



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 18 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 202978

Present:

- versus -

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

Promulgated:

VICTOR P. PADIT,
Accused-Appellant.

February 1, 2016

X-----*Wilfredo V. Lapitan*-----X

DECISION

PERALTA, J.:

Before the Court is an ordinary appeal filed by accused-appellant Victor P. Padit (*Padit*) assailing the Decision¹ of the Court of Appeals (*CA*), dated July 19, 2011, in CA-G.R. CEB-CR-H.C. No. 00888, which affirmed with modification the Decision² of the Regional Trial Court (*RTC*) of Guiuan, Eastern Samar, Branch 3, in Criminal Case No. 2266, finding Padit guilty of the crime of rape.

The antecedents are as follows:

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

¹ Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring; *rollo*, pp. 3-17.

² Penned by Judge Rolando M. Lacdo-o; *CA rollo*, pp. 49-71.

In the morning of May 5, 2006, the victim, AAA,³ a four-year-old girl, was playing inside their house while her mother was looking after her younger brother. After a while, AAA went out of the house to buy bread. On her way to the store, she was called by accused-appellant, who is their neighbor and the uncle of her mother, and whom AAA calls as Lolo Victor. Accused-appellant brought AAA inside his house and allowed her to play. He then brought her upstairs, caused her to lie down and removed her short pants. Accused-appellant also removed his short pants and proceeded to rub his penis against AAA's vagina. AAA felt pain but was rendered helpless and prevented from making any sound as accused-appellant covered her mouth with his hand. Thereafter, accused-appellant threatened to hurt AAA with his knife if she tells anybody about the incident.

Meanwhile, AAA's mother was about to serve lunch when she noticed that AAA was not yet around. She then went out of their house and around their neighborhood calling for AAA. While she was in accused-appellant's yard, the latter came out of his house and told her that AAA is inside watching him weave baskets. Accused-appellant then went back inside the house and, after a few minutes, brought AAA outside.

Back at their house, her mother asked AAA why she did not respond to her calls. AAA then told her mother about what accused-appellant did to her. Upon hearing AAA's account of her sexual molestation committed by accused-appellant, AAA's mother immediately went to accused-appellant's house to confront him. Accused-appellant, however, denied having molested AAA. Unable to elicit an admission from accused-appellant, AAA's mother went back to their house and proceeded to give AAA a bath. While she was washing AAA's vagina, the latter cried and asked her not to touch it because it was very painful.

The following morning, AAA's parents filed a complaint with their Barangay Chairman. They also caused AAA to undergo physical/medical examination on May 8, 2006 wherein it was found that the child's vulva showed a slight hymenal abrasion.

Subsequently, AAA's mother filed a criminal Complaint⁴ with the Prosecutor's Office of Guiuan, Eastern Samar. In an Information⁵ dated August 2, 2006, the Office of the Public Prosecutor of Eastern Samar charged accused-appellant with the crime of rape, the pertinent portions of which read as follows:

³ The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), the name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

⁴ Exhibit "A," Folder of Documentary Exhibits, p. 3.

⁵ Records, p. 1.

X X X X

The undersigned, Public Prosecutor of the Province of Eastern Samar, accuses Victor Padit y Padual of the crime of Rape, defined and penalized under Art. 335, Revised Penal Code, committed as follows:

That on or about the 5th day of May 2006, at about 12:00 noon, Brgy. Naparaan, Salcedo, Eastern Samar, Philippines, within the jurisdiction of this Honorable Court, the aforementioned accused with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously place and rub his penis into the vagina of [AAA], 4-year-old girl minor, without her consent and against her will.

Contrary to law.

X X X

In his defense, accused-appellant denied the allegations of the prosecution contending that he could not have raped AAA because his wife was with him at the time that the alleged molestation was committed. Accused-appellant's wife corroborated his testimony on the witness stand.

During pre-trial, the prosecution and the defense entered into a stipulation of facts wherein it was admitted that the victim was four (4) years old at the time of the alleged rape; accused-appellant is the same person who has been charged and arraigned; and, accused-appellant and the victim and her parents are neighbors.⁶

Thereafter, trial ensued.

