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D.V. LAPITAN
DEC 15 2017

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 207772

Present:

-versus-

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

GAVINO PAGAMUCAN
y MATIGA@ "SABINO/ABE,"
Accused-Appellant.

Promulgated:

November 8, 2017

[Signature]

X ----- X

RESOLUTION

MARTIRES, J.:

"Yes, he give (sic) me five (P5.00) pesos." So testified the minor victim in this case after her rape, bringing to a total of thirty pesos the money she had received from her assailant.

On appeal is the Decision of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00793,² dated 31 January 2012, which affirmed with modification the Decision of the Regional Trial Court of Balangiga, Eastern Samar (RTC),³ in Criminal Case No. 0007,⁴ dated 19 September 2007. The RTC found appellant Gavino Pagamucan y Matiga (*accused-appellant*) alias "Sabino" or "Abe," guilty beyond reasonable doubt of statutory rape.

[Signature]

¹ TSN dated 5 July 2006, p. 12.

² *Rollo*, pp. 3-13. Penned by Associate Justice Gabriel T. Ingles, and concurred in by Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr.

³ Branch 42.

⁴ *CA rollo*, pp. 37-45. Penned by Presiding Judge Rowena Nieves A. Tan.

THE FACTS

On 13 January 2006, appellant was charged with statutory rape, as defined and penalized under Article 335 of the Revised Penal Code. The Information⁵ reads:

That on or about 10:00 o'clock in the morning of September 10, 2005 at Brgy. Rizal, Quinapondan, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, with force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with AAA,⁶ a minor being only 10 years old against her will and consent, to the damage and prejudice of the herein victim.

Appellant entered a plea of "not guilty."⁷ Trial ensued.

The Version of the Prosecution

The prosecution presented as witnesses the victim AAA, her father BBB, the Chief of the General McArthur Municipal Hospital, and the Civil Registrar of Quinapondan, Eastern Samar.

AAA testified that on 10 September 2005, at around 10:00 A.M., she was defecating under coconut trees located at about a hundred meters away from her house in Barangay Rizal,⁸ Quinapondan, Eastern Samar, when accused-appellant, her next-door neighbor,⁹ approached her and got her up, and carried her to a grassy place. He undressed her, mounted her, held her breasts, and inserted his penis into her vagina. She felt pain and cried but could not shout because accused-appellant had covered her mouth, pointed a knife at her, and threatened to kill her. After the rape, accused-appellant gave her ₱5.00 and left. Thereafter, she went home.

BBB, AAA's father, testified that on 9 September 2005, he noticed that AAA had money. Bothered, because he never gave her money, he asked her where she got it. AAA revealed that appellant had given her ₱5.00 every time he raped her. The next day, on 10 September 2005, he reported the incident to the Punong Barangay to whom AAA narrated how appellant had raped her several times.


⁵ Records, p. 1.

⁶ The names of the victim and those of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children against Abuse, Exploitation and Discrimination Act*), Republic Act No. 9262 (*Special Protection of Children against Abuse, Exploitation and Discrimination Act*), and this Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 708 (2006).

⁷ Records, p. 27.

⁸ Also known as Barangay Panaugan.

⁹ TSN dated 5 July 2006, p. 6.

The Chief of the General Macarthur Municipal Hospital, Dr. Manuel Japzon, testified that he physically examined AAA on 26 September 2005, and found that her vaginal area bore healed laceration wounds at the 2 o'clock and 10 o'clock positions, which wounds could have been inflicted by a blunt instrument such as an erect penis.¹⁰

The Municipal Civil Registrar, Mr. Pionio Campo, testified that he had issued the Certificate of Live Birth of AAA that indicated she was born on 25 January 1994.¹¹

The Version of the Defense

The defense presented the testimonies of the appellant, of one Eyong Jadocan (*Eyong*), and of Dr. Gener Camposano (*Dr. Camposano*), the Rural Health Physician of Quinapondan.

