

THIRD DIVISION

[G.R. No. 223553, July 04, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ROGELIO BAGUION A.K.A. "ROGEL," DEFENDANT-APPELLANT.**

DECISION

MARTIRES, J.:

This is an appeal from the Decision,^[1] dated 29 October 2015, of the Court of Appeals in CA-G.R. CR.-H.C. No. 01840 which affirmed with modification the Decision,^[2] dated 28 March 2014, of the Regional Trial Court, Branch 12, [XXX]^[3] (RTC), in Criminal Case No. R-ORM-10-00085-HC, finding Rogelio Baguion a.k.a. Rogel (*accused-appellant*) guilty of Statutory Rape.

THE FACTS

In an Information, dated 11 May 2010, accused-appellant was charged with statutory rape. The information reads:

That on or about the 8th day of October 2009, at around 11:50 in the morning at [XXX], and within the jurisdiction of this Honorable Court, the above-named accused: ROGELIO BAGUION @ "Rogel," armed with a "MACHETE," by means of force, threat and intimidation, with lewd design and taking advantage of the innocence and minority of the complainant, did then and there wilfully, unlawfully, and feloniously had carnal knowledge of said victim "AAA,"^[4] 10 years of age, without her consent, against her will, and to the prejudice of her development and well-being as a child.

In violation of Article 266-A, RPC as amended by RA 8353.^[5]

Accused-appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the victim AAA, her mother BBB, and Dr. Amelia C. Cam (*Dr. Cam*) as witnesses. Their combined testimony tended to establish the following:

At 11:50 a.m., on 8 October 2009, and while she was home alone and fast asleep, AAA was awakened by accused-appellant, who was a neighbor and whom she called "Tiyo Roel." With a machete in his hand, accused-appellant threatened AAA not to do anything, otherwise, he would kill her and her nephew. He then held AAA and forced her to go with him to his house, which was eight (8) meters away from AAA's.^[6]

At his house, accused-appellant undressed himself and AAA and thereafter he performed the push-and-pull motion on her, but his erect penis failed to fully penetrate AAA's genitalia. Despite the lack of full penetration, AAA still felt severe pain.^[7]

Accused-appellant then closed down his house and went out to gather *tuba*. AAA, whom accused-appellant left behind, found a hole at the *bangera* or wash area, through which she went out and returned home. AAA did not immediately report the incident to her mother out of fear that accused-appellant would kill her and her nephew.^[8]

On 14 October 2009, Francisco Cabusas (*Cabusas*) and accused-appellant were drinking at AAA's house. Sometime during the drinking session, the two fought and they accused one another of molesting AAA. BBB, mother of AAA, then asked the latter who molested her. AAA, who was already crying at that time, told BBB that it was accused-appellant who threatened her with a machete and forcibly brought her to his house where she was raped.^[9]

The following morning, on 15 October 2009, AAA and BBB went to the Department of Social Welfare and Development (*DSWD*), and proceeded to report the incident likewise to the police authorities.^[10] On the same day, AAA was subjected to physical examination by Dr. Cam who testified later: that there was redness in the perihymenal area, i.e., surrounding the hymen; that there was no laceration or injury noted at the time of the examination; that the redness in said area of the vagina was not normal but it may disappear in three (3) days; that there was a possibility that the redness was caused by consistent rubbing, sexual abuse or application of external force; and that it was possible that even if the incident occurred on 8 October 2009, the redness would have still persisted up to 15 October 2009, the date of AAA's examination. ^[11]

Version of the Defense

Accused-appellant denied the allegations against him, saying on 8 October 2009, he stayed at home as he was ill due to his arthritis. On 13 October 2009, he went to a nearby store to buy milk. On his way, he saw AAA being cradled by Cabusas. When he admonished the latter for embracing the child, Cabusas got angry and threatened him that a case would be filed against him. The following day, BBB called him up and told him that a case for rape would be filed against him.^[12]

The RTC Ruling

In its decision, the RTC found accused-appellant guilty of statutory rape. It ruled that AAA was credible as she positively identified accused appellant as the one who raped her. The RTC added that even if there was no rupture of the hymen, this did not negate the commission of the crime of rape; for it is already a well-settled rule that full penile penetration is not an element in the crime of rape. The *fallo* reads:

WHEREFORE, accused ROGELIO BAGUION @ "Rogel" is found guilty beyond reasonable doubt of Statutory Rape as penalized under the Revised Penal Code as amended by R.A. 8353 and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the victim AAA fifty thousand pesos (P50,000.00) as moral damages, and

twenty-five thousand pesos (P25,000.00) as exemplary damages, and to pay the costs.

