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Wilfredo V. Lapihan
WILFREDO V. LAPIHAN
Division Clerk of Court
Third Division

JUL 31 2017



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 215195

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

BERSAMIN,
*MENDOZA,
REYES, and
TIJAM, JJ.

JOSE DESCARTIN, JR. y
MERCADER,
Accused-Appellant,

Promulgated:

June 7, 2017

Wilfredo V. Lapihan

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DECISION

TIJAM, J.:

Accused-appellant Jose Descartin, Jr. y Mercader challenges in this appeal the August 8, 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00959-MIN, which affirmed the judgment of conviction for the crime of Qualified Rape rendered against him on June 13, 2011² by the Regional Trial Court (RTC), Branch 8 of Davao City in Criminal Case No. 52-760-03.

The accusatory portion of the Information, reads:

“n or about 19 July 2003, in Davao City, Philippines, and within this Honorable Court's jurisdiction, the Accused, who is the 11-year-old(sic)

^{*}Designated as additional member as per Raffle dated February 27, 2017.

¹ Penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Edward B. Contreras.

² CA rollo, pp. 33-41.

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minor victim AAA's³ biological father, which relationship by consanguinity is alleged as a qualifying circumstance, had carnal knowledge of his (Accused) 11-year-old(sic) minor daughter AAA, willfully and feloniously.

CONTRARY TO LAW.⁴

When accused-appellant was arraigned, he pleaded not guilty to the offense charged.⁵ Thereafter, trial on the merits ensued.

As culled from the records, the facts of the case are as follows:

AAA testified that accused-appellant is her father and that she has 3 other younger sisters. They rented a house in Davao City with Frigem Almocera (Almocera) who rented a room therein, while her mother was working in Manila.

On the evening of July 19, 2003, after watching television, AAA went to sleep in the sala of their house with her three younger sisters, while Almocera was sleeping in his room.

Accused-appellant then arrived from a drinking spree in their neighbor's house. Upon arriving, accused-appellant removed AAA's shorts and panty, and raised AAA's right leg but the latter lowered the same to prevent accused-appellant from raping her. However, accused-appellant was still able to successfully insert his penis into AAA's vagina. AAA felt pain and could only cry in silence. AAA failed to wake up her siblings or shout for help while her father was raping her because she was afraid of her father and she could not move her hands anymore. When accused-appellant was finished, he wiped the semen from his pants and put back AAA's shorts.⁶

The next day, July 20, 2003, AAA together with Almocera, went to their neighbor, Virginia Capote (Capote). AAA then confided to Capote that accused-appellant raped her. Upon hearing the story, Capote brought AAA to the Davao Medical Center Women and Protection Unit for medical examination. Thereafter, Capote accompanied AAA to the Sasa Police Station to report the incident.

On the other hand, accused-appellant testified that on the day of the alleged rape, he was in Tagum City with his youngest child to get the payment for the motorcycle that his brother bought from him. When he returned to their house on July 20, 2003, at around 4:00 p.m., he was suddenly arrested by the police officers for allegedly raping her daughter, AAA.

³ The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 and A.M. No. 12-7-15-SC.

⁴ Records, p. 1.

⁵ Id. at 19.

⁶ *Rollo*, pp. 4-7.

On June 13, 2011, the RTC convicted accused-appellant of the crime of Qualified Rape, to wit:

Finding the Accused, Jose Descartin, Jr. y Mercader, Guilty of Rape under Article 266-A and qualified under paragraph 5 of Article 266-B, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

SO ORDERED.⁷

On appeal, the CA affirmed with modification the decision of the RTC, to wit:

WHEREFORE, the instant appeal is DENIED for lack of merit. The Decision dated June 13, 2011 of the Regional Trial Court of Davao City, Branch 8, in Criminal Case No. 52,760-03(sic), finding accused-appellant guilty beyond reasonable doubt of the crime of qualified statutory rape is hereby AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay AAA the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages plus 6% interest per annum on the total monetary awards from finality of this decision until fully paid.⁸

Hence, this appeal with accused-appellant raising this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.⁹

In seeking for his acquittal, accused-appellant claimed that the testimony of AAA as to the alleged rape was not sufficient to convict him of the offense charged. Accused-appellant specifically pointed out that the prosecution failed to elicit testimony from AAA that he made a push and pull movement. He also averred that the testimony of AAA as to the fact of carnal knowledge is too vague.

