

## **TWENTY-SECOND DIVISION**

**[ CA-G.R. HC NO. 01031-MIN, February 12, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FAUSTO ACEDO Y GUCOR, ACCUSED-APPELLANT.**

### **DECISION**

**INTING, J.:**

Under review in this APPEAL is the Joint Decision<sup>[1]</sup> dated March 9, 2012 of the Regional Trial Court, Branch 22, Cagayan de Oro City in FC Criminal Case Nos. 2007-314 and 2007-315 finding accused-appellant, FAUSTO ACEDO y GUCOR, guilty of rape as defined and penalized in Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353<sup>[2]</sup> and Violation of Section 5 (b) of Republic Act No. 7610<sup>[3]</sup>.

The facts are as follows:

Complainant AAA<sup>[4]</sup> is a mentally deficient person and the stepdaughter of accused-appellant Fausto Acedo as the latter is married to AAA's mother, BBB. AAA was born out of wedlock on April 1, 1989. At the time of the incident, AAA lived with her mother and accused-appellant, together with their four (4) children in a one (1) room dwelling. Accused-appellant, whom AAA calls "Papa Kulot", is a *trisikad* (tricycle propelled by pedals) driver while BBB is a laundry woman.

In her Affidavit-Complaint<sup>[5]</sup>, AAA alleged that she was raped by accused-appellant on July 20, 2007 at around 4 o'clock in the afternoon. She further alleged that accused-appellant kissed her face, sucked her breast, laid her down, and proceeded to have carnal knowledge with her. AAA could not do anything but cry. Then, on July 21, 2007, accused-appellant urged AAA to take a bath and told her that he will assist her. Accused-appellant then shampooed her hair, applied soap on her breast, and washed her genitalia. AAA ran away because she felt embarrassed and afraid that she would be raped again. She hid in her neighbor's house and related the incident to her neighbor Myrna, who later sought the assistance of the barangay authorities of Barangay Canitoan. The barangay chairperson then called for police assistance. The responding police authorities investigated AAA. Thereafter, AAA identified accused-appellant as the assailant in the presence of the police officers. They then arrested accused-appellant.

On August 8, 2007, two Informations were filed against accused-appellant docketed as FC Criminal Case Nos. 2007-314 and 2007-315, viz:

FC Criminal Case No. 2007-314<sup>[6]</sup>

The undersigned Assistant City Prosecutor accuses FAUSTO ACEDO y Gucor of the crime of RAPE, contrary to and in violation of Article 266-A

of the Revised Penal Code, as amended by R.A. 8353, in relation to Section 3 of R.A. 7610, committed as follows:

That on July 20, 2007 (Friday), at around 4 o'clock in the afternoon, more or less, at Calaanan, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with grave abuse of authority, have carnal knowledge with AAA, his 18-year old (birthdate- April 1, 1989) mentally deficient stepdaughter, against her will and consent.

Contrary to law, and with the aggravating circumstance that AAA is accused's stepdaughter and accused knows AAA is mentally deficient.

FC Criminal Case No. 2007-315<sup>[2]</sup>

The undersigned Assistant City Prosecutor, upon the prior sworn complaint of AAA, mentally deficient 18-year-old (birthdate- April 1, 1989), accuses FAUSTO ACEDO y Gucor of the crime of violating Section 5 (b) of R.A. 7610, in relation to Section 3, and to Article 336 of the Revised Penal Code, as amended, and in relation to the Family Courts Act of 1997 or RA 8369, committed as follows:

That sometime on July 21, 2007 (Saturday), at Calaanan, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with an intent to abuse, humiliate, harass or degrade the victim AAA, his stepdaughter, or arouse or gratify his sexual desire, did then and there willfully, unlawfully and feloniously commit lasciviousness conduct upon AAA by then and there applying soap on her breast and washing her genitalia, against her will and consent, to her damage and prejudice.

Contrary to law.

AAA was brought to the Northern Mindanao Medical Center (NMMC) on July 23, 2007 for a medical examination which was conducted by Dr. Judith Faye Metillo. The Living Case Report<sup>[8]</sup> revealed thus:

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FINDINGS

GENERAL PHYSICAL EXAMINATION

Breast- Tanner 2

GENITAL EXAMINATION:

Genitalia- Tanner- 2

Introitus- old healed hymenal lacerations at 3 and 9 oclock positions. Clumps of warty-like lesions at both right and left sides of the vaginal opening at 5 and 7 oclock positions.

Upon arraignment, accused-appellant pleaded not guilty in both cases.<sup>[9]</sup>

Per court order, AAA was brought to the NMMC for a psychiatric examination, which was conducted by Dr. Marlou Sustiguer. The Clinical Report<sup>[10]</sup> provided, *inter alia*, that AAA "is found to be having a provisional diagnosis of Mental Retardation". In his testimony, Dr. Sustiguer stated that based on his assessment, AAA's age would fall between 6-8 years old and that no symptom of psychosis was found in her.

Thereafter, trial ensued.

The witnesses for the prosecution were: Dr. Marlou B. Sustiguer, Dr. Judith Faye Metillo and AAA.