On March 3, 2008, the RTC rendered its Decision⁷ finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, the court finds accused **VICTOR P. PADIT**, guilty beyond reasonable doubt, as principal, of the consummated offense of RAPE, as defined and penalized under Art. 335 of the Revised Penal Code, as amended, and hereby convicts him to suffer the penalty of imprisonment of *reclusion perpetua* and to pay the victim, [AAA], the sum of seventy-five thousand pesos (₱75,000.00) as civil indemnity and seventy-five thousand pesos (₱75,000.00) as moral damages; with the accessory penalties provided for by law. With costs *de officio*.

March 3, 2008, Guiuan, Eastern Samar, Philippines.

SO ORDERED.⁸

⁶ See RTC Joint Preliminary Conference and Pre-Trial Order, *id.* at 19-21.

⁷ *Supra* note 2.

The RTC gave full faith and credence to the testimony of the victim as corroborated, in its material points, by the medical findings of the physician who examined the victim.

Accused-appellant appealed the RTC Decision with the CA in Cebu City.⁹

On July 19, 2011, the CA promulgated its assailed Decision affirming with modification the judgment of the RTC. The dispositive portion of the CA Decision reads, thus:

WHEREFORE, premises considered, the appealed Decision dated 3 March 2008 of the Regional Trial Court, Branch 3, Guiuan, Eastern Samar in Criminal Case No. 2266, finding accused-appellant guilty beyond reasonable doubt of consummated rape is hereby **AFFIRMED WITH MODIFICATION**. In addition to the award [of] ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, accused-appellant is hereby ordered to pay the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.¹⁰

The CA held that the prosecution was able to establish the elements of rape through the victim's testimony and that it found no cogent reason to disturb the findings of the RTC with respect to the credibility of the victim.

On August 8, 2011, accused-appellant, through counsel, filed a Notice of Appeal¹¹ manifesting his intention to appeal the CA Decision to this Court.

In its Resolution¹² dated December 1, 2011, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution¹³ dated October 11, 2012, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

⁸ *Id.* at 70-71.

⁹ See Notice of Appeal, *id.* at 79-98.

¹⁰ *Rollo*, p. 16. (Emphasis in the original)

¹¹ CA *rollo*, pp. 135-136.

¹² *Id.* at 138.

¹³ *Rollo*, p. 22.

In its Manifestation¹⁴ dated December 13, 2012, the Office of the Solicitor General (*OSG*) informed this Court that it will no longer file a supplemental brief because it had already extensively discussed and refuted all the arguments raised by the appellant in its brief filed before the CA, subject, however, to the reservation that it will file a supplemental brief if appellant will raise new matters and issues.

In the same manner, accused-appellant filed a Manifestation¹⁵ dated January 2, 2013, indicating that he no longer intends to file a supplemental brief and is adopting *in toto* and reiterates the contents and substance of his brief which was filed with the CA.

Thus, the basic issue to be resolved by this Court, in the instant appeal, is whether the prosecution was able to prove beyond reasonable doubt that the accused-appellant is guilty of rape.

The Court rules in the affirmative.

At the outset, the Court notes that the Information, dated August 2, 2006, specifically charged petitioner with rape under Article 335 of the Revised Penal Code (*RPC*). However, upon the enactment of Republic Act No. 8353 (*RA 8353*), otherwise known as the *Anti-Rape Law of 1997*, which became effective on October 22, 1997, rape was reclassified as a crime against persons, thus, repealing Article 335 of the *RPC*. The new provisions on rape are now found in Articles 266-A to 266-D of the said Code. In the instant case, the crime was committed on May 5, 2006. Hence, the applicable law is the *RPC* as amended by *RA 8353* and that the prosecution as well as the RTC and the CA committed an error in specifying the provision of law which was violated. Nonetheless, it is settled that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.¹⁶ The character of the crime is not determined by the caption or preamble of the information nor by 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.¹⁷ In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and describes acts punishable under Article 266-A, in relation to Article 266-B, of the *RPC*, as amended.

¹⁴ *Id.* at 28-29.

¹⁵ *Id.* at 35-36.

¹⁶ *People v. Sanico*, G.R. No. 208469, August 13, 2014, 733 SCRA 158, 177; *People v. Sumingwa*, 618 Phil. 650, 670 (2009); *Malto v. People*, 560 Phil. 119, 135-136 (2007).

