

SPECIAL THIRD DIVISION

[CA-G.R. CR-HC No. 05478, May 19, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENJAMIN SALAVER Y LUZON, ACCUSED-APPELLANT.**

D E C I S I O N

BUESER, J.:

Incestuous rape, especially one committed by a father against her own daughter, is a dastardly and repulsive crime, that has no place in our society, and time and again, has been condemned by this Court.^[1]

Before this Court on appeal is the Joint Decision dated August 24, 2011, of the Regional Trial Court, Branch 40 of Calapan City ("trial court") finding accused-appellant Benjamin Salaver ("appellant") guilty beyond reasonable doubt of the crime of Rape, the dispositive portion of which reads -

"ACCORDINGLY, finding herein accused Benjamin Salaver y Luzon in the instant cases guilty beyond reasonable doubt of three (3) counts of rape, said accused is hereby sentenced to suffer the THREE (3) penalties of RECLUSION PERPETUA without eligibility for parole and with all the accessory penalties as provided for by law. The accused is hereby directed to indemnify the private complainant civil indemnity ex-delicto in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case or a total amount of Two Hundred Twenty -Five Thousand Pesos (Php225,000.00); moral damages in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case or a total amount of Two Hundred Twenty-Five Thousand Pesos (Php225,000.00) and exemplary damages of Twenty-Five Thousand Pesos (php25,000.00) for each case or a total amount of Seventy-Five Thousand Pesos (Php75,000.00).

SO ORDERED."

The Facts

The above judgment of conviction arose from three Informations filed against appellant as follows -

Criminal Case No. CR - 06-8596:

"That on or about the 19th day of July 2006, at around 5:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living

with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Criminal Case No. CR - 06-8597:

That on or about the 23rd day of August 2006, at around 5:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Criminal Case No. CR – 06-8598:

That on or about the 8th day of September 2006, at around 7:00 o'clock in the afternoon, in Barangay Parang, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of [AAA], his fifteen (15) year old daughter, and therefore a relative within the 3rd civil degree by consanguinity and living with him in the same house, against her will and without her consent, acts which debase, degrade, and demean the intrinsic worth and dignity of the said [AAA] to her damage and prejudice.

Contrary to law.”

Appellant pleaded not guilty to the charges against him and trial on the merits ensued.

The prosecution's evidence consisted of the testimonies of AAA,^[2] the private complainant; Dr. Angelita Legaspi; and BBB, AAA's younger brother.

AAA was fifteen (15) years old when her ordeal started. The first one happened on July 19, 2006. She was alone in the house with appellant, her father, when the latter suddenly held her hand and pulled her inside the bedroom. Afraid, she cried. Appellant ordered her to take off her clothes but she refused making the appellant angry. Appellant suddenly pulled down her shorts, removed her panty and made her lie down on the bed. Then, appellant removed his own shorts and ordered her to spread her legs. Thereafter, appellant inserted his penis inside her vagina and she felt pain. She begged him to stop but appellant kept on making an up and down motion. She was scared to shout because the appellant told her that something bad would happen if she did so. After the incident, she told her brother, CCC, about what the appellant did but CCC just ignored her.

The dastardly incident happened again in the afternoon of August 23, 2006. Her father called her into his room, on the pretense that he would tell her something. Thinking that the rape would not be repeated, she obeyed and went in. Once inside, he ordered her to undress. She refused. However, the appellant removed her shorts and panty and raped her once again. This time she informed her mother about what happened but the latter simply told her not to sleep in their house anymore.

Not satisfied with his lustful behavior, the appellant raped AAA, a third time on September 8, 2006. AAA was washing the dishes when the appellant suddenly pulled her inside the bedroom. This time he was drunk. Appellant forcibly removed her clothes, made her lie on bed and held her hands while he inserted his penis inside her vagina. She felt pain while he was making an up and down movement but she could not do anything because he threatened to kill all of them. Meanwhile, BBB, who was asked by the appellant to buy a can of sardines, returned home and was shocked to find their father, the appellant, half – naked lying on top of his sister, AAA. Frightened, he ran away crying and went to the house of their uncle, Gerry Makiplanta ("Gerry"). After the revelations made by AAA and BBB, they were accompanied by DDD to a barangay tanod and AAA was taken to the Tibag Health Center for a medical examination.

