

## FIRST DIVISION

[ G.R. No. 223113, February 19, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
AUGUSTO GONZALES ESMENIO PADER, JR., AND MARCELO  
ANTONIO, ACCUSED,**

**MARCELO ANTONIO, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

On appeal is the March 13, 2015 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04791 finding appellant Marcelo Antonio (appellant) guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

#### ***Factual Antecedents***

Appellant, along with accused Augusto Gonzales (Augusto) and Esmenio Pader, Jr. (Esmenio), was charged with rape in an Information which reads:

That on or about the 13<sup>th</sup> day of December 1999, at about 8:00 o'clock in the evening, x x x Province of Zambales, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with lewd design and by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one "AAA,"<sup>[2]</sup> a minor of 15 years old, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.<sup>[3]</sup>

The case was docketed as Criminal Case No. 395-2000 and raffled to the Regional Trial Court (RTC), Branch 73, Olongapo City.

Upon arraignment, appellant pleaded not guilty. Augusto and Esmenio were at large.

The prosecution presented five witnesses namely: AAA, Lorna Pascua, *Barangay Kagawad* Eduardo Escobar (*Barangay Kagawad* Eduardo), Dr. Nida Fabunan (Dr. Fabunan), and Marlon Cajobe (Marlon).

The prosecution's evidence, as summarized by the appellate court, is as follows:

x x x "AAA" was born on 01 March 1984, per the Certificate of Live Birth; on 13 December 1999, at around 8:00 p.m., "AAA" was on her way home

[when she] met [appellant, Augusto, Esmenio], and Marlon on the road[.] [Augusto] asked "AAA" to go with them to Uncle Viano's house; "AAA" refused, so [appellant, Augusto, and Esmenio] dragged "AAA" to the sandpile; Marlon watched as [Augusto] removed "AAA's" clothes, and (appellant and Esmenio) pinned "AAA" down by holding "AAA's" hands and feet; [Augusto and appellant] punched "AAA" on the face and body; (appellant) kissed "AAA" on the lips and on the body, and inserted his penis in "AAA's" vagina[.] ["AAA"] felt pain; later, [Augusto] inserted his penis into "AAA's" vagina, and told "AAA" not to tell her parents about what happened; subsequently, [Esmenio] inserted his penis into "AAA's" vagina, and "AAA" cried; Lorna heard "AAA's" cries, and called *Barangay Kagawad* Eduardo [who] chased [appellant, Augusto, Esmenio], and Marlon, but *Barangay Kagawad* Eduardo was able to apprehend only the [appellant]; "AAA," accompanied by her mother, went to the San Marcelino Hospital for a physical examination; Dr. Fabunan physically examined "AAA," and issued the Medico-Legal Certificate dated 14 December 1999, indicating her findings (*i.e.*, "multiple lacerations surrounding the hymen," "bleeding," and presence of spermatozoa).<sup>[4]</sup>

The defense, on the other hand, presented appellant and his sister, Lorna Antonio Sison (Lorna). Appellant denied the accusations against him. His sister, Lorna, took the witness stand admitting that she pleaded with "AAA" and her parents to spare her brother. She was, however, unsuccessful unlike Marlon (prosecution's witness) who was eventually discharged by "AAA."

The defense's version of the incident, as summarized by the appellate court, is as follows:

x x x [O]n 13 December 1999, while [appellant] was on [his] way to Uncle Viano's house [together] with [Augusto, Esmenio], and Marlon, [appellant] saw "AAA" following them, so [Augusto] invited "AAA" to go with them to Uncle Viano's house; [Augusto] and "AAA" disappeared, and later [appellant] discovered [Augusto] on top of "AAA" on the sandpile; an unidentified person hit and poked a knife at [appellant's] neck, causing [appellant] to lose consciousness; upon regaining consciousness, [appellant] heard [Augusto] telling [Esmenio] and Marlon, "*Sige! Itumba ninyo na yan baka magsumbong pa si Antonio*;" then [Augusto] stabbed [appellant's] left hand with a knife; the *barangay* officials arrived, and chased [Augusto, Esmenio], and Marlon; the *barangay* officials apprehended, mauled, and forced [appellant] to confess to the rape of "AAA."<sup>[5]</sup>

### ***Ruling of the Regional Trial Court***

In its August 23, 2006 Decision,<sup>[6]</sup> the RTC accorded full faith and credence to the evidence of the prosecution, particularly the testimony of "AAA" regarding how the incident happened, the specific participation of the three accused who conspired to commit the crime against her, and the positive identification of appellant. The RTC did not accord credence to appellant's bare denials in view of the categorical and positive identification of appellant as one of the perpetrators of the crime. Based thereon, the RTC ruled as follows:

WHEREFORE, premises considered, the Court finds accused Marcelo Antonio *GUILTY* beyond reasonable doubt of the crime of Rape as defined

and penalized under Republic Act 8353 and hereby sentences him to suffer a straight penalty of "*reclusion perpetua*". He is also ordered to indemnify the victim "AAA" the sum of P50,000.00 as civil damages and another P50,000.00 as moral damages.

Insofar as accused Augusto Gonzales and Esmenio Pader are concerned, the Court shall deal with them after they shall have been arrested. Meantime, issue alias warrant for their arrest, send the records to the archives.

SO ORDERED.<sup>[7]</sup>

Aggrieved, appellant appealed before the CA.

### ***Ruling of the Court of Appeals***

In his Brief,<sup>[8]</sup> appellant argued that "AAA's" testimony had serious flaws and loopholes. In her narration of the incident, "AAA" did not show resistance to the alleged attack and thus militated against her assertion that the sexual intercourse with the accused was not consensual. Then, *Barangay Kagawad* Eduardo testified that he did not see "AAA" at the place of incident when he arrived. According to appellant, "AAA's" failure to resist the attack, as well as her conduct after the incident, cast doubt on her credibility and the veracity of her assertions. Appellant also pointed out inconsistencies and inaccuracies in the testimonies of the prosecution's witnesses, *i.e.*, 1) on direct examination, "AAA" testified that the sandpile was near her house, but on cross-examination, "AAA" testified that the sandpile was far from her house; 2) "AAA" testified that appellant punched her in the face and Augusto punched her in the body, but Marlon testified that appellant punched "AAA" on the body or stomach; 3) "AAA" testified that Augusto asked her to accompany him to Uncle Viano's house, but Marlon testified that appellant called "AAA"; and 4) "AAA" testified that Augusto removed her dress, but later retracted her statement. Appellant thus posited that the RTC erred in finding him guilty beyond reasonable doubt of the crime of rape. Moreover, appellant claimed that the trial judge, by his actuations, failed to show impartiality in trying the case.

The Office of the Solicitor General (OSG), on the other hand, argued that the guilt of appellant was proven beyond reasonable doubt. The testimony of "AAA" showed the truthful account of the crime committed by appellant and corroborated by the prosecution's witnesses. Besides, the inconsistencies pointed out by appellant were minor and inconsequential which did not negate appellant's culpability.

Like the trial court, the CA found that all the elements of rape under Article 266-A(1) of the Revised Penal Code (RPC), as amended by Republic Act No. 8353, were established beyond reasonable doubt. The CA held that "AAA's" alleged failure to resist the attack against her cannot be taken as voluntariness or consent to the sexual assault. It ruled further that while there may be inconsistencies in the testimonies of the prosecution's witnesses, it did not negate the commission of rape for these were merely trivial, immaterial and could not discredit "AAA's" claim of rape. The CA, hence, dismissed appellant's appeal as his guilt was proven beyond reasonable doubt.

The dispositive portion of the CA Decision reads as follows: