



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MIKE ALVIN PIELAGO y ROS,
Petitioner,

G.R. No. 202020

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, and
REYES, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

MAR 13 2013

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DECISION

REYES, J.:

The petitioner, Mike Alvin Pielago y Ros (Pielago) assails the Decision¹ dated February 1, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 33475 which affirmed the Judgment² dated May 31, 2010 of the Regional Trial Court (RTC) of Ligao City, Branch 14, finding Pielago guilty beyond reasonable doubt of the crime of rape by sexual assault.

Pielago was charged in an Information,³ the accusatory portion of which reads:

¹ Penned by Associate Justice Antonio L. Villamor, with Associate Justices Rosalinda Asuncion-Vicente and Ramon A. Cruz, concurring; *rollo*, pp. 29-43.

² Rendered by Presiding Judge Edwin C. Ma-alat; *id.* at 80-94.

³ *Id.* at 47.

“That on or about July 1, 2006 at around 3:30 in the afternoon at Barangay Allang[,] City of Ligao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and actuated by lust, did then and there willfully and unlawfully and feloniously commit an act of lasciviousness upon the person of [AAA]⁴, a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of [AAA], which acts debase, degrade and demean the intrinsic worth and dignity of said minor as human being to her damage and prejudice.”

CONTRARY TO LAW.⁵

Prior to the issuance of a warrant of arrest, Pielago voluntarily surrendered to the police authorities and posted a property bail.

During arraignment, Pielago pleaded not guilty to the charge against him.

At the trial, the prosecution presented the testimonies of AAA; her mother, BBB; Ligao City Health Officer Dr. Lea F. Remonte; Melie P. Gonzales, a resident of *Barangay Allang*; and PO2 Ma. Rowena S. Aldea. The defense, on the other hand, presented the testimonies of the accused; Nestor and Celeste Pielago, his parents; Myrna Ros De La Torre, his aunt; and some of the residents of *Barangay Allang* where the accused and the victim reside.

Evidence for the Prosecution

On July 1, 2006, between 2:00 p.m. to 2:30 p.m., AAA and her two (2)-year old brother, CCC, were playing with Pielago whom they call as *Kuya Alvin* at the porch of Boyet Ros' (Boyet) house. After playing, the three (3) went inside Boyet's house to watch television. After a while, Pielago turned off the television and brought AAA and CCC to a bedroom. While CCC played with a toy carabao at a corner, Pielago made AAA lie down on bed. Pielago then took off AAA's short pants and inserted his right hand's forefinger inside her vagina and exclaimed "*masiram*" (which means "delicious") as he brutally licked it and spewed saliva in it. AAA felt pain and blood came out of her vagina which frightened her. Unsatisfied, Pielago made AAA lie on her chest on the same bed then fingered her anus. After a few minutes, AAA and CCC were called for lunch by their mother, BBB. Pielago immediately replaced AAA's shorts then sent her and CCC out of the bedroom. BBB noticed the bloodstains at the back portion of AAA's

⁴ Under Republic Act No. 9262, also known as the "Anti-Violence Against Women and their Children Act of 2004," and its implementing rules, the real name of the victim and those of her immediate family members are withheld; fictitious initials are instead used to protect the victim's identity.

⁵ *Rollo*, p. 47.

shorts. When BBB asked AAA what happened, AAA did not answer immediately until she said “*Kuya Alvin tugsok buyay saka lubot ko buda dila pa.*” (which means “*Kuya Alvin inserted something in my vagina and my anus and he licked me*”). Incensed by what AAA told her, BBB went to a certain *Manay* Eden who accompanied her to the house of Boyet where she found Pielago still lying on bed. BBB continually hit Pielago as she asked him what he did to AAA. Pielago, however, denied the accusations and maintained that he was asleep when the incident happened. At 6:00 p.m. of the same day, AAA and BBB lodged a complaint at the Police Station where AAA was physically examined by a medico-legal officer which issued a report showing a superficial laceration found at the 7 o’clock position of AAA’s anus and the presence of erythema in the perihymenal area and fossa navicularis caused by the insertion into the victim’s genitals of a foreign object, possibly a small finger or any blunt object.⁶