The appellant, a sixty-year old farmer, widower, and resident of Barangay Rizal, Quinapondan, Eastern Samar, presented alibi as a defense. He testified that he could not have raped AAA on 10 September 2005 because he was home that day, in bed with a fever. His pregnant daughter-in-law was with him. At around 7:00 A.M., Eyong came to ask why the bamboos he had ordered had not been delivered, and stayed at appellant's house from 7:00 A.M. to 9:00 A.M.¹²

Eyong attested that he went to appellant's house in the morning of 10 September 2005, where he was with appellant from 8:00 A.M. to 11:00 A.M.¹³

Dr. Camposano testified that he physically examined AAA on 19 September 2005. He found that she did not have a vaginal discharge and did not bear any recent injury; however, her hymen was no longer intact.¹⁴

The daughter-in-law did not testify.



¹⁰ *Rollo*, p. 4.

¹¹ *Records*, p. 141.

¹² *Rollo*, p. 5.

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6.

The Rulings of the RTC and the CA

The RTC gave credence to the prosecution's version of events. It made the factual findings that AAA was raped on 10 September 2005; and that on said date, she was 11 years old, following her birth certificate, notwithstanding the allegation in the information that she was 10 years old on the day of the rape. Parenthetically, the trial court observed that despite his alleged illness, appellant still managed to carry on a conversation with a guest (Eyong) for three straight hours in his home.¹⁵ The RTC declared appellant to be guilty beyond reasonable doubt of statutory rape and sentenced him to suffer the penalty of *reclusion perpetua*. It ordered him to pay civil indemnity in the amount of ₱50,000.00,¹⁶ but did not impose the award for moral and exemplary damages.

The CA affirmed the conviction but modified the penalty by ordering appellant to pay AAA an additional ₱50,000.00 as moral damages.¹⁷

THE APPEAL

The appeal at bar reiterates the points raised in the Brief for the Appellee, dated 26 October 2009, which appellant had filed with the CA.¹⁸

The appeal is anchored on two arguments: (a) that the prosecution failed to prove the date of commission of the offense; and (b) that the prosecution failed to prove appellant's guilt beyond reasonable doubt.

Accused-appellant emphasizes the discrepancy in the testimony of BBB with respect to the date of the rape. To recall, BBB testified that on 9 September 2005, AAA had already told him that she had been raped. Appellant points out that this is contrary to the date of the rape alleged in the information, which is 10 September 2005. He argues that the discrepancy is material to the question of his guilt as, following the information, he had been apprised that he committed his alleged offense on 10 September 2005. Correspondingly, he prepared his defense with the date alleged in the information in mind. BBB's testimony thus prejudiced his right to adequately prepare for his defense.

Appellant also pleads that while alibi has consistently been weighed as a weak defense, it is still a valid defense. He maintains that in the morning

¹⁵ Records, p. 144.

¹⁶ Id. at 145.

¹⁷ *Rollo*, p. 13.

¹⁸ Id. at 23.

of 10 September 2005, he was home, down with the flu, where he spent time talking to his guest Eyong, making it physically impossible for him to have raped AAA on 10 September 2005.

Appellant does not contest the finding made by the RTC as to the age of AAA at the time of the rape, that she was a minor at the time.

OUR RULING

We find no reason to deviate from the findings of the courts *a quo* and to reverse the conviction of the appellant. The arguments raised in the appeal cannot upset the moral certainty, engendered by the prosecution evidence, that appellant had violated AAA as charged. However, a modification of the monetary awards imposed by the courts *a quo* is warranted, in line with the recent rulings on statutory rape.¹⁹ Thus, the amounts of civil indemnity and moral damages are increased to ₱75,000.00 each, and exemplary damages are additionally awarded in the amount of ₱75,000.00.

As pointed out in the rulings of the RTC and the CA, in rape cases,²⁰ the failure to specify the exact dates or times of the rape does not *ipso facto* make the corresponding information defective on its face. The reason for this is that the date or time of the commission of rape is not a material ingredient of said crime.²¹ At any rate, because AAA positively testified that she was raped on 10 September 2005, her testimony confirms the date of the rape stated in the information. It is AAA, not her father, who has personal knowledge of when she was raped. It is her testimony, therefore, not her father's, that must be given greater weight.