¹⁷ *Id.*

The pertinent provisions of Articles 266-A and 266-B of the Revised Penal Code, as amended, provide:

Art. 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

ART. 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 aggravating/qualifying circumstances:

X X X X

- 5. When the victim is a child below seven (7) years old.

X X X

Both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of the crime charged and this Court finds no cogent reason to depart from these findings, as will be discussed below.

Accused-appellant's arguments in the instant appeal basically harp on the alleged loopholes, inconsistencies and improbabilities in the testimonies of the victim and her mother which supposedly cast doubt on their credibility as witnesses.

Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed.¹⁸ When the offended party is of tender age and immature, courts are inclined to give credit to her account of what

¹⁸ *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587, 593.

transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.¹⁹ Youth and immaturity are generally badges of truth and sincerity.²⁰ Considering that AAA was only four (4) years old when she was raped and was only five (5) years old when she took the witness stand, she could not have invented a horrible story. For her to fabricate the facts of rape and to charge the accused falsely of a crime is certainly beyond her mental capacity.

The Court does not agree with accused-appellant's contention that the prosecution failed to prove carnal knowledge on the ground that AAA explicitly stated in her testimony that accused-appellant merely rubbed his penis against her vagina.

AAA, who was then four years old at the time of the molestation, was not expected to be knowledgeable about sexual intercourse and every stage thereof. The fact that she claimed that accused-appellant rubbed his penis against her vagina did not mean that there was no penetration. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman.²¹ This explains why the slightest penetration of the female genitalia consummates the rape.²² As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape.²³ In the present case, AAA testified that she felt pain when accused-appellant “rubbed his penis [against her] vagina.”²⁴ This Court has held that rape is committed on the victim's testimony that she felt pain.²⁵ In fact, AAA still felt severe pain in her vagina when she was being given a bath by her mother after her molestation.²⁶ This kind of pain could not have been the result of mere superficial rubbing of accused-appellant's sex organ with that of the victim. Such pain could be nothing but the result of penile penetration sufficient to constitute rape.²⁷

Besides, the testimony of AAA is corroborated by the findings of the physician who examined her indicating the presence of slight hymenal abrasion upon examination of her vulva.²⁸ Thus, the RTC and the CA are correct in concluding that both the victim's positive testimony and the findings of the medico-legal officer complemented each other in the conclusion that there was penetration, however slight.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *People v. Butiong*, 675 Phil. 621, 630 (2011).

²² *Id.*

²³ *Id.*

²⁴ See TSN, January 16, 2007, p. 32.

²⁵ *People v. Pangilinan*, 676 Phil. 16, 32 (2011), citing *People v. Tampos*, 455 Phil. 844, 859 (2003).

²⁶ See TSN, January 16, 2007, p. 33.

²⁷ *People v. Pangilinan*, *supra* note 25, citing *People v. Palicte*, G.R. No. 101088, January 27, 1994, 229 SCRA 543, 547-548.

²⁸ See Medico-Legal Certificate, Exhibit “B,” Folder of Documentary Exhibits, p. 6.

The Court is neither persuaded by accused-appellant's insistence that while there is no question that children, like AAA, at such an age are incapable of lying, their credibility is not only limited to their capacity to tell the truth but also their capacity to grasp things that have happened, to intelligently recall them and to completely and accurately relate them. The fact that the offended party is a minor does not mean that she is incapable of perceiving and of making her perception known.²⁹ Children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons.³⁰ In fact, AAA had consistently, positively, and categorically identified accused-appellant as her abuser. Her testimony was direct, candid, and replete with details of the rape.

Accused-appellant also contends that the testimony of AAA's mother that it was accused-appellant who molested her child is nothing but hearsay, considering that she only came to know of the alleged molestation when she found AAA inside accused-appellant's house and after the child told her about it when they got back home.

The Court does not agree.

The term "hearsay" as used in the law on evidence, signifies evidence which is not founded upon the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him; its value, if any, is measured by the credit to be given to some third person not sworn as a witness to that fact, and consequently, not subject to cross-examination.³¹ If one therefore testifies to facts which he learned from a third person not sworn as a witness to those facts, his testimony is inadmissible as hearsay evidence.

The reason for the exclusion of hearsay evidence is that the party against whom the hearsay testimony is presented is deprived of the right or opportunity to cross-examine the person to whom the statements are attributed. Moreover, the court is without opportunity to test the credibility of hearsay statements by observing the demeanor of the person who made them.

