



Republic of the Philippines
Supreme Court
 Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 208676

Present:

SERENO, C.J.,*
 VELASCO, JR., J.,
Chairperson,
 PERALTA,**
 PEREZ, and
 REYES, JJ.

-versus-

ALLAN MENALING y CANEDO
 Accused-Appellant.

Promulgated:

April 13, 2016

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DECISION

PEREZ, J.:

Before us for review is the Decision¹ of the Court of Appeals in CA G.R. CR.-H.C. No. 04819 dated 26 November 2012 which dismissed the appeal of appellant Allan Menaling y Canedo and affirmed with modification the Judgment² of the Regional Trial Court (RTC) of Olongapo City, Branch 73, in Criminal Cases Nos. 353-2006 and 354-2006, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

Appellant was charged with two (2) counts of qualified rape, to wit:

* Additional Member per Raffle dated 21 March 2016.

** On official leave.

¹ *Rollo*, pp. 2-21; Penned by Associate Justice Ramon R. Garcia with Associate Justices Amelita G. Tolentino and Dante Q. Bueser concurring.

² Records, pp. 179-186; Presided by Presiding Judge Consuelo Amog-Bacar.

Criminal Case No. 353-2006

That on or about the twenty-first (21st) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/natural father of [AAA³], a 12-year old minor and having moral ascendancy over the latter and with lewd design did then and there wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said [AAA], by then and there inserting his penis to the vagina of said [AAA] against her will and consent to her damage and prejudice.⁴

Criminal Case No. 354-2006

That on or about the twenty-six[th] (26th) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/natural father of AAA, a 12-year old minor and having moral ascendancy [over] the latter and with lewd design did then and there wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said AAA, by then and there inserting his penis to the vagina of said AAA against her will and consent to her damage and prejudice.⁵

Appellant pleaded not guilty to the charges. At the pre-trial conference, the parties stipulated that AAA is a twelve-year old minor at the time of the alleged crime and that appellant is her natural/biological father.

Trial on the merits ensued.

The prosecution presented four (4) witnesses: the victim, AAA; Dr. Rolando Marfel Ortis (Dr. Ortis); psychologist Dr. Naila dela Cruz (Dr. dela Cruz); and BBB, AAA's mother. The appellant was the sole witness for the defense.

AAA, who was only twelve (12) years old at the time of the commission of the crimes, recounted that in the evening of 21 January 2006, she was sleeping with her sibling and BBB on a bed in her house when her father, appellant, woke her up by tapping her foot and asked her transfer to the floor where he was sleeping. AAA sat down, refused his request, and cried. But appellant held her hands. Then he directed her to remove her clothing. When AAA refused this, appellant himself removed her clothing,

³ The victim's real name as well as the members of her immediate family is withheld to protect her privacy pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006).

⁴ Records, p. 1.

⁵ Id. at 179.

kissed her and inserted his male organ into her. AAA cried in pain. Appellant threatened AAA with harm if she would tell BBB about the incident. BBB woke up shortly and asked AAA to transfer to the bed.⁶

In the afternoon of 26 January 2006, AAA and her four siblings were sleeping when appellant again woke her up and sexually assaulted her. Her brother woke up and witnessed the incident. He ran away and told his aunt about it until word reached BBB.⁷

BBB cried when she learned of the incidents from her sister on 28 February 2006. BBB immediately reported the crime to the police resulting in the filing of charges against appellant.⁸

Dr. Ortiz was able to examine AAA on 1 March 2006. Per his Medico Legal Certificate⁹ dated 3 March 2006, AAA's hymen was not intact and was found to have old healed lacerations at 7 o'clock position and her female anatomy admits of two fingers with ease. On the witness stand, Dr. Ortis stated that the hymen laceration was thirty (30) days old or more; and that two (2) fingers could be inserted with ease into AAA's female anatomy indicates previous multiple sexual intercourse. AAA also had some infection from a previous sexual intercourse.¹⁰

Dr. dela Cruz, the psychologist testified that AAA was referred to her for protective custody. At the time of the interview, AAA appeared disturbed by the abuse committed against her by her father. Further, AAA was observed to harbor intense feelings of hatred, dissatisfaction and resentment against her father.¹¹ In the report of her findings, Dr. dela Cruz made the following remarks:

x x x She has transparent and vocal manifestations of resentment and indignation towards her experience. Client is agitated for thinking that she will not regain anymore her loss (sic) relationship with her siblings as well as her mother because of this case filed. She is helpless, unhappy, and insecure and has no emotional security and satisfaction. x x x¹²

⁶ TSN, 16 March 2007, pp. 2-17.