Secondly, this Court has time and again declared that the defense of alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.²² Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill motive to testify against the appellants.²³ In this case, appellant failed to plead as well as prove that AAA had been motivated by malice in accusing him of rape.

¹⁹ *People v. Jugueta*, G.R. No. 202124, 5 April 2016, 788 SCRA 331. See also *People v. Deliola*, G.R. No. 200157, 31 August 2016.

²⁰ CA rollo, pp. 72 and 93.

²¹ *People v. Magbanua*, 377 Phil. 750, 763 (1999).

²² *People v. Togahan*, 551 Phil. 997, 1013-1014 (2007).

²³ *Gan v. People*, 550 Phil. 133, 149-150 (2007).

All told, we find that the elements of statutory rape are sufficiently proven in this case. The age of AAA established before the RTC is eleven (11) years old. The acts of appellant thus fall squarely under Art. 335 of the Revised Penal Code. As held in *People v. Lopez*:

It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age. x x x²⁴

Consistent with prevailing jurisprudence on the monetary penalties for statutory rape,²⁵ we increase the awards of civil indemnity and moral damages to ₱75,000.00 each, and award exemplary damages in the amount of ₱75,000.00. Moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. Exemplary damages are called for, by way of public example, and to protect the young from sexual abuse.²⁶

Finally, a personal observation.

The information charged accused-appellant with only one count of rape, for the one that occurred on 10 September 2005. In the course of our review of the records, however, it came to our attention that the subject rape was probably not the first and only time that AAA had been raped. AAA's testimony bears this out:

x x x x

Court

The court observed that the witness is slow in comprehension. She has difficulty in answering questions. Anyway ask her another question.

Q. Was there an instance that the penis of the accused was inserted inside your vagina?

A. Yes, sir.

Q. When was that?

A. Long time ago already.

Q. On September 10, 2005 in the morning, was there an instance that the sex organ of the accused was inserted to your vagina?



²⁴ 617 Phil. 733, 744-745 (2009).

²⁵ *People v. Jugueta*, supra note 19.

²⁶ *People v. Piosang*, 710 Phil. 519, 530 (2013).

A. Yes, sir.²⁷

x x x x

Q. After the sexual intercourse, what did the accused do next?
A. He went home.

Q. Before he went home did he give you something?
A. Yes, he give me five (₱5.00) pesos.

Q. After receiving the five (₱5.00) pesos from the hand of the accused, what did you do next?
A. I went home to our house.

Q. Where did you place the five (₱5.00) pesos which the accused give you?
A. I kept it.

Q. When you reach home, was your father there?
A. He was not there.²⁸

x x x x

We relate the above testimony to that of AAA's father, BBB, who testified: *first*, that he had been wondering how AAA "always" had money; *second*, that on 9 September 2005 AAA had an aggregate amount of thirty pesos in her possession; and, *third*, that AAA had told him that accused-appellant had been giving her money. The pertinent direct testimony reads:

x x x x

Fiscal Campo

Q. What time was that in the morning when you came to know that your daughter, AAA, has plenty of money?

Witness

A. About 11:30 in the morning.

Fiscal Campo

Q. How did you come to know that your daughter has plenty of money?

Witness

A. Because I was wondering why she had plenty of money.

Fiscal Campo

Q. At that time on September 9, 2005 at about 11:30 in the morning, how did you come to know that your daughter has plenty of money?



²⁷ TSN dated 5 July 2006, p. 11.

²⁸ Id. at 12-13.

Witness

A. Because she was asking money from me to buy halo-halo but I told her that I have no money so, she went upstairs and then she got her own money.

Fiscal Campo

Q. At that time you said you were at your yard where did your daughter allegedly get the money?

Witness

A. Inside our house.

Fiscal Campo

Q. How much money your daughter have at that time after she went back from getting money inside your house?

Witness

A. Thirty Pesos (₱30.00).

Fiscal Campo

Q. What was your reaction when you came to know that your daughter has thirty pesos (₱30.00)?

Witness

A. I asked my daughter where she got it and who was giving her the money.

Fiscal Campo

Q. Why did you ask your daughter from whom did she got the money?

Witness

A. Because I was wondering why she always have money.

Fiscal Campo

Q. Why were you wondering?

Witness

A. Because she always have money that is why I asked her who was giving her the money.

Fiscal Campo

Q. What was the response of your daughter?

Witness

A. She told me that it was Abe who was giving her the money.

Fiscal Campo

Q. When was that?

Court

It was already answered, on September 9. You already asked him what happened. Another question, Fiscal.

