

THIRD DIVISION

[G.R. No. 215195, June 07, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE DESCARTIN, JR. Y MERCADER, ACCUSED-APPELLANT.

DECISION

TIJAM, J.:

Accused-appellant Jose Descartin, Jr. y Mercader challenges in this appeal the August 8, 2014 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00959-MIN, which affirmed the judgment of conviction for the crime of Qualified Rape rendered against him on June 13, 2011^[2] by the Regional Trial Court (RTC), Branch 8 of Davao City in Criminal Case No. 52-760-03.

The accusatory portion of the Information, reads:

"n or about 19 July 2003, in Davao City, Philippines, and within this Honorable Court's jurisdiction, the Accused, who is the 11-year-old(sic) minor victim AAA's^[3] biological father, which relationship by consanguinity is alleged as a qualifying circumstance, had carnal knowledge of his (Accused) 11-year-old(sic) minor daughter AAA, willfully and feloniously.

CONTRARY TO LAW.^[4]

When accused-appellant was arraigned, he pleaded not guilty to the offense charged.^[5] Thereafter, trial on the merits ensued.

As culled from the records, the facts of the case are as follows:

AAA testified that accused-appellant is her father and that she has 3 other younger sisters. They rented a house in Davao City with Frigem Almocera (Almocera) who rented a room therein, while her mother was working in Manila.

On the evening of July 19, 2003, after watching television, AAA went to sleep in the sala of their house with her three younger sisters, while Almocera was sleeping in his room.

Accused-appellant then arrived from a drinking spree in their neighbor's house. Upon arriving, accused-appellant removed AAA's shorts and panty, and raised AAA's right leg but the latter lowered the same to prevent accused-appellant from raping her. However, accused-appellant was still able to successfully insert his penis into

AAA's vagina. AAA felt pain and could only cry in silence. AAA failed to wake up her siblings or shout for help while her father was raping her because she was afraid of her father and she could not move her hands anymore. When accused-appellant was finished, he wiped the semen from his pants and put back AAA's shorts.^[6]

The next day, July 20, 2003, AAA together with Almocera, went to their neighbor, Virginia Capote (Capote). AAA then confided to Capote that accused-appellant raped her. Upon hearing the story, Capote brought AAA to the Davao Medical Center Women and Protection Unit for medical examination. Thereafter, Capote accompanied AAA to the Sasa Police Station to report the incident.

On the other hand, accused-appellant testified that on the day of the alleged rape, he was in Tagum City with his youngest child to get the payment for the motorcycle that his brother bought from him. When he returned to their house on July 20, 2003, at around 4:00 p.m., he was suddenly arrested by the police officers for allegedly raping her daughter, AAA.

On June 13, 2011, the RTC convicted accused-appellant of the crime of Qualified Rape, to wit:

Finding the Accused, Jose Descartin, Jr. y Mercader, Guilty of Rape under Article 266-A and qualified under paragraph 5 of Article 266-B, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA.

SO ORDERED.^[7]

On appeal, the CA affirmed with modification the decision of the RTC, to wit:

WHEREFORE, the instant appeal is DENIED for lack of merit. The Decision dated June 13, 2011 of the Regional Trial Court of Davao City, Branch 8, in Criminal Case No. 52,760-03(sic), finding accused-appellant guilty beyond reasonable doubt of the crime of qualified statutory rape is hereby AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay AAA the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages plus 6% interest per annum on the total monetary awards from finality of this decision until fully paid.^[8]

Hence, this appeal with accused-appellant raising this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[9]

In seeking for his acquittal, accused-appellant claimed that the testimony of AAA as to the alleged rape was not sufficient to convict him of the offense charged. Accused-appellant specifically pointed out that the prosecution failed to elicit testimony from AAA that he made a push and pull movement. He also averred that the testimony of AAA as to the fact of carnal knowledge is too vague.

We are unconvinced.

In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis.^[10]

The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.^[11] This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which, are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA.^[12]

In the present case, both the RTC and the CA found that AAA's testimony was straight, candid, spontaneous and steadfast even on cross-examination. Thus, We see no cogent reason to depart from the foregoing rule, since the accused-appellant failed to demonstrate that the RTC and the CA overlooked, misunderstood or misapplied some facts of weight and substance that would alter the assailed Decision.

Article 266-A of the Revised Penal Code (RPC) provides that 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.

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Whereas, Article 266-B of the RPC provides the penalties for the crime of rape:

ART. 266-B. Penalties. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

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.

[13]

To raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur.[14]

In the present case, the elements of qualified rape were sufficiently alleged in the Information, to wit: a) AAA was 11 years old on the day of the alleged rape; and b) accused-appellant is AAA's father. The foregoing elements were sufficiently proven by the prosecution. That AAA was 11 years old during the commission of the rape and that accused-appellant is AAA's father were established by AAA's Certificate of Live Birth[15].

AAA also recounted her harrowing experience, as follows:

PROS. LEMANA (direct examination)

Q. You said that you were inside your house in the evening of July 19,

2003, what were you doing inside your house?

A. I was sleeping after I watched television.

Q. In what particular part of your house did you sleep?

A. In the sala of our house.

Q. How about your other siblings, when you were asleep, where were they?

A. They were beside me.

Q. How about your uncle, Frigem Almocera, where was he?

A. He was in the room.

Q. You said your (sic) were sleeping at that time, what happened afterwards?

A. My father removed my shorts.

Q. You said your father removed your short pants, after removing your short pants what else did he do?

A. He took off my panty.

Q. After removing your panty, what else did he do?

A. He raised my right leg.

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Q. After raising your right leg, what else did your father do?

A. He inserted his penis to my vagina.

Q. At that point your father removed your short pants, your panty and raised your right leg and inserted his penis to your vagina, what were you doing?

A. I tried to immediately put down my right leg.

Q. What was the reaction of your father when you did that?

A. He raised it again.

Q. Did your father really succeed in inserting his penis into your vagina?

A. Yes.

Q. When at that point when he inserted his penis in your vagina, what did you feel?

A. I felt pain.

Q. Did you cry?

A. I cried in silence.

Q. Why?

A. Because I can't do anything.

Q. Why do you say that you could not do anything about the situation?