⁷ Id.

⁸ TSN, 17 July 2007, pp. 2-12.

⁹ Records, p. 12.

¹⁰ TSN, 16 February 2007, pp. 3-5.

¹¹ TSN, 8 June 2007, pp. 1-7.

¹² Records, p. 104.

The prosecution filed their Formal Offer of Evidence¹³ on 26 December 2007 with the RTC and rested their case. On 1 February and 18 April 2008, AAA and BBB were respectively called back to the witness stand by the defense counsel and the two recanted their previous testimonies against appellant. AAA declared that the real perpetrator was her grandfather, the uncle of her mother, now deceased.¹⁴ BBB stated that she had told lies when she first testified. BBB also admitted that she loves her husband very much and would do anything to have the charges against him dismissed.¹⁵

Appellant, for his part, denied raping his daughter AAA. Appellant claimed that AAA was a problem child who had a relationship with a lesbian. Appellant confessed though that he always created trouble every time he went home drunk which may have prompted AAA to charge him of rape.¹⁶ Appellant also asserted that he could not have possibly raped AAA because his wife, BBB, always stayed home. Appellant first came to know of the charges against him when he came home from work on 4 March 2006 when he was invited by the policemen to their station.¹⁷

In an Order¹⁸ dated 12 January 2009, the RTC rejected AAA and BBB's recantations. The RTC noted that the alleged real culprit had died in 2004, two (2) years before the commission of the rape charges in 2006. The trial court dismissed the recantations as incredulous and unworthy of belief.

On 23 November 2010, appellant was found guilty beyond reasonable doubt of qualified rape. The dispositive portion of the RTC Decision reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered finding accused Allan Menaling guilty beyond reasonable doubt for the crime of qualified rape in Criminal Case No. 353-2006, for which he is sentenced to suffer the maximum penalty of reclusion perpetua.

On the other hand, due to reasonable doubt, said accused is acquitted of the same crime in Criminal Case No. 354-2006.¹⁹

Appellant filed a Notice of Appeal on 21 December 2010.²⁰

¹³ Records, p. 102.

¹⁴ TSN, 1 February 2008, p. 3.

¹⁵ TSN, April 2008, pp. 4-5

¹⁶ TSN, August 2009, pp. 2-4.

¹⁷ TSN, 11 January 2010, p. 3.

¹⁸ Records, p. 132.

¹⁹ Id. at 185-186.

²⁰ Id. at 189.

On 26 November 2012, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, *viz.*:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated November 23, 2010 of the RTC, Branch 73, Olongapo City is **AFFIRMED with MODIFICATION** in that in addition to the maximum penalty of *reclusion perpetua*, accused-appellant Allan Menaling y Canedo is further **ORDERED** to pay private complainant AAA Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages.²¹

Appellant filed the instant appeal. In a Resolution²² dated 11 November 2013, appellant and the Officer of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. OSG manifested that it was adopting its brief filed before the appellate court²³ while appellant filed his Supplemental Brief arguing that AAA's initial testimony regarding the rape incident is incredulous. Appellant asserts that AAA's narration that she was raped by her father in the presence of her mother is preposterous because no mother would keep quiet and act nonchalantly after having witnessed the abuse of her daughter. Appellant also points out that AAA's mother testified that she was in Batangas on the day of the alleged rape. Appellant also questions the actuations of AAA during the rape incident. Appellant asks why AAA did not scream or offer any resistance despite the proximity of her siblings at that time. Appellant stresses that AAA and BBB had the motive to falsely charge him because they feared him.²⁴

It is a well-settled rule that appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.²⁵

We have carefully reviewed the records of the case and we find no reason to depart from this established rule.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,²⁶ define and punish rape as follows:

²¹ *Rollo*, p. 20.

²² *Id.* at 27.

²³ *Id.* at 32.

²⁴ *Id.* at 37-44.

²⁵ See *People v. Paculba*, 628 Phil. 662, 673 (2010).

²⁶ Effective on 22 October 1997.

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 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.

x x x x

Article 266-B. *Penalties-* Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

It is extant in the records that the prosecution has successfully proven beyond reasonable doubt that appellant had carnal knowledge of his twelve (12) year old daughter, AAA, through force and intimidation. AAA described the harrowing details of her experience, to wit:

PROS. PARCO-

Q Do you know the accused in this case?

A Yes, sir.

Q Why do you know the accused in this case?