Fiscal Campo

Q. On the following day, September 10, 2005, was there an unusual incident that happened?

Witness

A. Yes, Sir.



Fiscal Campo

Q. What was the unusual incident all about on September 10, 2005?

Witness

A. The following day, September 10, 2005, I asked my son if he gave money to AAA and then my son told me that he did not give any money to her.

Fiscal Campo

Q. What time was that on September 10, when you asked your sons if they were giving money to AAA?

Witness

A. About 10:00 o'clock in the morning.

Fiscal Campo

Q. How many sons do you have?

Witness

A. I have three (3) sons.

Fiscal Campo

Q. Were these the same sons from whom you asked whether they were giving money to AAA?

Witness

A. Yes, Sir.

Fiscal Campo

Q. What was their response?

Witness

A. That they did not give money to AAA.

Fiscal Campo

Q. What did you do when you were informed by your sons that they were not giving money to AAA?

Witness

A. That was it, I asked my daughter who was giving her the money because my sons told me that they were not giving money to her.

Fiscal Campo

Q. What was the answer of AAA?

Witness

A. She told me that it was Abe who was giving her the money.²⁹

x x x x

And on cross-examination, BBB testified as follows.



²⁹ TSN dated 26 July 2006, pp. 6-9.

Atty. Boco

Q. Am I correct that during the direct examination when you were asked on September 9, 2005 you answered that you were at your house in Brgy. Rizal, Quinapondan, E. Samar.

Witness

A. Yes, Sir.

Atty. Boco

Q. Am [I] also correct that you came to know and you were surprised when your daughter has plenty of money on the said date?

Witness

A. Yes, Sir.

Atty. Boco

Q. You even asked her where she got that money?

Witness

A. Yes, Sir.

Atty. Boco

Q. Am I correct that she answered you that she was given always by Abe, the accused?

Witness

A. Yes, Sir.³⁰

Taken together, these testimonies, given during trial, invoke the belief that accused-appellant could have raped AAA more than once, on occasions earlier than 10 September 2005. These tell-tale testimonies should have raised the red flag for the prosecution to investigate the probability that AAA could have been raped on dates other than that determined in the information.

Such belief, engendered unavoidably but only in passing, deepened upon our scrutiny of the *physical* records of this case, the *entire* folders of which were elevated to this Court as a matter of course, and invited our attention to the transcript of the stenographic notes taken down during the inquest which were included in the trial court records of the case.

During the inquest, on 27 September 2005, the transcript shows that, upon the query of an investigating Municipal Circuit Trial Court (*MCTC*) judge,³¹ AAA narrated that accused had raped her several times long before that fateful day in September.



³⁰ Id. at 15.

³¹ Hon. Rebecca G. Almeda.

- Q. Do you still remember when was that happened, the incident which you have narrated?
- A. September 10, 2005 during the town fiesta of Quinapondan.
- Q. What time did it happen?
- A. In the morning.
- Q. Was that the only incident on September 10, 2005 during the town fiesta in Quinapondan when Gavino Pagamucan raped you?**
- A. It was a very long time when I was fetching water he drag me to the grassy area and raped me.**
- Q. About how many times did Gavino Pagamucan raped you?
- A. ***I cannot remember, but many times.***
- Q. But you can still remember the first time he did that to you?
- A. ***I remember that he started raping me when I was already in Grade III when I transferred to Rizal Primary School from the school of Brgy. San Pedro where I studied my Grade II.***
- Q. You mentioned that you were raped for several times already and during those instances, do you still recall if this Gavino Pagamucan always give you money?**
- A. Yes Maam, many times.
- Q. When this Gavino Pagamucan did this to you, did you not have any idea of telling your father or other relatives?
- A. I did not because he kept on telling me that if ever I will tell my father he will kill me with a knife.
- Q. Everytime that this Gavino Pagamucan raped you, did you notice whether he was in possession of a deadly weapon or a knife?
- A. Yes, he was always armed with a knife.³² (emphases and italics supplied)

Thereafter, the investigating judge issued an Order of even date,³³ finding sufficient probable cause for the issuance of a warrant of arrest against accused-appellant, and directed him to submit a counter-affidavit for the preliminary investigation.

