Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPAY
Division Clerk of Court
Third Division
DEC 07 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

NAPOLEON BENSURTO, JR. y BOLOHABO,
Accused-Appellant.

G.R. No. 216061

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
PEREZ,
REYES, and
PERLAS-BERNABE,* *JJ.*

Promulgated:

December 7, 2016

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DECISION

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (CA) Decision[1] dated March 28, 2014 dismissing appellant's appeal and affirming the Joint Decision[2] dated November 28, 2011 of the Regional Trial Court, Branch 48, Masbate City, in Criminal Cases Nos. 10225-26 convicting appellant of two (2) counts of the crime of qualified rape defined and penalized under Article 266-A (1) (a), in relation to Article 266-B (1) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.

The facts follow.

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 9, 2015.

[1] Penned by Associate Justice Isaias P. Dicdican, with the concurrence of Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes.

[2] Penned by Presiding Judge Arturo Clemente B. Revil.

The victim, AAA,[3] was born on July 10, 1991, and sometime in February 1999, when she was only 9 years old, she was left alone by her adoptive mother, BBB, in their house, together with appellant, her father (as indicated in the birth certificate presented before the court). While she was sleeping in her room, appellant entered thereat with a rope in his hand. AAA was awakened by the presence of her father who proceeded to tie her feet. Appellant then pulled AAA's underwear to her feet and immediately laid on top of her. Thereafter, appellant undressed himself and then forced his penis into AAA's vagina. After appellant satisfied his carnal desires, he threatened AAA not to tell anyone about the incident or else he would kill her and her mother. Fearing for her life, as well as her mother, AAA never told anyone about the incident. The said incident, however, was repeated sometime in June 2000. After appellant ordered their househelper to go home, he instructed AAA to sleep in his room. Left alone with only her father as companion, she was forced to accede to her father's demand. While in the appellant's room, the latter pulled down AAA's underwear and again sexually abused her despite her pleas not to. Appellant again told her not to tell anyone under the threat of death upon her and her mother. AAA was only able to relate the incident to her mother in November 2000. Subsequently, AAA and her mother went to Edna Romano, the Rural Health Midwife of Cabitan, Mandaon, Masbate to seek assistance. Romano, thereafter, accompanied BBB and AAA to the Mandaon Medicare Community Hospital where AAA was examined by Dr. Napoleon Villasis. Based on the examination, AAA was found to have hymenal tears at 10 o'clock position. Hence, two (2) Informations were filed against appellant, which read as follows:

Criminal Case No. 10225

> That sometime in the month of February, 1999 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.
>
> CONTRARY TO LAW.

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[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

Criminal Case No. 10226

> That sometime in the month of June 2000 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.
>
> CONTRARY TO LAW.

AAA testified during the trial, as well as Dr. Napoleon Villasis, Edna Romano and BBB, AAA's mother.

Appellant offered denial, alibi and no ill motive as defenses. According to him, all the accusations against him were mere fabrications of his wife who only forced AAA to file the two criminal cases and testify against him. He added that he knew about the illicit affair of his wife with a certain Relino Retudo, hence, his wife was only trying to escape from him for fear that he would kill her together with her paramour.

After more than 7 years since AAA testified in court, the latter retracted her previous testimony that she was raped by appellant. Testifying for the defense, AAA narrated that she was not raped by her father and was merely being dictated by her mother to fabricate the rape charges against appellant so as to allow her mother to live freely together with her paramour.

The RTC, on November 28, 2011, convicted the appellant on both counts of rape, the dispositive portion of the Joint Decision reads as follows:

> WHEREFORE, premises considered, the Court finds, accused Napoleon [Bensurto] y Bolohabo GUILTY of:
>
> 1. Qualified Rape in Criminal Case No. 10225, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" ₱75,000.00 as moral damages and ₱50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;
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> 2. Qualified Rape in Criminal Case No. 10226, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

> The period of detention of accused Napoleon [Bensurto, Jr.] y Bolohabo shall be credited in his favor.
>
> The Provincial Jail Warden of the Provincial Jail, Masbate is directed to immediately transfer Napoleon [Bensurto Jr.] y Bolohabo to the National Bilibid Prison, Muntinlupa City.
>
> SO ORDERED.[4]

Notwithstanding the recantation of AAA, the RTC gave credence to her earlier testimony wherein she clearly narrated how the appellant raped her.