Evidence for the Defense

Pielago denied the charge against him and testified that on July 1, 2006, he ate lunch with Mary Grace Capinpin, Benedict Bordeos (Benedict) and Jerome Monasterial in the house of his uncle, Lito Ros. Thereafter, he and Benedict rested in a nipa hut which was 3 to 4 meters away from said house. While resting, Pielago heard BBB calling her two (2) children, AAA and CCC, who both ignored her while they were at the basketball court. Being close to the two (2) children, Pielago convinced them to go home and even assisted them in taking their lunch. He felt sleepy so he proceeded to the house of his uncle and slept on the sofa located in the living room. However, AAA and CCC came in and noisily played in the living room where he was so he transferred to the bedroom. He was sound asleep until he felt somebody boxing his back. While BBB was continually boxing Pielago, she kept on asking what he did to her child, AAA. Awakened and shocked, Pielago retorted: “*What is it?*” He denied her accusation because he said he was fast asleep. At that time, he saw AAA and CCC chatting at the corridor of his uncle’s house. After BBB left, Pielago just went back to sleep. Pielago added that there is an existing land dispute between his grandparents and BBB’s family which could have impelled the latter to file the instant charge against him even if he has nothing to do with it. The defense also insisted that the bloodstain found on AAA’s shorts may have resulted from BBB’s spanking; or that it could be the menstrual blood of a teenager living in the house of Pielago’s uncle who owns the short pants which AAA took and wore during the incident.⁷ This was not far fetched because Pielago stated that after he woke up, he noticed that the clothes on top of the bed were already scattered.⁸

⁶ Id. at 32-34.

⁷ Id. at 35.

⁸ Id. at 88.

The Decision of the RTC

In its Decision⁹ dated May 31, 2010, the RTC stated that it is necessary to determine the actual or proper crime against the accused in view of the discrepancy between the crime charged in the Information and the factual allegations contained therein. On its face, the Information charged the crime of acts of lasciviousness against Pielago. However, the factual allegations contained in the Information and the provisions of existing laws pertain to the crime of rape by sexual assault defined and penalized under Section 266-A of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.¹⁰ The trial court explained that the testimony of AAA merits full credit despite her tender age. Her clear, candid and straightforward testimony categorically narrated how Pielago successfully ravished her innocence when he inserted his finger into her vagina and *anus* that caused her to feel pain in her genital parts. Indeed, AAA's positive identification of Pielago as her molester convinced the trial court to believe her version of what indeed transpired between them.

The RTC brushed aside Pielago's defense of denial for being intrinsically weak. Finding Pielago guilty for the crime of rape by sexual assault, the RTC sentenced him to an indeterminate penalty of *prision mayor*, as minimum, to *reclusion temporal*, as maximum, after considering Pielago's voluntary surrender as a mitigating circumstance, and to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱10,000.00 as temperate damages.¹¹

The *fallo* of the RTC Decision reads:

WHEREFORE, the above premises considered, judgment is hereby rendered:

- a. Finding the accused, Mike Alvin Pielago y Ros GUILTY beyond reasonable doubt of the crime of Rape by Sexual Assault, committed against [AAA], defined in paragraph No. 2, Article 266-A, Revised Penal Code, as amended by RA 8353; thereby, after taking into account the qualifying circumstance relating to the victim's age, "*less than seven (7) years of age*" (last paragraph, Art. 266-B, *ibid.*), but crediting accused with the mitigating circumstance of voluntary surrender, hereby sentences said accused to suffer the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, with the accessory penalties provided by law;

⁹ Id. at 80-94.

¹⁰ The Anti-Rape Law of 1997.

¹¹ *Rollo*, p. 94.

- b. As civil liability *ex delicto*, the same accused is ORDERED TO PAY minor complainant, [AAA], through her parents, the following sums:
- 1) Php.10,000.00 as temperate damages;
 - 2) Php.30,000.00 as civil indemnity for the commission of Rape by sexual assault;
 - 3) Php.30,000.00 as moral damages; and
 - 4) Php.25,000.00 by way of exemplary damages.

