

EIGHTEENTH DIVISION

**[CA-GR CEB CR. HC. NO. 01738, February 25,
2015]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOVER
BELARMA Y LUCHAVEZ, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

This is an appeal from the Judgment^[1] dated August 13, 2013 of the Regional Trial Court of Ormoc City, Branch 35 in Criminal Case Nos. R-ORM-07-00100-HC and R-ORM-07-00101-HC convicting the accused-appellant of Statutory Rape under Art. 266-A(d) of the Revised Penal Code as amended by RA 8353 in relation to RA 7610, and Rape under Art. 266-A par. 2 of the RPC as amended by RA 8353 in relation to RA 7610.

Factual and Procedural Antecedents

The accused-appellant was charged under two separate informations, the accusatory portions of which are hereunder quoted as follows:

Crim. Case No. R-ORM-07-00100-HC

That on or about 21st day of May 2007 at around 8:30 o'clock in the evening at Brgy. Bagong Buhay, Ormoc, and within the jurisdiction of this Honorable Court, the above-named accused, NOVER BELARMA y Luchavez by means of force, threat and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of the victim AAA^[2], a minor, 6 years of age, by inserting his penis into the victim's vagina which sustained several lacerations even if the hymen remains intact, Medical Certificate hereto attached, making the push and pull motion until he consummated his lustful desire without her consent, against her will, and prejudicial to her development and well-being as a child.

In violation of Article 266-A(d) of RPC as amended by RA 8353 in relation to RA 7610.

Crim. Case No. R-ORM-07-00101-HC

That on or about 21st day of May 2007 at around 8:30 o'clock in the evening at Brgy. Bagong Buhay, Ormoc, and within the jurisdiction of this Honorable Court, the above-named accused, NOVER BELARMA y Luchavez by means of force, threat and intimidation, did then and there

willfully, unlawfully, and feloniously sexually assaulted the victim AAA, a minor, 6 years of age, by inserting his penis into the victim's mouth and consummated his lustful desire without her consent, against her will, and prejudicial to her development and well-being as a child.

In violation of Article 266-A, par. 2 of RPC as amended by 8353 in relation of RA 7610.

When arraigned on September 3, 2007, accused-appellant pleaded not guilty in both cases. The pre-trial conference was then terminated on March 3, 2008. The court a quo then conducted joint trial on the merits.

Version of the Prosecution

AAA and her family lived in a construction site in Brgy. Bagong Buhay, Ormoc City where her father works as a construction worker. Accused-appellant, whom AAA called "Kuya Nover", was her father's co-worker. AAA was only six (6) years old at the time of the commission of the offense.

On May 21, 2007, at around 8:30 in the evening, while AAA was playing outside and her father was busy preparing dinner, accused-appellant told AAA to go with him to the outhouse near the construction site. When they were inside, accused-appellant immediately took off AAA's shorts and panty and undressed himself. He then inserted his penis into AAA's mouth. AAA cried and was frightened. Accused-appellant then inserted his penis inside AAA's vagina. AAA felt pain in her vagina and saw a white fluid coming out from accused-appellant's penis.

When it was time to eat dinner, AAA's father called for her. One of his sons told him that AAA is outside. AAA's father looked for her and saw her crying and holding her vagina. He rushed towards her and asked what had happened. AAA answered: "Kuya Nover fucked me."

The next day, the incident was reported to the police. The matter was then referred to PO3 Nova Tan who prepared AAA's affidavit. Dr. Marilyn Pascual conducted the medical examination. She found that AAA's hymen was not intact because of several lacerations, and the specimen taken from AAA's vaginal canal tested positive for human sperm.

Version of the Appellant

Accused-appellant Belarma proffered denial as his defense claiming that on May 21, 2007 at around 8:30 o'clock in the evening, he was at home watching TV together with his parents, his wife, his siblings and his co-worker. He knew AAA's father because he is a co-worker, but accused-appellant did not know that it was AAA's father who charged him for rape. When he went to Bliss to get a scaffolding on May 21, 2007, he was arrested by police officers. To his knowledge, the reason why AAA's father charged him for allegedly raping the latter's daughter was because AAA's father and the accused-appellant's father had some kind of work-related quarrel.

Accused-appellant's father, Rodolfo Belarma, corroborated the testimony of his son that on the date and time of the incident, accused-appellant was in their house

watching television until about 9 o'clock in the evening after which they went to bed. Rodolfo testified that the reason why AAA's father charged his son, Nover, with rape was because they had a work-related altercation.

Findings of the trial court

On August 16, 2013^[3], the trial court promulgated its Judgment^[4] dated August 13, 2013 convicting accused-appellant as charged. The trial court ruled that the prosecution was able to establish by clear and convincing evidence that indeed, the accused had carnal knowledge and sexually assaulted the victim who was six (6) years old at the time the crime was committed.

