



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Appellee,

G.R. No. 201105

Present:

- versus -

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
ABAD,* and
PEREZ, *JJ.*

NATALIO HILARION y LALIAG,
Appellant.

Promulgated:

NOV 25 2013

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DECISION

BRION, *J.*:

We decide the appeal, filed by appellant Natalio Hilarion, from the decision¹ of the Court of Appeals (CA) dated October 12, 2011 in CA-G.R. CR-HC No. 03104. The CA decision affirmed *in toto* the October 25, 2007 judgment² of the Regional Trial Court (RTC), Branch 260, Parañaque City, finding the appellant guilty beyond reasonable doubt of the crime of rape, and sentencing him to suffer the penalty of *reclusion perpetua*.

In its October 25, 2007 judgment, the RTC found the appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended (RPC). It gave credence to the testimony of AAA³ that the appellant inserted his penis into her vagina in the afternoon of November 15, 2002. It further held that AAA's testimony was corroborated by the medical findings of the Philippine National Police medico-legal officer stating that the victim had "deep healing laceration at 3 o'clock position"⁴ on her hymen. The RTC sentenced

* Designated as acting member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1619 dated November 22, 2013.

¹ *Rollo*, pp. 2-22; penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justice Fernanda Lampas-Peralta and Associate Justice Priscilla J. Baltazar-Padilla.

² *CA rollo*, pp. 17-27.

³ See *People v. Cabalquinto*, 533 Phil. 703 (2006).

⁴ *CA rollo*, p. 22.

the appellant to suffer the penalty of *reclusion perpetua*, and ordered him to pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

On appeal, the CA affirmed the RTC judgment *in toto*. The CA held that AAA positively identified the appellant as the person who inserted his penis into her vagina in a grassy area on November 15, 2002; her testimony was corroborated by Medico-Legal Report No. 3472-02 showing that AAA had deep-healing hymenal lacerations, and that her posterior fourchette had been “abraded.” It further held that the victim’s age had been sufficiently proven by the written and oral testimonies of AAA’s mother, BBB. The CA also rejected the appellant’s denial for his failure to substantiate his defense.

In his brief,⁵ the appellant maintained that the prosecution failed to prove the elements of force and intimidation; he also claimed that the victim’s age had not been proven with certainty.

OUR RULING

We **DENY** the appeal, but modify the designation of the crime committed and the awarded indemnities.

For a charge of rape under Article 266-A of the RPC, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

The prosecution in the present case positively established the elements of rape required under Article 266-A of the RPC.

First, the appellant had carnal knowledge of the victim. AAA was steadfast in her assertion that the appellant inserted his penis into her vagina, and her testimony was corroborated by the medical findings of Dr. Winston Tan. “We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that carnal knowledge has taken place.”⁶

“*Second*, the appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result.”⁷ In the present case, AAA testified that she cried when the appellant inserted his penis into her vagina. As a child of tender years, she could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. Nonetheless, AAA’s act of crying during the rape is sufficient indication that the appellant’s act was *against her will*. AAA

⁵ Id. at 41-56.

⁶ *People v. Mercado*, G.R. No. 189847, May 30, 2011, 649 SCRA 499, 503.

⁷ See *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 392.

also revealed that the appellant threatened to kill her parents if she disclosed the incident to anyone.

In addition, the appellant did not impute any improper motive on AAA or on any other prosecution witnesses on why they would falsely testify against him.

We additionally note that while the CA's dispositive portion affirmed *in toto* the RTC's decision (which found the appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, in relation with Article 266-B, of the Revised Penal Code, as amended), the body of the appellate court's decision showed that it was convicting the appellant of statutory rape.

It is not lost on us that the victim's age had been properly alleged in the Information⁸ which stated that AAA was a minor and six (6) years of age at the time of the rape. We cannot, however, sustain the appellant's conviction for statutory rape since the prosecution failed to sufficiently prove the victim's age.