SO ORDERED.¹²

The Decision of the CA

On February 1, 2012, the CA rendered a Decision¹³ affirming *in toto* the RTC's decision. The appellate court explained that despite the fact that the Information charged the crime of acts of lasciviousness, the established factual circumstances therein constitutes the elements of rape penalized under Article 266-A of the Revised Penal Code such as: (1) that the offender inserted his penis into another person's mouth or anal orifice or inserted any instrument or object into the genital or anal orifice of another person; and (2) that the same was done to a child below 12 years of age.¹⁴ Citing the case of *Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People*,¹⁵ the CA emphasized that it is not the nomenclature of the offense that determines the crime in the Information but the recital of facts of the commission of the offense. The determination by the prosecutor who signs the Information is merely an opinion which is not binding on the court.¹⁶ The CA, moreover, agreed with the RTC in brushing aside the bare self-serving denial of Pielago. He also failed to adduce any evidence to support his claim that AAA was coached by her mother on what she should testify in court. Finding support in current jurisprudence,¹⁷ the CA aptly stated that an accused may be convicted solely on the testimony of the victim so long as it is credible, convincing and consistent with human nature and the normal course of things.¹⁸ Lastly, the CA concurred with the RTC's cognizance of the mitigating circumstance of voluntary surrender there being no warrant of arrest issued against Pielago. Thus, it decreed, in this wise:

WHEREFORE, in view of the foregoing, the Decision dated May 31, 2010, of the Regional Trial Court of Ligao City, Branch 14 in Criminal Case No. 5496 is **AFFIRMED** *in toto*.

SO ORDERED.¹⁹

¹² Id.

¹³ Id. at 29-43.

¹⁴ Id. at 36-37.

¹⁵ G.R. No. 181409, February 11, 2010, 612 SCRA 272.

¹⁶ Id. at 291.

¹⁷ *People v. Subesa*, G.R. No. 193660, November 16, 2011, 660 SCRA 390, 401.

¹⁸ *Rollo*, p. 39-40.

¹⁹ Id. at 42.

Hence, this appeal anchored on the two issues, namely:

I

WHETHER THE HONORABLE [CA] ERRED IN AFFIRMING THE PETITIONER'S CONVICTION DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT[; and]

II

WHETHER THE HONORABLE [CA] ERRED IN CONVICTING THE PETITIONER OF THE CRIME OF RAPE BY SEXUAL ASSAULT DESPITE HIS BEING CHARGED IN THE INFORMATION FOR ACTS OF LASCIVIOUSNESS ONLY.²⁰

Our Ruling

This Court affirms Pielago's conviction with modification as to the awarded damages.

Pielago's guilt was proved beyond reasonable doubt.

This Court finds no cogent reason to disturb the factual findings of the RTC, as affirmed by the CA. It is well-settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.²¹ After a careful review, this Court is convinced that the testimony of AAA positively identifying Pielago as the one who molested her is worthy of belief.

The clear, consistent and spontaneous testimony of AAA unrelentingly established that Pielago inserted his right hand's forefinger into her vagina and anus while she and her younger brother, CCC, were in his custody. Being a child of tender years, her failure to resist or struggle while Pielago molested her would all the more prove how she felt intimidated by her "*Kuya*". Furthermore, Pielago's bare denial cannot exculpate him from the criminal charge. It is well-settled that denial, just like *alibi*, cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.²² Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the victim of the

²⁰ Id. at 17.

²¹ *People v. Ramos*, G.R. No. 198017, June 13, 2012.

²² *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 829.

identity and involvement of appellant in the crime attributed to him.²³ Apparently, in the instant case, Pielago failed to prove the alleged ill motive on the part of the prosecution witnesses that led to the false charges against him.

The RTC correctly convicted Pielago for the crime rape by sexual assault.