On appeal, the CA, in its Decision dated March 28, 2014, dismissed the same with the following disposition:

> WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DENIED and, consequently, DISMISSED. The appealed Joint Decision rendered by Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City dated November 28, 2011 in Criminal Cases Nos. 10225-26 is hereby AFFIRMED,
>
> SO ORDERED.[5]

According to the CA, the presence of healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by the appellant months before the date of examination. The CA added that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to do conclude, having the opportunity to observe the witnesses' demeanor and deportment on the stand and the manner in which they gave their testimony. It was also adjudged that it was not adequately and convincingly shown that the trial court had overlooked or disregarded significant facts and circumstances which, when considered, would have affected the outcome of the case or justify a departure from the assessments and findings of the trial court. Furthermore, it ruled that a recantation or an affidavit of desistance is viewed with suspicion and reservation. According to the CA, it is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when AAA was already 19 years old and, as noted by the trial court, unemployed. It was also ruled that the failure of AAA to shout for help or resist the sexual advances of the appellant is not equivalent to consent. Lastly, the CA ruled that long silence and delay in reporting the crime is not an indication that the accusations are false.

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4 CA *rollo*, p. 20.

5 *Rollo*, p. 14.

Hence, the present appeal where appellant insists that the prosecution was not able to prove his guilt beyond reasonable doubt.

The appeal has no merit.

Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[6] All the elements, therefore, are present. The clear and straightforward testimony of AAA, as corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[7]

The appellant claims that the medical evidence, with respect to the lacerations on the hymen of AAA, failed to convincingly corroborate the crime of rape as the cause of the same was not determined with possibility. This is a flawed argument. The medical report revealed that AAA suffered hymenal lacerations at 10 o'clock position and it must be emphasized that the said examination was made in November 2000, or months after the incidents of rape occurred in February of 1999 and June of 2000. Thus, the CA was correct when it ruled that the presence of such healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by appellant months before the date of the medical examination.[8] The healed lacerations on the victim's hymen do not disprove that accused-appellant raped the victim and cannot serve to acquit him.[9] Proof of hymenal laceration is not even an element of rape, so long as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ.[10]

Appellant also contends that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, however, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and

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6 *People v. Flagrante*, G.R. NO. 182521, February 9, 2011, 642 SCRA 566, 579-580.
7 *People v. Estoya,* 700 Phil. 490, 499 (2012), citing *People v. Dizon*, 453 Phil. 858, 883 (2003).
8 *Rollo*, p. 9.
9 *People v. Pacheco*, 632 Phil. 624, 634 (2010).
10 *People v. Cruz*, 612 Phil. 726, 734 (2009), citing *People v. Jumawid*, 606 Phil. 816, 823 (2009).

intrinsically believable on the whole.[11] Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[12]

As to the retraction of AAA, this Court has ruled that when a rape victim's testimony is straightforward and marked with consistency despite gruelling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.[13] As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly, because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation.[14] Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, 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.[15] 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.[16] In this regard, the CA was correct with the following findings:

> In the case at bench, the determination by the trial court of the credibility of "AAA's" accusations and recantation is facilitated by the fact that her recantation was made in open court, by testifying for the defense. Unlike in cases where recantations were made in affidavits, the trial court in this case had the opportunity to see the demeanor of "AAA" not only when she narrated the sordid details of the alleged rape by her

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11 See *People v. Laog*, 674 Phil. 444, 463 (2011), citing *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

12 *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 522-523.

13 *People v. Bulagao*, G.R. No. 184757, October 5, 2011, 658 SCRA 746, 755.

14 *People v. Teodoro*, 704 Phil. 335, 357 (2013).

15 *People v. Ballabare*, G.R. No. 108871, November 19, 1996, 264 SCRA 350, 361.

16 *People v. Terrible*, G.R. No. 140635, November 18, 2002, 392 SCRA 113, 118.

