

## THIRD DIVISION

**[ G.R. No. 212157, September 28, 2016 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODRIGO RUSCO, ACCUSED-APPELLANT.**

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

**PEREZ, J.:**

For our consideration is the Court of Appeals' Decision<sup>[1]</sup> dated 29 August 2013 in CA-G.R. CR-H.C. No. 01288 that affirmed the judgment of conviction of appellant Rodrigo Rusco by the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66 for rape.

Appellant was charged with rape in three Informations differing only on the dates. The identical allegations read as follow:

Criminal Case No. 00-1453

That on or about 12<sup>th</sup> day of August 2000, in the Municipality of Sara, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with force, threat and intimidation, did then and there, willfully, unlawfully and feloniously, did lie and succeed in having carnal knowledge of said [AAA],<sup>[2]</sup> a sixteen (16) year old minor, against her will and consent.<sup>[3]</sup>

Criminal Case No. 00-1454

That on or about 16111 day of August 2000, in the Municipality of Sara, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with force, threat and intimidation, did then and there willfully, unlawfully and feloniously, did lie and succeed in having carnal knowledge of said [AAA], a sixteen (16) year old minor, against her will and consent.<sup>[4]</sup>

Criminal Case No. 00-1455

That on or about 23<sup>rd</sup> day of July 2000, in the Municipality of Sara, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife and with force, threat and intimidation, did then and there willfully, unlawfully and feloniously, did lie and succeed in having carnal knowledge of said [AAA], a sixteen (16) year old minor, against her will and consent.<sup>[5]</sup>

Appellant pleaded not guilty to the charge. The prosecution presented AAA and Dr. Jeremiah Obanana (Dr. Obanana) while appellant testified for his defense.

AAA testified that on 23 July 2000, at around 6:00 a.m., she was tending to a cow grazing in the pasture land owned by Silverio Castillo. She passed by appellant who suddenly hit her on the chest. AAA fainted. When she regained consciousness, she was naked in the lower portion of her body and she felt pain on her vagina. On 12 August 2000, AAA was again in the same pasture land watching over a grazing cow at around 12 noon when she saw appellant armed with a knife. He threatened to kill her so AAA had to succumb to his bestial desire. For the third time on 16 August 2000, appellant went to the house of AAA. He again threatened her with a knife and proceeded to rape her.<sup>[6]</sup> Finally, on 3 September 2000, appellant went to the house of AAA to forcibly take her as his wife.<sup>[7]</sup> Thereafter, AAA confessed to her brother that she was raped. She then reported the incident to the police and underwent a medical examination.<sup>[8]</sup>

Dr. Obanana examined AAA. He noted the following findings: 1) healed hymenal laceration noted at 3, 6, 8 & 10 o'clock positions; and 2) negative for spermatozoa on direct vaginal smear.<sup>[9]</sup> He explained during the direct examination that healed hymenal lacerations could possibly be caused by sexual intercourse.

For his defense, appellant claimed that AAA agreed to have sexual intercourse with him on three (3) occasions at the house of AAA in exchange for payment ranging from 140.00 to 160.00. After their third sexual encounter, appellant proposed marriage to AAA. He went to her house on a Sunday afternoon and asked for AAA's hand from her brother. AAA's brother objected to the proposal. Appellant then revealed that he already had sexual intercourse with AAA. This angered AAA's brother and prompted him to file a case against appellant.<sup>[10]</sup>

On 6 May 2009, the Regional Trial Court (RTC) found appellant guilty of only one count of rape. The dispositive portion of the Decision reads:

WHEREFORE, the court hereby finds the accused guilty beyond reasonable doubt of the crime of rape in the charges alleged in Crim. Case No. 00-1453<sup>[11]</sup> and hereby sentences the said accused to suffer a penalty of *reclusion perpetua*, together with the accessory penalty provided by law, pay the victim P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs. The accused period of detention shall be credited fully from the sentence herein imposed.

On reasonable doubt, the accused is acquitted of the charges in Crim. Cases No. 00-1454 and 00-1453.<sup>[12]</sup>

The trial court gave credit to AAA's testimony regarding the first rape incident while it found incredible her version of the second and third rape incidents.

Appellant elevated the case to the Court of Appeals. On 29 August 2013, the appellate court affirmed appellant's conviction but modified the ruling as to the penalties imposed. The dispositive portion reads:

**WHEREFORE**, the appeal is **DENIED**. The assailed Decision dated May 6, 2009 of the Regional Trial Court, Branch 66 of Barotac Viejo, Iloilo in

Criminal Case No. 00-1455 is **AFFIRMED WITH MODIFICATION** to include P30,000.00 as exemplary damages, in addition to P50,000.00 as civil indemnity and P50,000.00 as moral damages awarded by the lower court, with an interest on all damages awarded at the rate of 6% per annum from the finality of the judgment until fully paid.<sup>[13]</sup>

The appellate court ruled that the following circumstantial evidence presented by the prosecution led to the conclusion that appellant raped AAA:

1. While AAA was grazing her brother's cow, appellant was in the vicinity.
2. When AAA was passing by, appellant suddenly boxed her on the chest.
3. The force generated from the punch rendered AAA unconscious.
4. When she regained consciousness, AAA observed that her shorts and panty were already removed.
5. She also noticed appellant pointing a knife at her and threatened her not to tell anybody especially her brother.
6. She felt pain in her vagina.<sup>[14]</sup>

The appellate court dismissed the inconsistencies in AAA's testimonies in the direct and cross-examinations as minor and trivial.