We are unconvinced.

In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of

⁷ CA rollo, p. 41.

⁸ Rollo, p. 23.

⁹ CA rollo, p. 22.

credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis.¹⁰

The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.¹¹ This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.¹²

In the present case, both the RTC and the CA found that AAA's testimony was straight, candid, spontaneous and steadfast even on cross-examination. Thus, We see no cogent reason to depart from the foregoing rule, since the accused-appellant failed to demonstrate that the RTC and the CA overlooked, misunderstood or misapplied some facts of weight and substance that would alter the assailed Decision.

Article 266-A of the Revised Penal Code (RPC) provides that 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;
- 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.

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¹⁰ *People v. Enrique Ceballos Jr. y Cabrales*, G.R. No. 169642, September 14, 2007.

¹¹ *People v. Quirino Cabral y Valencia*, G.R. No. 179946, December 23, 2009.

¹² *People v. Anastacio Amistoso y Broca*, G.R. No. 201447, January 9, 2013, citing *People v. Aguilar*, G.R. No. 177749, December 17, 2007.

Whereas, Article 266-B of the RPC provides the penalties for the crime of rape:

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

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

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

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.¹³

To raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur.¹⁴

In the present case, the elements of qualified rape were sufficiently alleged in the Information, to wit: a) AAA was 11 years old on the day of the alleged rape; and b) accused-appellant is AAA's father. The foregoing elements were sufficiently proven by the prosecution. That AAA was 11 years old during the commission of the rape and that accused-appellant is AAA's father were established by AAA's Certificate of Live Birth¹⁵.

AAA also recounted her harrowing experience, as follows:

PROS. LEMANA (direct examination)

Q. You said that you were inside your house in the evening of July 19, 2003, what were you doing inside your house?

A. I was sleeping after I watched television.

¹³ *People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

¹⁴ *Id.*

¹⁵ Exhibit "A" of the Prosecution, Folder of Exhibits. See Court of Appeals' Decision dated August 8, 2014, *Rollo*, p. 9.

Q. In what particular part of your house did you sleep?

A. In the sala of our house.

Q. How about your other siblings, when you were asleep, where were they?

A. They were beside me.

Q. How about your uncle, Frigem Almocera, where was he?

A. He was in the room.

Q. You said your (sic) were sleeping at that time, what happened afterwards?

A. My father removed my shorts.

Q. You said your father removed your short pants, after removing your short pants what else did he do?

A. He took off my panty.

Q. After removing your panty, what else did he do?

A. He raised my right leg.

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Q. After raising your right leg, what else did your father do?

A. He inserted his penis to my vagina.

Q. At that point your father removed your short pants, your panty and raised your right leg and inserted his penis to your vagina, what were you doing?

A. I tried to immediately put down my right leg.

Q. What was the reaction of your father when you did that?

A. He raised it again.

Q. Did your father really succeed in inserting his penis into your vagina?

A. Yes.

Q. When at that point when he inserted his penis in your vagina, what did you feel?

A. I felt pain.

Q. Did you cry?

A. I cried in silence.

Q. Why?

A. Because I can't do anything.

Q. Why do you say that you could not do anything about the situation?

A. Because I was afraid of my father.

Q. Did your father doing (sic) this before to you before this incident?

A. Yes, ma'am.

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Q. You said your father succeeded in inserting his penis in to your vagina, after that what happened?

A. He wiped the semen that came out from his penis.

Q. After that what happened?

A. He did not wipe my vagina instead he put back my short pants.¹⁶ (Emphasis ours)

AAA's foregoing testimony sufficiently established that accused-appellant inserted his penis into her vagina and succeeded in having carnal knowledge of her. When a woman, especially a minor, alleges rape, she says in effect all that is necessary to mean that she has been raped.¹⁷ When the offended party is of tender age and immature, courts are inclined to give credit to her account of what 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. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.¹⁸

In *People v. Canoy*,¹⁹ We held that it is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not been aggrieved. The foregoing legal dictum especially applies in this case, since accused-appellant failed to prove any ill motive on the part of AAA to falsely accuse him of such a serious charge.

The allegation of the accused-appellant that he could not have summoned enough courage to molest AAA knowing the danger that he will be caught considering that AAA's three siblings were beside her when the alleged rape occurred, and Almocera was just sleeping in the other room, is without merit.