> "adoptive" father, but also when she claimed that she made up the previous rape charges upon the ill advice of her "adoptive" mother.
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> As such, it is difficult to overlook the fact that the trial court convicted accused-appellant even after examining the young witness as she made a complete turnaround and admitted to perjury. The legal adage that the trial court is in the best position to assess the credibility of witnesses thus finds an entirely new significance in this case where "AAA" was subjected to gruelling cross examinations, redirect examinations and re-cross examinations both as a prosecution and defense witness. Still, the trial court found that the private complainant's testimony for the prosecution was the one that was worthy of belief.
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> Even if we disregard the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, it is clear which of the narrations of "AAA" was sincere and which was concocted. As found by the trial court, "AAA's" testimony for the prosecution was clear, candid, and filled with emotions. It is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when "AAA" was already nineteen (19) years old and, as noted by the trial court, unemployed.
>
> Verily, the trial court gave credence to the testimony of "AAA" when she was presented as witness for the prosecution. The RTC found that her clear narration of how the crime of rape on two counts was committed and her categorical statement that the accused-appellant committed said crime, are sufficient to warrant the conviction of the appellant for two counts of rape.[17]

Another point raised in this appeal is AAA's lack of resistance if indeed it was true that she was subjected to sexual abuse because according to appellant, such absence of resistance tarnished AAA's testimony. Such argument, however, deserves scant consideration. In *People v. Enrique Quintos*,[18] this Court ruled that resistance or the absence thereof does not carry any weight in proving the crime of rape, thus:

> In any case, resistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is "lack of consent."
>
> "Consent," "resistance," and "absence of resistance" are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.
>
> Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. However, it may also be the product of force, intimidation, manipulation, and other external forces.

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17 *Rollo*, pp. 12-13.

18 G.R. No. 199402, November 12, 2014, 740 SCRA 179, 199-200.

> Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape.
>
> Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape.
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> Hence, Article 266-A of the Revised Penal Code does not simply say that rape is committed when a man has carnal knowledge with or sexually assaults another by means of force, threat, or intimidation. It enumerates at least four other circumstances under which rape may be committed: (1) by taking advantage of a person's deprived reason or unconscious state; (2) through fraudulent machination; (3) by taking advantage of a person's age (12 years of age) or demented status; and (4) through grave abuse of authority. Article 266-A recognizes that rape can happen even in circumstances when there is no resistance from the victim.
>
> Resistance, therefore, is not necessary to establish rape, especially when the victim is unconscious, deprived of reason, manipulated, demented, or young either in chronological age or mental age.

This Court is also not persuaded by appellant's contention that AAA's delay in reporting the crime indicates that the accusations against him are false. The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated.[19] Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists.[20] They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[21]

Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be

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19 *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412.
20 *Id.*
21 *Id.*

present at the place where the crime was committed at the time of commission.[22]

As to the penalty imposed, the RTC and the CA were correct in imposing the penalty of *reclusion perpetua* instead of death by virtue of R.A. No. 9346, as the rape is qualified by private complainant AAA's minority and appellant's paternity. However, in the award of damages, a modification must be made per *People v. Ireneo Jugueta*.[23] Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of damages shall be as follows:

1. Civil Indemnity – ₱100,000.00
2. Moral Damages – ₱100,000.00
3. Exemplary Damages – ₱100,000.00

WHEREFORE, the appeal of Napoleon Bensurto, Jr. y Bolahabo is **DISMISSED** for lack merit and the Decision dated March 28, 2014 of the Court of Appeals, affirming the Joint Decision dated November 28, 2011 of the Regional Trial Court, Branch 48, Masbate City, in Criminal Cases Nos. 10225-26, convicting appellant of two (2) counts of the crime of qualified rape defined and penalized under Article 266-A (1) (a) in relation to Art. 266-B (1) of the Revised Penal Code, as amended by R.A. No. 8353 and imposing on each count, the penalty of *Reclusion Perpetua* without eligibility for parole is **AFFIRMED** with the **MODIFICATION** that the award of damages on each count must be in this manner per *People v. Ireneo Jugueta*:[24] ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with legal interest on all damages awarded at the rate of 6% *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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22 *People v. Abulon*, 557 Phil. 428, 448 (2007).
23 G.R. No. 202124, April 5, 2016.
24 *Id.*

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
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, 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

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