SO ORDERED.^[13]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It held that where the victim was threatened with bodily injury, as when the rapist was armed with a deadly weapon, such constituted intimidation sufficient to bring the victim to submission to the lustful desires of the rapist. The CA opined that although the victim testified that accused-appellant's erect penis did not penetrate her vagina, the prosecution was able to establish that his penis touched the labia of the victim. It noted that AAA felt pain because the penis of accused appellant touched her vagina while the former was performing push-and-pull movements; and that AAA's testimony was corroborated by Dr. Cam when she testified that the victim suffered redness in the area of her labia minora. The appellate court declared that rape is consummated by the slightest penile penetration of the labia; thus, it concluded that accused-appellant committed statutory rape against the victim who was 10 years old at the time of the incident. The CA disposed of the case in this wise:

WHEREFORE, the appeal is hereby DENIED. The Regional Trial Court's Judgment finding accused-appellant ROGELIO BAGUION @ "ROGEL" guilty beyond reasonable doubt of statutory rape is AFFIRMED with MODIFICATION. Accused-appellant is sentenced to reclusion perpetua and ordered to pay AAA the sums of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages, with an interest of 6% per annum from the finality of this decision until its full satisfaction.

SO ORDERED.^[14]

ISSUE

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, viz:

THE COURT A QUO ERRED IN PRONOUNCING THE GUILT OF ROGELIO BAGUION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT^[15]

Accused-appellant asserts that he could not have abducted AAA because his house was surrounded by the houses of AAA's relatives; that if indeed a sexual intercourse occurred, AAA could have yelled for help even while the aggressor was still making his advances; and that her relatives would surely have noticed when she was being forcibly brought out from her house.^[16]

THE COURT'S RULING

The appeal is bereft of merit.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.

[17]

As to the first element, AAA' s age at the time of the commission of the offense is uncontroverted. Her birth certificate, which was duly presented and offered in evidence, shows that she was born on 17 January 1999,^[18] thus, she was only 10 years and 8 months old at the time she was raped.

As regards the second and third elements, AAA positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incidence of rape as follows:

[Prosecutor Encina]: Do you remember AAA if anything happened to you on October 8, 2009?

[AAA]: Yes, [sir]. I can remember.

Q: On this date October 8, 2009 at around 11:50 in the morning, where were you?

A: I was at home asleep, Ma'am.

Q: Who was with you at that time?

A: I was alone, Ma'am.

x x x x

Q: When you said you fall asleep AAA, what happened next?

A: Somebody awaken me, Ma'am.

Q: What did somebody do to wake you up?

A: I heard a voice saying "hoy" 3x and when I woke up I saw a person named "Tiyo Roel," Ma'am.

Q: Who is this "Tiyo Roel" you are referring to?

A: Our neighbor, Ma'am.

Q: Is he the same as the accused in this case Rogelio Baguion?

A: Yes, Ma'am. He is the one.

Q: Have you known this Rogelio Baguion for a long time AAA?

A: Yes, Ma'am.

Q: When you said you saw him when you opened your eyes, what was he doing?
A: He told me should I tell anybody what will happen next he will kill me and my nephew, Ma'am.

Q: What was he carrying at that time while he was telling you that?
A: A machete, Ma'am.

Q: After saying "don't do anything," what else did he do?
A: He forced me, Ma'am, to go with him to his residence?

Q: How far is his residence from your house?
A: To the front walling of this Court which distance is estimated to 8 meters, more or less, Ma'am.

Q: Did you resist at that time AAA?
A: I resisted, Ma'am.

Q: At that time while he was forcing you to go with him to his house he was holding his machete?
A: Not anymore, Ma'am. He put it down.

Q: Was he holding you?
A: Yes, Ma'am.

Q: Were you able to reach his house AAA?
A: Yes, Ma'am.

Q: What did he say when you reached his house?
A: He undressed me, Ma'am.

Q: How about himself, did he also undress himself?
A: Yes, Ma'am.

Q: After he undressed himself and he undressed you, what did he do?
A: "Iya gi saghid-saghid ang iya oten sa ako bisong ug naa mi gawas na puti sa iya oten" which means that he rubbed his penis on my vagina and a little while he ejaculated a white substance, Ma'am.

Q: When he made "saghid-saghid" movement AAA was his penis erected?
A: Yes, Ma'am. It was.

Q: You also said that he ejaculated a white substance, what happened next?
A: He closed the whole house and thereafter he went out and gathered "tuba," Ma'am.