A Because he was the one who did this thing to me.

Q How is he related to you?

A He is my father.

Q Do you recall madam witness where you were (sic) on January 21, 2006 in the evening?

A I was in the house.

Q What were you then doing in the evening?

A We were then sleeping.

Q When you said “kami” who were these persons?

A My mother and my siblings.

Q When you were sleeping, what happened?

A He woke me up.

Q Who woke you up?

A My father.

Q The accused in this case?

A Yes, sir.

Q After you woke up, what happened?

A He told me to remove my clothing but I refused, that’s why he was the one who took off my clothes and he kissed me and inserted his organ to my organ.

Q How did you feel when he inserted his organ to your organ?

A I felt pain.

Q Did you not shout?

A No, sir I just cried.

Q After that, what happened?

A My mother woke up and she told me to transfer to the bed.

Q Also on January 26, 2006 in the afternoon, do you recall any incident that happened to you?

A Yes, sir.

Q What was this incident?

A The same incident as in January 21.

Q What do you mean the same?

A He again told us to sleep. My mother was not there and after that, he again did what he did to me the last time.²⁷

x x x x

ATTY. GUILARAN-

Q You testified that in the evening of January 26, 2006, you were sleeping then with your father and your mother and your other siblings?

²⁷ TSN, 16 March 2007, pp. 3-5.

- A Yes, Ma'am.
- Q What part of the house did you sleep on January 21, 2006 together with your father, your mother and your siblings?
- A On the bed.
- Q How many siblings do you have?
- A We are all 5, Ma'am.
- Q Plus your mother and your father, you are all seven (7)?
- A Yes, Ma'am.
- Q And you were sleeping in one bed, the 7 of you?
- A No, Ma'am.
- Q Where did you sleep then?
- A We slept on the bed with my mother, my younger sister and me.
- Q Three (3) of you slept in the bed?
- A Yes, Ma'am.
- Q Where were the others slept?
- A In the other bed.
- Q Do you want to impress this Court that your room has two beds?
- A Yes, Ma'am.
- Q How big is your room?
- A It's just a small room.
- Q Could you approximate the area of your room?
- A From that wall to this wall.
- Q And the beds are single?
- A Single, Ma'am.
- Q Who slept at the other bed?
- A My three other siblings.
- Q Where did you[r] father sleep then?
- A Beside our bed.
- Q On the floor?
- A Yes, Ma'am.
- Q You testified that your father woke you up on January 21, 2006 and he instructed you to pull down your pants, where was your mother then?
- A She was sleeping on the bed because my father asked me to transfer to where he was then sleeping.

- Q He was sleeping on the floor beside the bed where you, your mother and your younger sister slept and you transferred. How big was the space where your father slept?
- A As big as the table, Ma'am.

INTERPRETER-

The witness is referring to the table in the courtroom which is about 2 meters by 1 meter.

ATTY. GUILARAN-

- Q How did your father wake you up on January 21, 2006?
- A He slept on the bed where my three other siblings are sleeping and then he tapped my foot.
- Q What was your reaction when your father tapped your foot?
- A I was awakened.
- Q What did you do thereafter, when you were awakened by the tapping of your foot by your father?
- A I sat down.
- Q What did your father do after you sat down?
- A He called me to transfer to where he was sleeping.
- Q And you immediately heeded?
- A No, Ma'am.
- Q What did you do in refusing to the order of your father?
- A I cried.
- Q Loud?
- A No, Ma'am because he told me not to make noise.
- Q I thought, he only tapped your foot and you were awakened?
- A Yes, ma'am he tapped my foot and called for me to ask me to transfer.
- Q And you refused?
- A Yes, ma'am.
- Q You cried not loud?
- A Yes, ma'am.
- Q What happened?
- A He held my hands.
- Q Where was your mother?
- A She was sleeping.
- Q Beside you?

- A No, Ma'am.
- Q You were beside your sister?
A Yes, ma'am.
- Q You were allegedly sexually assaulted by your father at the room of your mother and father and your siblings were sleeping?
A Yes, Ma'am.
- Q For how long did the accused sexually assault you?
A Maybe 5 to 6 minutes and my mother awakened.
- Q You did not tell your mother what your father did to you?
A No, Ma'am I really want to tell her but I was afraid.
- Q Were you threatened by your father?
A Yes, Ma'am.
- Q How?
A He told me if I tell my mother and if he will be incarcerated I will also be detained and he will kill my mother.
- Q Where were your pants then when your mother was awakened?
A Just below my knee.
- Q And your mother saw it?
A Yes, Ma'am.
- Q And she did nothing?
A Yes, Ma'am.²⁸

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime. Thus, the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing. Moreover, the testimony of a young rape victim is given full weight and credence considering that her denunciation against him for rape would necessarily expose herself and her family to shame and perhaps ridicule.²⁹

The initial testimony of AAA appears to be truthful, candid and spontaneous. The oft-repeated adage that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor³⁰ finds application in this

²⁸ Id. at 9-13.

