



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff/Appellee,

G.R. No. 189355

- versus -

Present:

CARPIO, *Chairperson,*
DEL CASTILLO,
PEREZ,
PERLAS-BERNABE, *and*
LEONEN, * *JJ.*

ROLANDO CABUNGAN,
Accused/Appellant.

Promulgated:

JAN 23 2013

Handwritten signature: Rolando Cabungan

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DECISION

DEL CASTILLO, J.:

In a prosecution for the crime of rape, the culpability of the offender often hinges on the story of the offended party. Thus, courts usually rely on her credibility or the lack of it as against the bare denials of the accused.

This is an appeal interposed by Rolando Cabungan (appellant) from the July 9, 2009 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03142 which affirmed with modification the November 7, 2007 Decision² of the Regional Trial Court (RTC), Branch 54, Alaminos City, Pangasinan, finding him guilty beyond reasonable doubt of the crime of rape. *Manu*

¹ Per Special Order No. 1408 dated January 15, 2013.

² CA rollo, pp. 98-110; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. (now Presiding Justice) and Fernanda Lampas Peralta.

³ Records, pp. 191-199; penned by Judge Jules A. Mejia.

Factual Antecedents

On April 14, 2003,³ appellant was charged with the crime of rape in Criminal Case No. 4398-A before the RTC of Alaminos City, Pangasinan. On a plea of not guilty,⁴ he was tried upon an Information which alleges:

That sometime in November, 2002 in Siapar, Anda, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threats and intimidation, did then and there wil[l]fully, unlawfully and felon[i]ously have carnal knowledge of his step-daughter (daughter of his wife or common-law wife), “AAA”,⁵ a fifteen (15) [yr.] old minor, in their own house to her damage and prejudice.

Contrary to Articles 266-A and 266-B of the Revised Penal Code.⁶

The circumstances surrounding the charge are as follows:

Appellant is the uncle of “AAA,” he being the husband of the sister of “AAA’s” mother. He lived in the house of “AAA” because he was supposed to take care of her and her brother while their mother was working abroad. Sometime in November, 2002, at about 10:00 o’clock in the evening, and while “AAA” was alone in her room, appellant suddenly came in. He sat beside “AAA” and then removed her shorts and panty. Appellant also took off his sando and shorts, mounted “AAA” and inserted his penis into her vagina while she was lying down. “AAA” tried to push him but to no avail as he was stronger than her. She then felt something come out from appellant, who thereupon stood up and threatened to kill her if she would report the incident to anyone.

³ Id. at 1.

⁴ Id. at 44.

⁵ “The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 5, 2004.” *People v. Dumadag*, G.R. No.176740, June 22, 2011, 652 SCRA 535, 538-539.

⁶ Records, p. 1.

From “AAA’s” recount, appellant started abusing her when she was still in Grade IV but could no longer remember the number of times he ravished her. She did not tell anybody about her misfortune except her friend “BBB” as she was afraid of appellant’s threats. It was “BBB” who informed “AAA’s” mother of the incident.

When Dra. Ma. Teresa G. Sanchez (Dra. Sanchez) of the Western Pangasinan District Hospital examined “AAA” on February 17, 2003, she discovered old hymenal lacerations at four o’clock and nine o’clock positions. The vagina of “AAA”, according to her, could admit two fingers with ease and this could have been caused by penetration of an erect penis. She did not, however, find any physical injury on “AAA’s” body. These findings and conclusion were contained in a written certification marked in evidence as Exhibit “A”⁷ which Dra. Sanchez identified in court.

Appellant, on the other hand, denied raping “AAA”. He claimed that “AAA” lived in his house since her birth until she was in Grade IV when “AAA’s” mother had their own house constructed. Since then, “AAA” lived in their new house together with her brother and appellant’s daughter and appellant would just occasionally visit and sleep in the said house. Appellant figured that he was charged with rape because of his advice that “AAA” should leave her boarding house since her mother does not want her to be mingling with male boardmates.

Ruling of the Regional Trial Court

After trial, the RTC found “AAA’s” narration of her ordeal at the hands of appellant positive and categorical and, hence, accorded it full faith and credence. Thus, by its Decision⁸ dated November 7, 2007, the RTC declared appellant guilty

⁷ Id. at 15.

⁸ Id. at 191-199.

beyond reasonable doubt of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, the court finds the accused guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced [to suffer] the penalty of RECLUSION PERPETUA.

The accused is further ordered to pay the offended party the sum of SEVENTY FIVE THOUSAND (Php75,000.00) as civil indemnity.