On the other hand, the defense presented accused-appellant himself as its witness.

Accused-appellant vehemently denied the accusations against him. He insisted that during the time of the alleged incidents, he was at Carmen, Cagayan de Oro City driving a *trisikad* (tricycle propelled by pedals); and that usually, he only goes home at Calaanan, Cagayan de Oro City once every month. Accused-appellant also testified that the allegations against him were purely fabricated considering that he had been living in Carmen, Cagayan de Oro City even before the year 2007 with a live-in-partner which made AAA's mother BBB very angry and could have been the reason that the instant cases were filed against him.

On March 9, 2012, the RTC rendered a Joint Decision finding accused-appellant guilty beyond reasonable doubt, the dispositive portion of which provides:

WHEREFORE, the foregoing premises considered judgment is hereby rendered finding the accused FAUSTO ACEDO y GUCOR:

1. GUILTY beyond reasonable doubt of rape in FC Criminal Case No. 2007-314 and is sentenced to suffer the penalty of reclusion perpetua, and to pay "AAA" P50,000.00 as civil indemnity, P50,000.00 as moral damages and P30,000.00 as exemplary damages.
2. GUILTY beyond reasonable doubt for Violation of Section 5 (b) of Republic Act No. 7610, and is hereby sentenced to suffer the penalty of 14 years and 8 months of reclusion temporal as minimum, to 20 years of reclusion temporal as maximum and ordered to pay AAA P20,000.00 as civil indemnity, P15,000.00 as moral damages and a fine of P15,000.00.

SO ORDERED.

Hence, this appeal by accused-appellant raising the lone assignment of error<sup>[11]</sup>, viz:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

### **Our Ruling**

We affirm the conviction.

Accused-appellant hinges his first contention on the Clinical Report made by Dr. Sustiguer which stated that AAA "is not deemed psychologically and intellectually capable of providing a reliable testimony". With that declaration, he argues that AAA is not aware of the effects of her testimony on the life of accused-appellant nor the concept of what is right or wrong. He further argues that AAA never gave straight or definite answers regarding the alleged rape; that the idea that she was raped was just fed to her; that upon questioning on the alleged rape, she answers with monosyllabic answers only.

Furthermore, accused-appellant takes exception to the rule relied upon by the court *a quo* that the positive identification of the accused prevails over the denial and alibi interposed by him. Accused-appellant finally argues that he was charged with rape out of BBB's spite, and without any factual basis.

The contentions are unmeritorious.

The crime of rape as defined and penalized by the Revised Penal Code (RPC) reads:

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; x x x.

For the charge of rape to prosper, the prosecution must prove that (1) the offender had carnal knowledge of a woman, (2) through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.<sup>[12]</sup> "From these requisites, it can thus be deduced that rape is committed the moment the offender has sexual intercourse with a person suffering from mental retardation. Carnal knowledge of a woman who is a mental retardate is rape. A mental condition of retardation deprives the complainant of that natural instinct to resist a bestial assault on her chastity and womanhood. For this reason, sexual intercourse with one who is intellectually weak to the extent that she is incapable of giving consent to the carnal act already constitutes rape, without requiring proof that the accused used force and intimidation in committing the act. Only the facts of sexual congress between the accused and the victim and the latter's mental retardation need to be proved."<sup>[13]</sup>

The prosecution was able to satisfactorily prove AAA's mental retardation. Dr. Sustiguer, the psychiatrist who conducted a mental status examination on AAA, testified that AAA was found to have mental retardation. She further testified that based on his assessment, AAA's age would fall between 6-8 years old. Notably, the defense did not impugn AAA's mental retardation.

But accused-appellant argues that based on the Clinical Report made by Dr. Sustiguer which provided that AAA "is not deemed psychologically and intellectually capable of providing a reliable testimony", AAA is not aware of the effects of her testimony on the life of appellant nor the concept of what is right or wrong. He further argues that the bare answers of "yes" by AAA during direct examination where it was made to appear that accused-appellant raped her cannot suffice to establish a moral certainty as to his guilt.

We do not agree.

First, settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witness was telling the truth.<sup>[14]</sup>

Second, at the heart of almost all rape cases is the issue of credibility of the witness.<sup>[15]</sup> When asked to recount, AAA's recollection of the abuses on her honor was clear and straightforward, thus<sup>[16]</sup>:

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Q: AAA are you okay now?

A: Yes (nodding her head).

Q: Do you know Fausto Acedo?

A: Yes (nodding her head).

Q: Can you answer yes or no AAA?

A: Yes.

Q: Can you say loud yes or no so that Atty. Emano can hear your voice?

A: Yes.

Q: Do you call Fausto Acedo as "Papa Kolot"?

A: Yes.

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Q: When you were together in that house, did Papa Kolot kissed you?

A: He squeezed me.

Q: What part of your body did Papa Kolot squeezed?

Interpreter: Witness is pointing to her breast.

Q: Can you demonstrate to us how did Papa Kolot squeezed your breast?

A: He went near me and I went out the house.

Q: Where did you go when you went out the house?

A: I went to the comfort room.