In the resolution³⁴ which the same MCTC judge issued after the conduct of preliminary investigation, she duly noted that AAA had narrated under oath, during inquest, that accused-appellant had raped her for several times before 10 September 2005, although she could no longer recall the exact dates of these rapes. The investigating judge then directed that the entire records of the case be forwarded to the Office of the Assistant

³² Records, p. 11; TSN dated 27 September 2005.

³³ Records, p. 21.

³⁴ Id. at 22-23.



Provincial Prosecutor of Guiuan, Eastern Samar, for appropriate action and/or review.³⁵

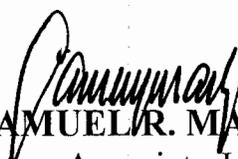
Surely, the transcript of the inquest and the above orders and resolutions pertaining to this case were part of the records at hand when the case was filed with the RTC. While these may not have been utilized in the assessment for the conviction of accused-appellant, our careful review of AAA and her father's testimonies showed that AAA had been raped by accused-appellant not just once, as specified in the information, but several times.

Further, during our review of all the records elevated to the Court, the question arose in our mind as to why only one count of rape was filed against accused-appellant, despite the glaring testimony of the victim and in spite of the MCTC Judge's observation that the victim could have been raped many times.³⁶ Moreover, the records indicate that no further preliminary investigation responding to the above-quoted testimonies were conducted.

We see fit to remind the prosecution of its mandate to conscientiously investigate and prosecute every aspect of a case. Here, we take the prosecution to task for egregiously missing the opportunity to fully serve the ends of justice.

WHEREFORE, in view of these considerations, we **AFFIRM** the Decision of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00793, dated 31 January 2012, with the **MODIFICATION** that Gavino Pagamucan y Matiga is ordered to pay AAA civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00. The monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this resolution until fully paid.

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

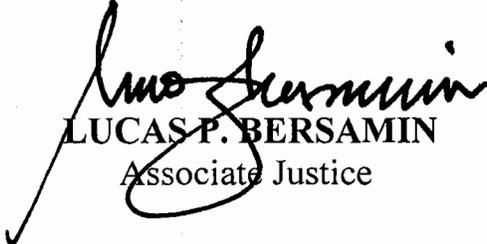
³⁵ Id. at 23.

³⁶ Id.

WE CONCUR:



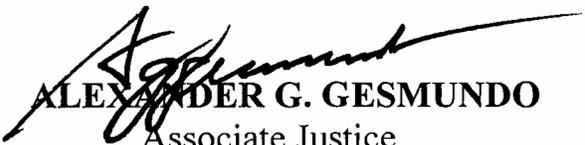
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



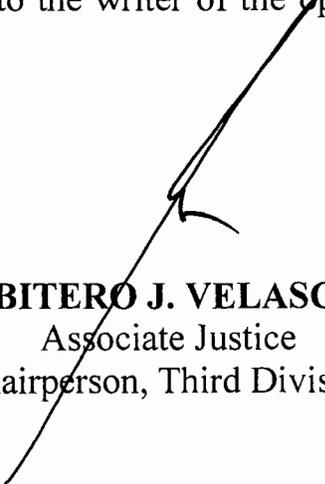
MARVIC M.V. F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

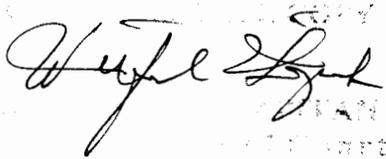
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DEC 11 2017



MARIA LOURDES P. A. SERENO
Chief Justice