The Provincial Jailer is ordered to transfer the living body of the accused to the National Penitentiary at Muntinlupa City upon receipt of this Decision.

Finally, the period of preventive imprisonment of the accused in the Provincial Jail, Lingayen, Pangasinan shall be credited for purposes of the service of his sentence.

SO ORDERED.⁹

Ruling of the Court of Appeals

Appellant sought reversal of his conviction before the CA. However, the CA, in its Decision¹⁰ dated July 9, 2009, affirmed with modifications the RTC Decision in that the amount of civil indemnity was reduced and appellant was ordered to further pay “AAA” moral damages, *viz*:

WHEREFORE, in the light of the foregoing, the instant appeal is DENIED. The decision appealed from is AFFIRMED with the modifications that the award for civil indemnity is reduced to ₱50,000.00 and an additional award of ₱50,000.00 for moral damages is hereby ordered.

IT IS SO ORDERED.¹¹

Still undeterred, appellant is now before this Court arguing that the lower courts erred in finding him guilty beyond reasonable doubt for the crime of rape.

⁹ Id. at 199.

¹⁰ CA *rollo*, pp. 98-110.

¹¹ Id. at 110.

Our Ruling

The present appeal is utterly devoid of merit.

Appellant tries to undermine the credibility of “AAA” as a rape victim. He contends that the belated filing of the Complaint, “AAA’s” act of still returning to their house even after she was allegedly raped therein by the appellant, her failure to shout and offer resistance during the rape, and the several material inconsistencies between her affidavit and her open court testimony, tainted her credibility.

The Court disagrees. Indeed, there was no prompt revelation of what befell “AAA.” But this is not enough reason to discredit her. A delay in reporting a rape case for two months or longer, as in this case, cannot be taken against the rape victim. “[L]ong silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation.”¹² “A rape charge becomes doubtful only when the delay [or inaction] in revealing its commission is unreasonable and unexplained.”¹³ In *People v. Domingo*,¹⁴ we held that “it is not uncommon that a rape victim conceal for some time the assault against her person on account of fear of the threats posed by her assailant.”¹⁵ This is exactly the situation in this case. “AAA’s” delay in filing the Complaint is not without a valid reason. She was cowed by appellant’s threats which hindered her from immediately reporting her painful ordeal to the authorities.

Appellant next contends that “AAA’s” act of still coming back to their house where the incident allegedly occurred is contrary to human behavior. If it is true that she was raped there, she would have avoided going home to their house and would have instead stayed in some other place like her boarding house or the

¹² *People v. Ortoa*, G.R. No. 174484, February 23, 2009, 580 SCRA 80, 94.

¹³ *People v. Domingo*, G.R. No. 177136, June 30, 2008, 556 SCRA 788, 800-801.

¹⁴ *Id.*

¹⁵ *Id.* at 801.

residence of her brother. Normal behavior, he avers, dictates that “AAA” would refrain from returning to the place of the incident.

Such contention fails to persuade. The fact that “AAA” was acting in a manner outside the normal behavior will not result in appellant’s exoneration. Moreover, it bears stressing that not all victims can be expected to act conformably with the usual expectation of everyone or in the manner suggested by the accused. Besides, it has been established that the place of the incident is “AAA’s” own house where she has the right to stay and go home to after staying in a boarding house during the weekdays. She also has no other place to go home to since the place of her brother in Solano, Nueva Vizcaya is too far away. Thus, “AAA’s” actuations can hardly be considered contrary to normal human conduct.

Neither does “AAA’s” alleged failure to shout and offer resistance during the incident deserve credence. Contrary to appellant’s assertion, the records show that “AAA” tried to resist his advances but was not successful because he is bigger and stronger than her. In any event, the law does not impose upon a rape victim the burden of proving resistance especially when, as in this case, intimidation is exercised upon the victim who submitted herself to the advances of her assailant because of fear for her life.

Anent the inconsistencies between “AAA’s” affidavit and her testimony in open court as pointed out by the appellant, the Court finds that the same are not material and refer only to minor details. The alleged contradictions as to whether appellant is her uncle or step-father and whether it was she or her friend who revealed her ordeal to her mother are inconsequential matters that will not affect the determination of whether appellant is innocent of the crime charged or not. In *People v. Tolentino*,¹⁶ we ruled that inconsistencies which are trivial and insignificant “do not warrant rejection of the entire testimony nor the reversal of the judgment. Accuracy in account ha[s] never been [used] as a standard [against]

¹⁶ G.R. No. 176385, February 26, 2008, 546 SCRA 671, 696.

which the credibility of witnesses are tested since it is undeniable that human memory is fickle and prone to the stresses of emotions x x x.”

