

## THIRD DIVISION

[ G.R. No. 220023, August 08, 2016 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DARIO TUBORO Y RAFAEL, APPELLANT.**

### D E C I S I O N

**PERALTA, J.:**

This is an appeal from the June 19, 2013 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04745, the dispositive portion of which states:

**WHEREFORE**, the appeal is **DENIED**. The decision dated July 12, 2010, rendered by the Regional Trial Court of Antipolo City, Br. 72, finding accused-appellant Dario Tuboro y Rafael guilty beyond reasonable doubt for the crime of rape defined and penalized under Article 335 of the Revised Penal Code in relation to Sections 5 and 3 (a) of Republic Act No. 7610, otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" (RA 7610), is **AFFIRMED WITH MODIFICATION**. Accused-appellant shall pay the victim AAA moral damages in the amount of P50,000.00 and civil indemnity in the amount of P50,000.00.

SO ORDERED.<sup>[2]</sup>

On February 24, 1997, accused-appellant Dario Rafael Tuboro (Dario) was charged with rape under Article 335 of the Revised Penal Code (RPC), in relation to Sections 5 and 3 (a) of Republic Act No. 7610. The accusatory portion of the Information reads:

That [on] or about and sometime in the month of November, 1996, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] armed with a kitchen knife, by means of force, violence and intimidation, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of the said complainant [AAA], a child over twelve (12) years old but less than eighteen (18) years of age, against the latter's will and consent.<sup>[3]</sup>

During his arraignment on January 30, 2001, Dario pleaded not guilty.<sup>[4]</sup> Pre-trial was deemed terminated upon agreement of the prosecution and the defense.<sup>[5]</sup> Trial ensued while Dario was under detention. Aside from AAA, the prosecution presented Ireneo T. Melgar, Emma Melgar, and Dr. Valentin Bernales. Only Dario testified for the defense.

AAA testified that Dario is the brother-in-law of her father, Ireneo T. Melgar. She could not recall the specific date when she was raped, but it occurred when Susan

Tuboro, Dario's wife, invited her over their house in Sitio Bulao, Cainta, Rizal. With the permission of Ireneo, she agreed to come as she was told by her aunt that her uncle was not there. The following day, however, Dario arrived while Susan left early for work. AAA was sleeping alone when at dawn she was awakened and was surprised to see him lying beside her. He placed himself on top of her and removed her panty. She punched him, but he still succeeded in using her. He held her two hands and boxed her in the chest. After the detestable act was done, AAA could do nothing but cry. She was only fourteen (14) years old at the time, having been born on February 27, 1982.

Previously, in April and October 1996, Dario also sexually abused AAA several times in her father's house in Payatas, Quezon City. At the time, he and Susan, together with their three children, were living in the house of Ireneo, who was residing in Antipolo City together with his new wife. AAA's paternal grandmother, Crisanta Melgar, also used to stay in Payatas, but she was in Bicol from April to October 1996. AAA's mother was staying in Las Pinas with AAA's sister. AAA stated that she was raped three times in Payatas in April 1995, but she could not recall the exact dates.

What she could only remember was that the first one took place while she was alone with Dario while Susan was at work and her cousins went to Bicol due to the death of Ireneo's sibling; a week after, she was raped again in the evening while Susan was in Bicol; and that the third incident, before she graduated from elementary, occurred in the early morning while Susan was at work and her cousins left for Bicol.

As to the alleged rape incidents in Payatas, AAA admitted that she did not tell anybody what happened because Dario threatened to kill her. He actually threatened her before she was raped for the first time by pointing a knife at her. She did not leave the house in Payatas because she had nobody to turn to. Her grandmother was in Bicol and she did not know where her father was living in Antipolo or where her mother was staying with her own family. She did not take steps to write them as she was confused. Even if she had seen her father between April and October 1996, as the latter had visited Payatas to give her educational support, they did not talk to each other because, aside from Dario's threat, they were not close to each other since she turned 11 years old. Although she was free to go where she wanted to, she also did not know where the barangay hall was.