¹⁶ TSN, May 4, 2005, pp. 4-7.

¹⁷ *People v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

¹⁸ *People v. Guillermo B. Cadano, Jr.*, supra note 13.

¹⁹ 459 Phil. 933 (2003).

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It is well-settled that close proximity of other relatives at the scene of the rape does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.²⁰

Neither is the allegation of accused-appellant that AAA's failure to ask for help from his siblings or from Almocera, despite the fact that he did not employ force or intimidation, could be a ground to acquit him.

In *People v. Villamor*,²¹ AAA's silence and failure to shout or wake up her siblings do not affect her credibility. The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.²²

Further, the inconsistency as to whether AAA cried in silence or loudly should be given liberal appreciation considering that the same is not an essential element of the crime of rape. What is decisive is that accused-appellant's commission of the crime charged was sufficiently proved. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.

In contrast, accused-appellant's bare denial and alibi deserve scant consideration. Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. Alibi is an inherently weak

²⁰ Supra note 11.

²¹ G.R. No. 202187, February 10, 2016.

²² Id.

defense, which is viewed with suspicion because it can easily be fabricated. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.²³ AAA's positive and straightforward testimony that she was raped by accused-appellant deserves greater evidentiary weight than accused-appellant's uncorroborated defenses.

Since the elements of minority of AAA and the relationship of the accused-appellant with AAA were alleged in the Information and sufficiently proven by the prosecution during the trial, We agree with the CA that accused-appellant is guilty of statutory rape under Article 266-A paragraph 1(d), as qualified under Article 266-B of the RPC. Thus, the CA is correct in imposing upon accused-appellant the penalty of *reclusion perpetua*. However, with the advent of Republic Act No. 9346 (R.A. No. 9346), entitled as "An Act Prohibiting the Imposition of Death Penalty in the Philippines", Section 3 thereof provides that:

Sec. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

Thus, accused-appellant should be imposed a penalty of *reclusion perpetua*, without eligibility for parole, in lieu of the death penalty, pursuant to Section 3 of R.A. No. 9346.

However, We modify the amounts awarded to AAA in view of the recent jurisprudence²⁴ imposing a minimum amount of PhP 100,000 as civil indemnity; PhP 100,000 as moral damages; and PhP 100,000 as exemplary damages in cases where the proper penalty for the crime committed by the accused is death but where it cannot be imposed because of the enactment of R.A. No. 9346.²⁵

Thus, We increase the award of civil indemnity from PhP 75,000 to PhP 100,000; moral damages from PhP 75,000 to PhP 100,000; and, exemplary damages from PhP 30,000 to PhP 100,000.

WHEREFORE, the instant appeal is **DISMISSED** The Court of Appeals' Decision dated August 8, 2014 in CA-G.R. CR-H.C. No. 00959-MIN which found accused-appellant Jose Descartin, Jr. y Mercader **GUILTY** in Criminal Case No. 52-760-03 of Qualified Statutory Rape is **AFFIRMED** with **MODIFICATIONS** that: (a) the awards of civil indemnity, moral damages and exemplary damages are each increased to One Hundred Thousand Pesos (P100,000); and (b) interest at the rate of 6% per

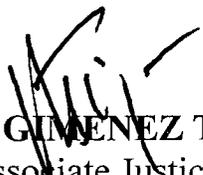
²³*People v. Guillermo B. Cadano, Jr.*, G.R. No. 207819, March 12, 2014.

²⁴*People v. Gamboa*, G.R. No. 172707, October 1, 2013 and *People v. Edilberto Pusing y Tamor*, G.R. No. 208009, July 11, 2016.

²⁵*People v. Gamboa*, G.R. No. 172707, October 1, 2013.

annum is imposed on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

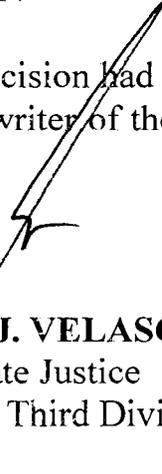

LUCAS P. BERSAMIN
Associate Justice

(On Leave)
JOSE CATRAL MENDOZA
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

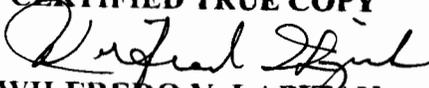
CERTIFICATION

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. LAPID
Division Clerk of Court
Third Division

JUL 31 2017