²⁹ *People v. Gallano*, G.R. No. 184762, 25 February 2015.

³⁰ *People v. Avero*, 247-A Phil. 216, 221 (1988).

case. 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.³¹

That the incident was done in the presence of AAA's mother, BBB, who herself seemed to have had no reaction to the grave matter, does not diminish or affect the credibility of AAA's testimony nor render her narration improbable. BBB might have been in a state of shock at the time, reason for the non-reaction. Or this fact could speak of how dysfunctional the family has become that a father can boldly rape his own daughter in the presence of the latter's mother who herself will not feel repulsed by the same. Lust indeed respects neither time nor place.³²

AAA's behaviour during and immediately after the ordeal also do not affect the veracity of her testimony that she was raped. As supported by prevailing jurisprudence, one could not expect a twelve (12)-year old to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered, no less, by her own father.³³ Moreover, rape is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a rape victim not to make an outcry against an unarmed assailant. In fact the moral ascendancy and influence of appellant, being the victim's father, can take the place of threat and intimidation.³⁴

Notably, Dr. Ortis's medical findings corroborate AAA's testimony that she had been sexually abused. When a victim's testimony is corroborated by the medical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.³⁵

We uphold the appellate court's declaration that victim's recantation is unreliable. In her testimony, AAA intimated that she was not raped by her

³¹ *People v. Espenilla*, G.R. No. 192253, 18 September 2013, 706 SCRA 134, 147.

³² *People v. Alviz*, 477 Phil. 188, 199 (2004).

³³ See *People v. Oydoc*, 210 Phil. 214, 220-221 (1983) quoted in *People v. Avero*, supra note 30 at 220-221.

³⁴ *People v. Aguilar*, 643 Phil. 643, 656 (2010).

³⁵ *People v. Sabal*, G.R.No. 201861, 2 June 2014, 724 SCRA 407, 412 citing *People v. Perez* 595 Phil. 1232, 1258 (2008).

father, but was actually raped by her grandfather who had already passed away.

A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.³⁶

Before allowing the recantation, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.³⁷

Guided by the preceding precept, we do not ascribe any weight to the recantation of the victim. In this regard, very telling is the following portion of the cross-examination of BBB's own recantation, to wit:

Q And accused in this case, are you legally married?

A No madam.

Q You love him so much?

A Yes.

Q And you will do anything to help him so that the charges against him will be dismissed?

A Yes.

Q That will include telling lies?

A I am not telling a lie.

Q That will also be helping him that will also include forcing your daughter to recant her testimony?

³⁶ *People v. Bulagao*, 674 Phil. 535, 544 (2011) citing *People v. Sumingwa*, 618 Phil. 650, 663 (2009).

³⁷ *People v. Teodoro*, G.R. No. 175876, 20 February 2013, 691 SCRA 324, 344-345.

A **Yes.**³⁸ (Emphasis supplied)

We find unmeritorious appellant's defense of denial. Denial could not prevail over the victim's direct, positive and categorical assertion.³⁹

All told, appellant's guilt of the crime charged was established beyond reasonable doubt.

The lower courts correctly reduced the penalty from death penalty to *reclusion perpetua*. The passage of R.A. No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. It must be stated however, that the accuse shall suffer the penalty of *reclusion perpetua* without eligibility for parole.⁴⁰

Also, we however, modify the appellate court's award of damages and increase it as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.⁴¹ Further, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.⁴²

WHEREFORE, premises considered, the Decision dated 26 November 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04819, finding appellant Allan Menaling y Canedo guilty in Criminal Case No. 353-2006, is hereby **AFFIRMED** with **MODIFICATION**. Appellant shall suffer the penalty of *reclusion perpetua* without eligibility for parole. Appellant is ordered to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

³⁸ TSN, 18 April 2008, p. 5

³⁹ *People v. Sabal*, supra note 35.

⁴⁰ Section 2, A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties).

⁴¹ *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508.

⁴² *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


MARIA LOURDES P.A. SERENO
Chief Justice


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(on official leave)
DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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