Ireneo testified that he filed a complaint because AAA told his sister, Susan, on November 15, 1996 that she was raped by Dario. When he learned this from his sisters, Rosie and Alice, sometime in December 1996, he and AAA went to Karangalan Police Station on December 27, 1996 and gave their sworn statements. Days prior, Ireneo's mother, Crisanta, who arrived from Bicol, brought AAA to Alice's residence where she started to talk about what happened between her and Dario. Thereafter, Rosie and Alice accompanied AAA to the National Bureau of Investigation (NBI). Ireneo was informed of the rape when Crisanta and Alice reported the incident to the NBI, and on December 25, 1996 when Crisanta went to his house and told him not to worry anymore since the person who raped his daughter was already incarcerated.

Ireneo recalled that Susan went to his house on December 15, 1996, during the baptism of his child, and asked for AAA to go with her in a reunion with her (AAA) cousins who just arrived from Bicol. He did not allow her. The next day, AAA went to

Susan's house without his permission. She returned three days after. In December 18, 1996, Susan told Ireneo that AAA was raped by someone unknown to her (Susan). He then asked her daughter if it is true, but she did not answer, just looked (*tulala*), and did not want to speak.

As to other pertinent matters, Ireneo related that AAA resided in Payatas in 1995 and in Antipolo in 1996. She started living in Payatas since she was in Grade 2 or when she was about 8 years old. After her elementary graduation in 1996, she was sent to a school in Antipolo. She would transfer to Susan's house once in a while to eat and to look after the latter's children. Ireneo knew this because he would visit Crisanta to bring their supply every Saturday. He also observed that AAA had poor grades in school. He was even summoned by the principal as a result.

At the time Ireneo testified in court, he shared that they could not seriously talk to AAA everytime she hears about the case. She was traumatized. He already brought her to a physician for her continued medication.

Emma Melgar knew Dario since he is the brother-in-law of her husband, Salvador Melgar, who, in turn, is the brother of Ireneo. She testified that in October and November 1996, she and her family were residents of Munting Dilaw, Cainta, Rizal; that Susan, Dario and their children were staying at a house built at the back of their house; and that AAA was also sleeping at Susan's place. Emma recollected that on the same period, she saw Susan and AAA seriously talking in front of their house but she did not hear their conversation. When she asked Susan what it was all about, the latter replied that AAA was pregnant and that she already subjected her to a *hilot*. Emma admitted that she did not know of any rape incident involving Dario and AAA, who did not tell her that such crime happened in their house in Munting Dilaw.

For the defense, Dario claimed that, from February to July 1996, his entire family was staying with his brother, Allan Tuboro, in Pasig City because they already sold their house in Payatas. He denied raping AAA in April 1996 in Payatas, since he was at work at the time and in October 1996 in Payatas because he was in Dagupan. He also repudiated the alleged rape in November 1996 in Sitio Bulao, but offered no explanation. Dario believed that this criminal case is purely a harassment suit. He argued that Ireneo and his in-laws were mad at him as they want him to be separated from and be abandoned by Susan. He asserted that Ireneo talked to AAA to file the case against him.

After trial, the RTC convicted Dario of the crime charged. The dispositive portion of the July 12, 2010 Decision<sup>[6]</sup> states:

WHEREFORE, finding the accused DARIO TUBORO y RAFAEL **GUILTY** beyond reasonable doubt for the crime of Rape defined and penalized under Article [335] of the Revised Penal Code, in relation to Sees. 5 and 3 (a) of R.A. 7610[.] [He] is hereby ordered to suffer the penalty of Reclusion Perpetua.