It is well-settled that in all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him.²⁴ In this respect, the designation in the Information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.²⁵ In the instant case, the designation of the offense in the Information against Pielago was changed from the crime of acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610 to the crime of rape by sexual assault penalized under Article 266-A(2)²⁶ of the Revised Penal Code, as amended by R.A. No. 8353. It cannot be said, however, that his right to be properly informed of the nature and cause of the accusation against him was violated. This Court is not unaware that the Information was worded, as follows: “x x x *commit an act of lasciviousness upon the person of [AAA], a minor being four (4) years old, by kissing the vagina and inserting one of his fingers to the vagina of AAA, x x x.*” And, as correctly explained by the CA, the factual allegations contained in the Information determine the crime charged against the accused and not the designation of the offense as given by the prosecutor which is merely an opinion not binding to the courts. As held in *Malto v. People*:²⁷

What controls is not the title of the information or the designation of the offense but the actual facts recited in the information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information.²⁸ (Citations omitted)

²³ *People v. De los Santos, Jr.*, G.R. No. 186499, March 21, 2012, 668 SCRA 784, 801, citing *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 527.

²⁴ RULES OF COURT, Rule 115, Section 1(b).

²⁵ *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 657.

²⁶ Article 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.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

²⁷ G.R. No. 164733, September 21, 2007, 533 SCRA 643.

²⁸ *Id.* at 657-658.

Also, in the more recent case of *People v. Rayon, Sr.*,²⁹ this Court reiterated that the character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.

The CA further ratiocinated that the variance in the two crimes is not fatal to Pielago's conviction. Indeed, in order to obtain a conviction for rape by sexual assault, it is essential for the prosecution to establish the elements that constitute such crime. Article 266-A(2) of the Revised Penal Code explicitly provides that the gravamen of the crime of rape by sexual assault which is the *insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice*. In the instant case, this element is clearly present when AAA straightforwardly testified in court that Pielago inserted his forefinger in her vagina and anus. Jurisprudence has it that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.³⁰ Thus, AAA's unrelenting narration of what transpired, accompanied by her categorical identification of Pielago as the malefactor, established the case for the prosecution.

The RTC and CA properly imposed the correct indeterminate penalty but the amount of exemplary damages should be modified.

As can be gleaned from the records, the RTC and CA correctly imposed the indeterminate penalty of imprisonment ranging from seven (7) years of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, with the accessory penalties provided for by law considering that Pielago voluntarily surrendered to the police authorities before a warrant of arrest could be issued against him. However, in line with the existing jurisprudence on the matter, the award of exemplary damages should be increased from ₱25,000.00 to ₱30,000.00.³¹ In addition, and in conformity with the current policy, we also impose on all the monetary awards for damages interest at the legal rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.³²

WHEREFORE, the Decision dated February 1, 2012 of the Court of Appeals in CA-G.R. CR No. 33475 is **AFFIRMED** with **MODIFICATION**, that: (1) the amount of exemplary damages is increased

²⁹ G.R. No. 194236, January 30, 2013.

³⁰ *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412-413, citing *People v. Tabayan*, 357 Phil. 494, 508 (1998).

³¹ *People v. Asprec*, G.R. No. 182457, January 20, 2013.

³² *People v. Veloso*, G.R. No. 188849, February 13, 2013.

from ₱25,000.00 to ₱30,000.00; and (2) petitioner Mike Alvin Pielago y Ros is ordered to pay the private offended party interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this decision.

No costs.

SO ORDERED.



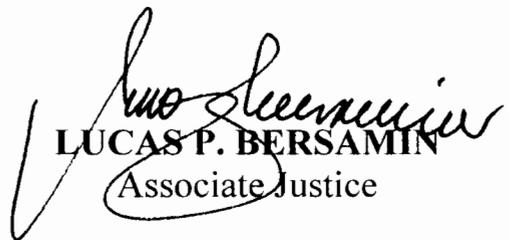
BIENVENIDO L. REYES
Associate Justice

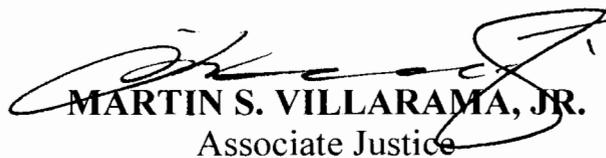
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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