

SECOND DIVISION

[G.R. No. 215331, January 23, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LUDIGARIO BELEN Y MARASIGAN, ACCUSED-APPELLANT.**

D E C I S I O N

PERALTA, J.:

Before us on appeal is the Decision^[1] dated July 11, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05610, affirming the Decision^[2] dated December 20, 2010 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76, which convicted Ludigario Belen y Marasigan (*appellant*) of two counts of simple rape.

On February 2, 2006, appellant was charged with qualified rape under Article 266-A (1) (a), in relation to Article 266-B (6) (1) of the Revised Penal Code, as amended by Republic Act (RA) No. 8353 and in further relation to Section 5 (a) of RA 8369 in two separate informations, the accusatory portions of which state:

Criminal Case No. 9563

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon - a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA,^[3] an eight (8)-year-old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.^[4]

Criminal Case No. 9564

That sometime in July 1999 in the Municipality of San Mateo, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy, with intent to cause or gratify his sexual desire, by means of force, violence and intimidation, through the use of a deadly weapon - a knife, did then and there willfully, unlawfully and feloniously, have carnal knowledge of

AAA, an eight (8)-year-old minor, against her will and without her consent; the crime having been attended by the qualifying circumstances of relationship-the complainant being the daughter of his common-law wife, and minority, thereby raising the said crime to that of QUALIFIED RAPE, which is aggravated by the circumstances of treachery, evident premeditation, abuse of superior strength and dwelling, to the damage and prejudice of the said victim.

Contrary to Law.^[5]

Appellant, assisted by counsel, was arraigned^[6] on April 17, 2008 and pleaded not guilty to each charge. Trial thereafter ensued.

The prosecution presented AAA, Police Senior Inspector Dean C. Cabrera (*PSI Cabrera*), the medico-legal officer of the Philippine National Police (*PNP*) Crime Laboratory, and BBB, AAA's mother.

AAA testified that she was 8 years old in 1999 and that appellant is the husband of her mother but they were not married;^[7] and that they were all then living in Purok I, Buntong Palay, San Mateo Rizal.^[8] At 4 o'clock in the afternoon of July 1999, she was playing outside their house when she was called by appellant to go inside the house. Once inside, appellant locked the door and poked a knife at her and ordered her to remove her clothes to which she complied.^[9] Appellant instructed her to bend over and he inserted his penis into her vagina.^[10] Thereafter, appellant placed himself on top of her, moving up and down while she was crying.^[11] The rape incident happened for about half an hour in her mother's room.^[12]

At 7 o'clock in the evening of the second week of July 1999, while her mother was at work and she was then sitting at home, appellant entered the house and told her to undress to which she complied as he threatened her not to make noise or tell her mother.^[13] Appellant asked her to bend and inserted his penis into her vagina^[14] then she was told to lie down and appellant went on top of her and inserted his penis in her vagina and started moving up and down. The rape incident happened for about half an hour while she was crying.^[15] Appellant raped her several times more which only stopped when her grandmother took her to her uncle's house in Divisoria.^[16] It was only in 2005, when confronted by her mother as to the truth that she was raped by appellant, that she had finally told her that she had been repeatedly sexually molested by appellant.^[17] She had never told her mother about her ordeal before because appellant threatened her.^[18]

PSI Cabrera testified that he conducted a physical and genital examination on AAA on December 8, 2005 as requested by the Chief of Police of San Mateo, Rizal,^[19] and in this connection, he issued a Medico Legal Report stating that the victim sustained deep-healed laceration of the hymen at 6:00 position.^[20] He stated that the finding of laceration on the hymen would hardly give any proof to the number of times that a sexual abuse had taken place.^[21]

BBB, AAA's mother, testified that appellant is her live-in partner for 10 years,^[22] and that she was staying with AAA and appellant in the latter's house in July 1999. On November 11, 2005, AAA told her that appellant had molested her but kept silent because of appellant's threat that he would kill them.^[23] Her mother took AAA after the latter finished grade 2 and brought her to an uncles' house in Divisoria.^[24] AAA was 8 years old and in grade 2 at the time of the rape incidents.^[25]