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

The trial court noted that AAA, who was placed in the witness stand eight times, was subjected to a "very lengthy and exhaustive" cross-examination. Even if there were

some discrepancies about the rape incidents that were committed against her by Dario in Payatas, AAA was consistent with the rape incident that occurred at the house of her aunt Susan in Sitio Bulao. Likewise, while there was a conflicting testimony on the part of AAA as to when the rape incident happened in Sitio Bulao, she was still able to recall it in relation to the time frame alleged in the Information, which was also supported by the testimony of Emma. The trial court ruled that, consistent with jurisprudence, the date is not an essential element of the crime of rape since the gravamen of the offense is carnal knowledge of a woman. Moreover, Dario's imputation of ill motive on the part of AAA was not given weight for lack of sufficient corroborative evidence. Finally, the trial court considered the finding of the medico-legal officer that even if the hymen of AAA is intact it is distensible such that a calibrated test tube was able to pass through the hymenal canal without producing any injury. In any case, it was stressed that medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape.

On appeal, Dario's conviction was sustained, as the CA opined that there is no justifiable ground to doubt AAA's credibility. For the appellate court, the discrepancies in her testimony were only with respect to the events surrounding the sexual assaults allegedly committed in Payatas, which were outside the jurisdiction of the trial court. In contrast, the rape committed against AAA in Sitio Bulao was rebutted only by a denial that was not buttressed by strong evidence of non-culpability. Lastly, the CA did not give credence to Dario's claim that this was merely a harassment suit due to his failure to present convincing evidence that AAA's family had a grudge against him.

Now before Us, Dario manifests that he would no longer file a Supplemental Brief and moves that the Appellant's Brief he filed before the CA be adopted.<sup>[8]</sup>

The appeal is dismissed.

The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case.<sup>[9]</sup> Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.<sup>[10]</sup> Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.<sup>[11]</sup>

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.<sup>[12]</sup> Accordingly, in

resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony.<sup>[13]</sup> When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.<sup>[14]</sup>

Upon review of the entire case records, there is no showing that either the trial court or the appellate court committed any error in law and findings of fact. The perceived defects and contradictions by the defense refer only to minor and insignificant details which do not work to alter the outcome of the case.

The Court shall separately rule on the issues raised as follows:

1. AAA failed to recall the specific dates of the incidents of rape.

While AAA admitted that she could not remember the exact month when she was raped by Dario, We agree that she could exactly remember what he had done to her. In fact, even Dario admitted in his Brief that AAA relayed the details of the alleged molestation in Sitio Bulao although she could not remember when it happened.<sup>[15]</sup> AAA conceded that she was not in her proper senses when she gave the statement to the Antipolo Police Station on December 27, 1996; that she was confused at the time; and that she was already worried because of the trouble she was causing her family.<sup>[16]</sup> These are but understandable natural reactions coming from a minor victim who sadly experienced repeated sexual abuse from a relative. Nonetheless, the discrepancies in AAA's testimony regarding the exact date of the alleged rape subject of this case are inconsequential, immaterial, and cannot discredit her credibility as a witness. We held that the date of the rape need not be precisely proved, considering that it is not a material element of the offense.<sup>[17]</sup> It is sufficient that the Information alleges that the crime was committed on or about a specific date.<sup>[18]</sup> What is decisive in a rape charge is that the commission thereof by the accused-appellant has been sufficiently proven.<sup>[19]</sup>

2. Being a patient of the National Center for Mental Health, AAA's qualification as a witness is questionable as her capacity to perceive and make known her perception is very limited;

Dario is estopped from assailing the mental state of the victim, because during the hearing on May 23, 2005, after AAA was presented as a witness, the prosecution and the defense stipulated<sup>[20]</sup> that she is sane, in good condition, and qualified to testify. By reason thereof, the supposed testimony of Dr. Joy Tabanda Manzo was dispensed with.

3. AAA willingly went back to his house despite her allegation that she was previously molested by him in Payatas.

What is glaring from the records is that AAA innocently relied on Susan's representation before she agreed to go with her. She was assured that Dario was not in their house. Even prior to sleeping that night, she inquired about his whereabouts, as to which Susan replied that he was a stay-in in Dagupan.<sup>[21]</sup> Unfortunately, Dario arrived the day after. Despite AAA's testimony, Susan was not