On the same date, September 8, 2006, AAA was examined by Dr. Angelita Legaspi ("Dr. Legaspi"), Rural Health Doctor of the Calapan City Health and Sanitation Department. Dr. Legaspi found old healed, complete hymenal lacerations at 1, 4, 6, 9 and 11 o'clock positions with no hymenal nor vaginal bleeding. Dr. Legaspi said that these lacerations could have been caused by the insertion of a male sex organ into AAA's private organ and it was possible that AAA had been molested three or more times. She did not find any bruises or injuries on the body of AAA.

Appellant denied the accusations. He claimed the charges against him were fabricated by his brother-in-law, Gerry who harbored a grudge against him because Gerry suspects him of having an affair with the former's wife. When asked about the contents of the sworn statement executed by his son BBB, he admitted having been surprised by his son BBB but what BBB saw was appellant putting on his work clothes. However, BBB upon seeing this immediately proceeded to the house of his uncle Gerry.

After due proceedings, the trial court rendered the assailed Joint Decision and found appellant guilty beyond reasonable doubt of three (3) counts of rape. It held -

"The Court believes and so holds, that private complainant [AAA] would not accuse her own father Benjamin Salaver who is the accused in these cases, of so serious a crime like rape, if she has not in truth been a victim of rape and impelled to seek justice for the wrong done to her. Testimonies of child victims like [AAA] are normally given full weight and credit, since when a woman, more so if she is still a minor, says that she has been raped, she in all effect that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity. (People of the Philippines vs. Alfredo Bon, G.R. No. 166401, October 20, 2006)

In sum, after a judicious evaluation of the totality of evidence adduced by both the prosecution and the defense, this Court finds nothing which would destroy the moral certainty of the accused's guilt."

Hence, this appeal.

Assignment of Errors

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE IMPROBABLE, INCREDIBLE AND INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANT AND HER WITNESSES.

THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE MEDICO-LEGAL FINDINGS THAT NEGATE THE COMMISSION OF THE ALLEGED RAPE.

This Court's Ruling

Appellant argues that the trial court failed to correctly appreciate the testimony of AAA. First, AAA claims that she was raped three times by her father, the appellant, and yet she continued to stay at the same house with him. Assuming that appellant did invite AAA to go with him to the bedroom she always obliged. Second, AAA's statements are inconsistent. She said she told her mother about what happened the first time appellant raped her and on cross-examination she changed her answer. Third, the medical examination showed no signs of force and physical injuries. Fourth, AAA's conduct after the alleged incident, raises grave suspicion as to whether she was raped or not. AAA, resumed her usual routine of school as if nothing horrifying happened. If it is true that she was raped, AAA should have reported the matter to the authorities. Lastly, AAA's testimony shows that she did not scream for help or even attempt to put up any resistance. The evidence alarmingly suggest that she willingly consented to the copulation. Her testimony, that she obeyed the appellant out of fear, is self-serving. There is not a single testimony that would show that appellant was armed and dangerous. All these, taken together, shows that AAA was never raped by the appellant.

The appeal fails.

Upon evaluation of the evidence, we found credence in AAA's version of events. The prosecution has sufficiently demonstrated that there is ample evidence to prove that appellant had carnal knowledge of the minor victim. The testimony of AAA pertaining to the rape incident shows in detail her horrific experience at the hands of her own father, the appellant. The pertinent portion of her testimony is quoted here

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"Q How many times did your father allegedly rape you?

A Three times, sir.

Q The first time that he raped you. When was that?

A In the month of July, sir.

Q And what year was that?

A July 2006, sir.

Q In what particular place wherein your father allegedly raped you?

A In our house, sir.

Q The second time that your father allegedly raped you, when was that?

A In August 2006, sir.

Q And where was the particular place that your father allegedly raped you for the second time?

A Also in our house, sir.

Q And the third time that your father allegedly raped you, when was that?

A September 8, 2006, sir.

Q And in what particular place your father allegedly raped you for the third time?

A In our house, sir.

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Q According to you, the first time that you were allegedly raped by your father or on July 19, 2006 at around 5:00 o'clock in the afternoon, will you please tell us how the accused was able to rape you?

A He held me and pulled me.

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Q And according to you, on July 19, 2006 at around 5:00 o'clock in the afternoon, your father held you in your hand. Is that nor correct?

A Yes, sir.

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Q After your father held you in your hand, what else did he do?

A He brought me in the bedroom, sir.

Q You did not ask your father why he brought you to that room?

A I just cried, sir.

Q Why did you cry?

A Because I was afraid of what my father would do to me, sir.