Appellant denied the charges and claimed that AAA is the daughter of BBB, his live-in partner with whom he separated in 1999;^[26] that in 1999, his mother-in-law brought AAA, who was then 7 years old, to Manila to study, and did not visit her since then;^[27] that BBB was *masungit*, so he left their house and lived alone in another house; and that BBB got mad when he left her and told him that she would file a case against him.^[28] They filed a case against him to get his property.^[29]

On December 20, 2010, the RTC rendered its Decision the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 9563, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.

2. In Criminal Case No. 9564, accused Ludigario Belen y Marasigan is hereby found GUILTY beyond reasonable doubt of the crime of Simple Rape and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages. No pronouncement as to cost.

Accused Ludigario Belen y Marasigan is to be credited for the time spent for his preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by RA 6127 and EO 214.

Accused Ludigario Belen y Marasigan is hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.^[30]

The RTC found that AAA gave a detailed recount of her sexual ordeal in a candid and straightforward manner; that the medico-legal report stating a deep healed laceration at 6 o'clock position with conclusion that "genital examination reveals remote history of blunt force or penetrating coma" clearly bolstered AAA's allegation that appellant sexually molested her in her younger years. The RTC, however, did not find the two rape incidents as qualified rape even if AAA's birth certificate was marked and offered, since the Local Civil Registrar of San Mateo, Rizal had presented a certification that it had no record of AAA's birth, thus, failing to prove

her minority.

Appellant filed his appeal with the CA. After the Solicitor General filed his Appellee's Brief, the case was submitted for decision.

On July 11, 2014, the CA rendered its Decision which denied the appeal and affirmed the RTC decision.

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs as they had already exhaustively argued their issues in their respective briefs.^[31]

Appellant argues that the prosecution miserably failed to overthrow the presumption of innocence in his favor. He contends that the bulk of AAA's testimony was supplied by the prosecutor who even made presumptions and legal conclusions even before hearing the evidence. He claims that AAA's testimony is doubtful as it is inconsistent with the medico-legal report findings of only one laceration in the victim's hymen.

We affirm the lower court's conviction of appellant for two counts of simple rape.

Article 266-A, paragraph (1) of the Revised Penal Code, states the elements of the crime of rape as follows:

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 otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority; and
 - 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.

We have scrutinized the records of this case and are convinced that appellant had carnal knowledge of AAA with threat and intimidation, thus, against her will and without her consent. AAA categorically declared that in two separate instances, appellant had inserted his penis into her vagina while she was crying. Her testimony on the first rape incident, to wit:

Q. Where were you sometime in the month of July 1999 around 4:00 in the afternoon which is the subject of this complaint?

A. I was in our house at Purok I, sir.

Q. What were you doing at that time?

A. I was playing, sir.

Q. You were then, as you said, 8 years old?

A. Yes, sir.

Q. And at that time who were there in your house?

A. Ludigario Belen, sir.

Q. While you were playing outside your house, what, if any, transpired at around 4:00 in the afternoon?

A. He called me, sir.

Q. Who called you?

A. Ludigario Belen.

Q. And what did you do after you were called?

A. I approached him, sir.

Q. And what happened next after that?

A. He asked me to go inside the house.

Q. What happened next after that?

A. He locked the door, sir.

Q. And after locking the door of your house, what, if any, did he do if he had done anything?

A. He told me to remove my clothes, sir.

Q. Did you comply?

A. Yes, sir.

Q. Why did you comply?

A. Because he threatened me, sir.

Q. How did he threaten you?

A. He poked a knife at me, sir.

Q. You said that you had undressed, what were you wearing then at that time?

A. I was wearing shorts, sir.

Q. And what were your undergarments?

A. Shorts and panty, sir.

Q. What were your upper garments at that time?

A. T-shirt, sir.