The trial court gave full faith and credit to AAA's testimony who positively identified the accused-appellant as the perpetrator. Moreover, the victim vividly remembered the details of her harrowing experience and despite her young age, AAA was frank and straightforward in her testimony. The trial court further ruled that although AAA could not remember the year when the incident occurred, this does not discredit her testimony. What is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.

The trial court rejected the accused-appellant's defense which is alibi and denial and ruled that considering that AAA positively identified the accused in a categorical and consistent manner and without any showing of ill motive on the part of the eyewitness, the positive testimony must prevail over the accused-appellant's denial.

The dispositive portion of the said Judgment reads:

"WHEREFORE, PREMISES CONSIDERED, the prosecution having proven the guilt of the accused beyond reasonable doubt in both Criminal Case No. R-ORM-07-00100-HC and Criminal Case No. R-ORM-07-00101-HC, judgment is hereby rendered as follows:

1. In Criminal Case No. R- ORM-07-00100-HC, this Court finds the accused, NOVER BELARMA y Luchavez, guilty beyond reasonable doubt of the offense of Statutory Rape by having carnal knowledge of AAA who is below 12 years of age at the time of the commission of the offense as defined and penalized under letter (d) paragraph 1 of Article 266-A of R.A. 8353 with the qualifying circumstance under number 5 of Art. 266-B of Republic Act 8353 that the victim is a child below seven years old as charged in the Information and hereby sentences him to suffer the penalty of *Reclusion Perpetua*; and to indemnify the victim, "AAA", the amount of P75,000.00 as civil indemnity, and P75,000.00 as moral damages, and P30,000.00 as exemplary damages.

2. In Criminal Case No. R- ORM-07-00101-HC, this Court finds the accused, NOVER BELARMA y Luchavez, guilty beyond reasonable doubt of the offense of Rape by Sexual Assault as defined and penalized under paragraph 2 of Article 266-A of

Republic Act 8353 with the qualifying circumstance under number 5 of Art. 266-B of Republic Act 8353 that the victim is under 7 years of age as charged in the Information and hereby sentences him to suffer the indeterminate penalty of *six (6) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum* and to indemnify the offended party, "AAA", civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P30,000.00.

In the service of his sentence, the accused being a detention prisoner is entitled to be credited with the full time during which he had undergone preventive imprisonment if he voluntarily agree in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise he shall be credited with only 4/5 thereof, in accordance with Article 29 of the Revised Penal Code.

SO ORDERED."

Accused-appellant timely filed a Notice of Appeal^[5] on August 27, 2013, which was given due course by the trial court in its Order dated September 11, 2013^[6].

This court received the records of this case on November 5, 2013^[7]. On November 25, 2013, a Notice to File Brief^[8] was sent to the parties. Appellant filed his brief^[9] on February 3, 2014, while the appellee filed brief^[10] on July 21, 2014. This case was declared submitted for decision on January 20, 2015^[11].

Assignment of Errors

Accused-appellant now seeks the reversal of the trial court's judgment and makes the following assignment of error:

"The trial court erred in convicting the accused-appellant of the crimes charged despite the fact that the prosecution failed to prove his guilt beyond reasonable doubt."^[12]

Appellant's Arguments

The accused-appellant contends that the trial court overlooked certain facts of substance pertaining to the credibility of complainant-witness AAA, which, if considered, will affect the result of this case.

The accused-appellant points to allegedly material and substantial inconsistencies in the testimony of private complainant, particularly on private complainant's imperfect recollection as to what happened right after the rape occurred. This substantial discrepancy in the testimony of the prosecution's primary witness, appellant argues, should not have been ignored by the trial court as it creates doubt on the credibility of AAA. Moreover, the testimony of AAA cannot be considered as direct and straightforward as most of AAA's answers were elicited only after the prosecution propounded leading questions thus already suggesting the answer to the witness, AAA.

Finally, the accused-appellant argues that where two conflicting probabilities arise from the evidence, as in this case, the one compatible with the presumption of innocence will be adopted. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment of the abuser. While courts ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, magistrates should equally bear in mind that their responsibility is to render justice in accordance with law.

Appellee's Arguments

The appellee on the other hand argues that the prosecution more than sufficiently proved the guilt of appellant beyond reasonable doubt. The alleged inconsistencies and contradictions in AAA's testimony are too inconsequential to the issue of rape and do not affect her credibility.

What is decisive in a rape charge, the appellee argues, is that the commission of the rape by appellant against complainant has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. Thus, the trial court was correct in giving full faith and credit to the testimony of AAA.

Ruling of this Court

After a careful and independent review of the records of this case, this Court finds the accused-appellant's appeal to be devoid of merit.

Accused-appellant Belarma was charged with Rape under Article 266-A paragraph 1 (d), and sexual assault under Article 266-A paragraph 2, of the Revised Penal Code^[13]. Said provisions read:

Article 266-A. Rape, When and How Committed. - Rape is committed:

1) **By a man who shall have carnal knowledge of a woman** under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or 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.