board a bus when he was arrested (tsn, January 29, 1998, p. 8). Indeed, appellant's flight from the scene of the crime seals his fate. It has been said that flight is a silent admission of guilt. As aptly put, "the wicked man flees though no one pursueth, but the righteous are as bold as a lion." (People vs. Mendoza, 254 SCRA 18 [1996]).

Finally, appellant claims that the trial court erred in convicting him twice for the rape committed on April 19, 1997. This claim is inaccurate. Although two of the six informations alleged the date, April 19, 1997, as the date of the commission of the crime, the prosecution was able to sufficiently establish that, indeed, six rape incidents occurred — in October, November and December of 1996, and in January, February and April of 1997. Consequently, the trial court convicted appellant of six counts of rape for the rapes committed on aforesaid dates. It is well-settled that even a variance of a few months between the date set out in the information when the alleged crime was committed, and that established by the evidence during the trial does not constitute an error so serious as to warrant reversal of the judgment of conviction (Rocaberte vs. People, 193 SCRA 152 [1991]). Also, Section 11 of Rule 110 of the Revised Rules of Criminal Procedure pertinently provides:

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.

Indeed, we have repeatedly ruled that the date of the commission of the rape is not an essential element of the crime (People vs. Bernaldez, 294 SCRA 317 [1998]; People vs. Bugarin, 273 SCRA 384 [1997]). Besides, the aforequoted rule merely requires that the allegation of the date be only as near as possible to the actual date of its commission.

All told, the trial court correctly found appellant guilty beyond reasonable doubt of the crime of statutory rape on six counts and correctly sentenced him to six sentences of reclusion perpetua. The service of the said penalties shall not, however, exceed forty years pursuant to Article 70 of the Revised Penal Code, as amended by C.A. No. 217.

In view of such convictions, the trial court correctly ordered appellant to pay civil indemnity and moral damages for each count of rape. Consistent with current jurisprudence, appellant should pay the complainant the sum of P50,000.00 as civil indemnity in each of the six counts of rape or a total of P300,000.00; and the amount of P50,000.00 in each case, or a total of P300,000.00 as moral damages.

WHEREFORE, the appealed judgment of the lower court finding appellant Benny Conde guilty beyond reasonable doubt of six counts of statutory rape and ordering him to pay the sum of P300,000.00 as actual damages and P300,000.00 in moral damages is hereby AFFIRMED in toto.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, and Carpio, JJ., concur.

Vitug, J., abroad on official business.

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