Moreover, appellant’s assertion that “AAA” had male companions in her boarding house and that anyone of them could have indulged in sexual intercourse with her is purely speculative and has no factual basis. “A rape victim’s testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.”¹⁷ Verily, it is unlikely and unnatural for a victim and her relatives to point to someone else as the author of the crime other than the real culprit.¹⁸

Finally, appellant attacks the credibility of Dra. Sanchez. He claims that the said doctor’s conclusion that “AAA” could have been raped is merely based on the narration made to her by “AAA.” He also gives emphasis on the doctor’s admission that the insertion of two fingers with ease into “AAA’s” vagina is possible even in the absence of prior sexual intercourse. Moreover, appellant stresses that the likelihood that an erect penis could have caused the lacerations found in “AAA’s” vagina is just a mere possibility.

The Court, however, is not convinced. The doctor’s finding that “AAA” was a victim of rape cannot be regarded as hearsay considering that it was not based solely on “AAA’s” story but anchored mostly on the former’s own examination of the latter.¹⁹ Regarding the possibility of inserting two fingers with ease even in the absence of prior sexual intercourse, suffice it to state that “[t]he condition of the woman’s hymen x x x is not conclusive on the question of whether rape has or has not been committed as the mere introduction of the male organ into the *labia majora* of the pudendum is sufficient to consummate rape.”²⁰ In any event, this Court has already ruled that a medical examination of the victim

¹⁷ *People v. Ugos*, G.R. No. 181633, September 12, 2008, 565 SCRA 207, 216.

¹⁸ *Maturillas v. People*, 521 Phil. 404, 433 (2006).

¹⁹ See TSN, December 7, 2004, pp. 12-13.

²⁰ *People v. Jacob*, G.R. No. 177151, August 22, 2008, 563 SCRA 191, 204.

as well as the medical certificate are merely corroborative in character and are not indispensable for conviction in rape cases. What is important is that the testimony of the private complainant about the incident is clear, unequivocal and credible, and this we find to be the case here. “Further, well-settled is the rule that prior sexual intercourse which could have resulted in hymenal laceration is not necessary in rape cases for virginity is not an element of rape.”²¹ Neither can the absence of bodily injury negate the commission of rape.

In the light of the positive identification by “AAA” whose narration of the incident was found credible by the RTC and the CA, appellant’s proffered defense of denial fails. “Like the defense of alibi, a denial crumbles in the light of positive declarations.”²² Moreover, it is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered therefrom. “The rule finds an even more stringent application where said findings are sustained by the [CA],”²³ as in this case.

All told, the CA correctly affirmed the RTC’s conviction of appellant for the rape of “AAA.”

The Penalty

The crime committed in this case is simple rape only in view of the failure of the prosecution to prove with clarity the special qualifying circumstance of relationship. While the information alleges that “AAA” is the step-daughter of the appellant, there is nothing on record to support the same. The stepfather-stepdaughter relationship as a qualifying circumstance presupposes that the victim’s mother and the accused are married to each other which, however, is not

²¹ *People v. Arivan*, G.R. No. 176065, April 22, 2008, 552 SCRA 448, 469.

²² *Fernandez v. Rubillos*, A.M. No. P-08-2451, October 17, 2008, 569 SCRA 283, 289.

²³ *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 366.

obtaining in this case. Hence, the CA's affirmance of the penalty of *reclusion perpetua* as imposed upon appellant by the RTC is proper.

The Civil Indemnity

We agree with the CA in reducing the civil indemnity awarded by the trial court from ₱75,000.00 to ₱50,000.00 in view of the finding that appellant is guilty only of simple rape. Also, we respect the award of moral damages made by the CA in the amount of ₱50,000.00. "Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof."²⁴

We note that both the trial court and the CA failed to award exemplary damages. In *People v. Tejero*,²⁵ we held that "when either one of the qualifying circumstances of relationship or minority (for qualified rape under Article 266-B of the Revised Penal Code) is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code." Thus, conformably with the above ruling, we hold that "AAA" is entitled to an award of exemplary damages in the amount of ₱30,000.00.

In addition, pursuant to prevailing jurisprudence, "interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid."²⁶

²⁴ *People v. Arivan*, supra note 21 at 470.

²⁵ G.R. No. 187744, June 20, 2012.

²⁶ *People v. Dumadag*, supra note 5 at 550.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals dated July 9, 2009 in CA-G.R. CR-H.C. No. 03142 is **AFFIRMED with MODIFICATIONS** that “AAA” is further awarded the amount of ₱30,000.00 as exemplary damages and interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO***Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO***Chief Justice*