In *People v. Buado, Jr.*,⁹ the Court reiterated the guidelines in appreciating the victim's "age," either as an element of the crime or as a qualifying circumstance, thus:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40,

⁸ CA *rollo*, p. 13. The Information in Criminal Case No. 02-01364 reads:

That on or about the 15th day of November, 2002, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA], a minor, 6 years of age, against her will and consent.

⁹ G.R. No. 170634, January 8, 2013, 688 SCRA 82, 104-105, citing *People v. Pruna*, G.R. No. 138471, October 10, 2002, 390 SCRA 577; emphasis ours.

Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

- a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
6. The trial court should always make a categorical finding as to the age of the victim.

In the present case, the records are completely devoid of evidence that the certificates recognized by law have been lost or destroyed or were otherwise unavailable. The mother simply testified without prior proof of the unavailability of the recognized primary evidence. Thus, proof of the victim's age cannot be recognized, following the rule that all doubts should be interpreted in favor of the accused.

Accordingly, as the Court did in *Buado*, we can only sustain the accused's conviction for simple rape,¹⁰ as the victim's and her mother's testimonies to prove the victim's minority are insufficient:

In Criminal Case No. 912-V-99, the amended information alleged that AAA was only ten years old when the rape was committed in April 1999 and that she was the daughter of the accused. **During the trial, however, the Prosecution adduced no evidence to establish her minority save her testimony and that of her mother's.** In the absence of proof of AAA's minority in accordance with the guidelines set in *People v. Pruna*, we concur with the CA's conclusion that he could not be properly found guilty of qualified rape. Indeed, his substantial right to be informed of the nature and cause of the accusation against him would be nullified otherwise. Accordingly, the CA correctly prescribed *reclusion perpetua* as the penalty.¹¹

¹⁰ There were two victims in this case, AAA and BBB. The Court sustained the imposition of the death penalty (which it reduced to *reclusion perpetua without eligibility for parole* by virtue of the passage of R.A. No. 9346) in Criminal Case No. 974-V-99 for the rape committed by the accused against her other daughter, BBB, since the prosecution was able to present the latter's birth certificate.

¹¹ *People v. Buado, Jr.*, *supra* note 9, at 105-106; emphases ours, italics supplied, citation omitted.

To reiterate, while AAA's mother, BBB, testified that her daughter was six (6) years old at the time of the rape, **it had not been previously established that the certificate of live birth or other similar authentic document such as the baptismal certificate or school records have been lost or destroyed or otherwise unavailable.**¹² Even AAA's own testimony on cross examination that she was six (6) years old at the time of the incident would not suffice to prove her minority since her age was not expressly and clearly admitted by the accused. We stress that age is an essential element of statutory rape; hence the victim's age must be proved with equal certainty and clarity as the crime itself.

The trial and appellate courts correctly sentenced the appellant to suffer the penalty of *reclusion perpetua*, as none of the circumstances that qualify the rape under Article 266-B of the Revised Penal Code, as amended, had been proven. However, we direct the appellant to further pay AAA ₱30,000.00 as exemplary damages to conform to prevailing jurisprudence on simple rape cases.¹³

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.¹⁴

WHEREFORE, the decision of the Court of Appeals dated October 12, 2011 in CA-G.R. CR HC No. 03104 is **AFFIRMED** with the following **MODIFICATIONS**: (1) the appellant is found guilty beyond reasonable doubt of simple rape; and (2) he is further ordered to pay AAA ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until full payment.

SO ORDERED.


ARTURO D. BRION
Associate Justice

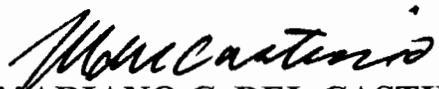
WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

¹² See *People v. Lupac*, G.R. No. 182230, September 19, 2012, 681 SCRA 390, 396-398, citing *People v. Pruna*, G.R. No. 138471, October 10, 2002, 390 SCRA 577.

¹³ See *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 743; and *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 258.

¹⁴ See *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

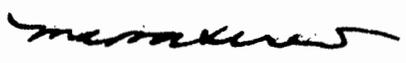
ATTESTATION

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. CAPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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