Aggrieved, appellant filed a Notice of Appeal. In a Resolution<sup>[15]</sup> dated 9 July 2014, this Court required the parties to file their respective Supplemental Briefs. In their respective Manifestations,<sup>[16]</sup> the parties manifested that they would no longer submit a supplemental brief.

In his brief,<sup>[17]</sup> appellant argues that with respect to the 23 July 2000 incident, the prosecution failed to prove the element of sexual congress because AAA did not know who raped her and she failed to narrate in detail how the rape was consummated. Appellant claims that the trial court merely relied on AAA's statement that she felt pain in her vagina to establish the commission of rape. Moreover, appellant avers that the medical examination failed to corroborate the crime of rape. Appellant denies possessing a knife during the rape incident. He also faults AAA for not reporting the matter to the police station or subjecting herself to a medical examination immediately after the incident. As will hereafter be discussed, appellant points out several inconsistencies and probabilities in AAA's testimony. Appellant submits that AAA's unbelievable testimony militates against her credibility.

The crime of rape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof.<sup>[18]</sup> Since only two people are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with great caution.<sup>[19]</sup>

We defer to the rule that the trial court's evaluation of the credibility of witnesses and their testimonies is deserving of the highest respect because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grilling examination.<sup>[20]</sup>

The trial court gave credence to AAA's account on the first incident of rape. Against the conclusion, appellant highlighted the inconsistent statements of AAA regarding his identity as the rapist. Appellant points out several inconsistencies and improbabilities in AAA's testimony, such as:

1. AAA initially stated that she did not know appellant but later admitted that appellant was courting her prior to the rape incidents.
2. AAA stated in her direct examination that she did not know who boxed her but later on, she narrated that when she passed by appellant, the latter boxed her.
3. AAA did not report the incident because she was allegedly scared of her brother, which is contrary to her claim that it was appellant who threatened her.
4. After the 23 July 2000 rape incident, AAA did not run when she saw appellant on two more occasions.
5. In her direct examination, AAA testified that she did not see appellant when she regained consciousness. On the contrary, in her cross-examination, she claimed seeing appellant when she regained consciousness.<sup>[21]</sup>

When asked whether she knew appellant, AAA initially denied knowing appellant but later relented that appellant was courting her. This inconsistency does not detract from the credibility of AAA's declaration. A review of her sworn affidavit taken on 6 September 2000 shows that she already knew appellant because she was able to identify him as the one who boxed her before she fainted. Again, during the same direct examination, AAA reiterated that she saw appellant standing nearby while she was grazing a cow. It was not denied that AAA knew appellant prior to the rape incident.

Appellant also points out that AAA also denied seeing anybody when she regained consciousness. When pressed to answer during the cross examination, she declared that she saw appellant who then threatened her and her brother if she tells anyone about the rape, thus:

Q: After you woke up and when you regained consciousness your shorts and panty was already removed from your body, is that correct?

A: Yes, Sir.

Q: And the shorts and panty was properly folded beside you when you regained consciousness?

A: Yes, Sir.

COURT: (to the witness)

Q: Whom did you see?

A: Rodrigo Rusco, Your Honor.

ATTY. FRANCISCO: (to the witness)

Q: When you asked by the Honorable Court and when you regained consciousness you said that Rodrigo Rusco was around, but in your direct testimony you testified that when you regained your consciousness Rodrigo Rusco was not

around, why there is a discrepancy, can you explain to the court?

A: When I regained my consciousness Rodrigo Rusco was already there and he pointed a knife to me and threatened me not to tell to anybody especially to my brother.

Q: You want to tell the court that your direct testimony is not true?

A: Yes, Sir my answer was not correct during that time because I was (sic) felt nervous. [22]

AAA's statement during the cross-examination jived with her sworn statement wherein she made the following declaration:

That, when I woke up I was already lying on the grassy area, nude/undress (sic) with Rodrigo Rusco beside me and I realized that I was raped so I immediately stand (sic) up but Rodrigo Rusco hold (sic) my hand and pointed a knife at me threatening me that if I tell anybody about what happened he will kill me and my brother XXX. [23]

AAA is not expected to deliver a complete and perfect recollection of the incident. Besides, inaccuracies and inconsistencies in a rape victim's testimony are generally expected, thus:

x x x [T]he credibility of a rape victim is not destroyed by some inconsistencies in her testimony. On the contrary, it is a recognized axiom in rape cases that inconsistencies in the victim's testimony do not detract from the vital fact that, in truth, she had been abused. Testimonial discrepancies could have been caused by the natural fickleness of the memory, which variances tend to strengthen rather than weaken credibility as they erase any suspicion of rehearsed testimony. [24]

Contrary to appellant's assertion that AAA initially testified that she did not know who boxed her, it was also clear that AAA saw appellant standing nearby and when she passed by him, he boxed her on the chest causing her to fall out of consciousness.

AAA cannot be faulted for failing to immediately report the rape incident. Appellant threatened to kill AAA and her brother if she tells anyone about the rape. It is settled that delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant. [25]

Anent AAA's behavior after the first rape incident, the behavior of the victim does not establish the truth or falsity of her accusation. Rape is subjective and not all victims react in the same way; there is no typical form of behavior for a woman when facing a traumatic experience such as a sexual assault. [26]

Appellant was convicted of rape for the 23 July 2000 incident while he was acquitted on the two other alleged rape incidents. Appellant's conviction hinges on the sufficiency of the circumstantial evidence because AAA admitted that she was unconscious at the time she was raped.