In the instant case, the declarant, AAA herself, was sworn as a witness to the fact testified to by her mother. Accused-appellant's counsel even cross-examined AAA. Moreover, the trial court had the opportunity to observe

²⁹ *People v. Somodio*, 427 Phil. 363, 377 (2002).

³⁰ *Id.*

³¹ *People v. Pruna*, 439 Phil. 440, 460 (2002).

AAA's manner of testifying. Hence, the testimony of AAA's mother on the incident related to her by her daughter cannot be disregarded as hearsay evidence.

Even assuming that the aforementioned testimony of AAA's mother is hearsay, its non-admission would not save the day for accused-appellant. Such testimony is not indispensable, as it merely serves to corroborate AAA's testimony that accused-appellant forced himself upon her. As discussed earlier, AAA's testimony, which was found to be credible by the trial court, and was corroborated by the findings of the medico-legal, is sufficient basis for conviction.

At any rate, the testimony of AAA's mother is proof of the victim's conduct immediately after the rape. It shows that AAA immediately revealed to her mother the rape incident and the identity of her defiler. Such conduct is one of the earmarks of the truth of the charge of rape.

The Court finds neither logic nor relevance in accused-appellant's argument that if he indeed committed the offense charged, why is it that of all times that AAA went to his yard and play it was only during the time alleged by the prosecution that accused-appellant decided to rape her. This matter is inconsequential as it has no bearing with respect to the elements of rape. As aptly held by the CA, the decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the accused for the crime charged.³² As the inconsistencies alleged by accused-appellant had nothing to do with the elements of the crime of rape, they cannot be used as grounds for his acquittal.

When the offended party is under twelve (12) years of age, the crime committed is termed statutory rape as it departs from the usual modes of committing rape.³³ What the law punishes is carnal knowledge of a woman below twelve years of age.³⁴ In the instant case, there is no dispute that AAA was four years of age when the crime was committed. Resultantly, accused-appellant was charged and proven guilty of statutory rape.

As to the penalty, Article 266-B of the RPC, as amended, provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346,³⁵ the RTC, as affirmed by

³² *People v. Lolos*, 641 Phil. 624, 633 (2010).

³³ *People v. Crisostomo*, G.R. No. 196435, January 29, 2014, 715 SCRA 99, 109, citing *People v. Dollano, Jr.*, 675 Phil. 827, 843 (2011).

³⁴ *Id.*

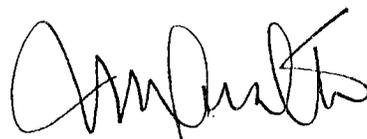
³⁵ *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but it should be specified that it is without eligibility for parole, as the RTC did not state it in the dispositive portion of its Decision. Likewise, the RTC correctly awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. The CA, in turn, correctly modified the RTC ruling by awarding an additional amount of ₱30,000.00 as exemplary damages. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.³⁶ Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.³⁷

The Court additionally orders accused-appellant to pay interest of six percent (6%) per annum from the finality of this judgment until all the monetary awards for damages are fully paid, in accordance with prevailing jurisprudence.³⁸

WHEREFORE, the instant appeal is **DISMISSED** and the Decision dated July 19, 2011 of the Court of Appeals in CA-G.R. CEB CR-H.C. No. 00888 is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) accused-appellant VICTOR P. PADIT is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; and (2) that said accused-appellant is additionally ordered to pay the victim interest of six percent (6%) per annum on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice

³⁶ *People v. Piosang*, *supra* note 18, at 599.

³⁷ *Id.*

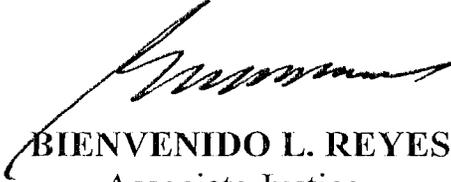
³⁸ *Id.*; *People of the Philippines v. Obaldo Bandril y Tabling*, G.R. No. 212205, July 6, 2015.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

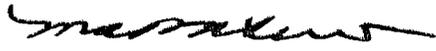
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



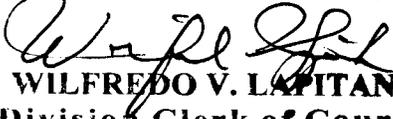
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

FEB 18 2016