

## THIRD DIVISION

**[ G.R. No. 216061, December 07, 2016 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
NAPOLEON BENSURTO, JR. Y BOLOHABO, ACCUSED-APPELLANT.**

### DECISION

**PERALTA, J.:**

This is an appeal of the Court of Appeals' (CA) Decision<sup>[1]</sup> dated March 28, 2014 dismissing appellant's appeal and affirming the Joint Decision<sup>[2]</sup> dated November 28, 2011 of the Regional Trial Court, Branch 48, Masbate City, in Criminal Cases Nos. 10225-26 convicting appellant of two (2) counts of the crime of qualified rape defined and penalized under Article 266-A (1) (a), in relation to Article 266-B (1) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.

The facts follow.

The victim, AAA,<sup>[3]</sup> was born on July 10, 1991, and sometime in February 1999, when she was only 9 years old, she was left alone by her adoptive mother, BBB, in their house, together with appellant, her father (as indicated in the birth certificate presented before the court). While she was sleeping in her room, appellant entered thereat with a rope in his hand. AAA was awakened by the presence of her father who proceeded to tie her feet. Appellant then pulled AAA's underwear to her feet and immediately laid on top of her. Thereafter, appellant undressed himself and then forced his penis into AAA's vagina. After appellant satisfied his carnal desires, he threatened AAA not to tell anyone about the incident or else he would kill her and her mother. Fearing for her life, as well as her mother, AAA never told anyone about the incident. The said incident, however, was repeated sometime in June 2000. After appellant ordered their househelper to go home, he instructed AAA to sleep in his room. Left alone with only her father as companion, she was forced to accede to her father's demand. While in the appellant's room, the latter pulled down AAA's underwear and again sexually abused her despite her pleas not to. Appellant again told her not to tell anyone under the threat of death upon her and her mother. AAA was only able to relate the incident to her mother in November 2000. Subsequently, AAA and her mother went to Edna Romano, the Rural Health Midwife of Cabitan, Mandaon, Masbate to seek assistance. Romano, thereafter, accompanied BBB and AAA to the Mandaon Medicare Community Hospital where AAA was examined by Dr. Napoleon Villasias. Based on the examination, AAA was found to have hymenal tears at 10 o'clock position. Hence, two (2) Informations were filed against appellant, which read as follows:

Criminal Case No. 10225

That sometime in the month of February, 1999 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means

of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.

CONTRARY TO LAW.

Criminal Case No. 10226

That sometime in the month of June 2000 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.

CONTRARY TO LAW.

AAA testified during the trial, as well as Dr. Napoleon Villasis, Edna Romano and BBB, AAA's mother.

Appellant offered denial, alibi and no ill motive as defenses. According to him, all the accusations against him were mere fabrications of his wife who only forced AAA to file the two criminal cases and testify against him. He added that he knew about the illicit affair of his wife with a certain Relino Retudo, hence, his wife was only trying to escape from him for fear that he would kill her together with her paramour.

After more than 7 years since AAA testified in court, the latter retracted her previous testimony that she was raped by appellant. Testifying for the defense, AAA narrated that she was not raped by her father and was merely being dictated by her mother to fabricate the rape charges against appellant so as to allow her mother to live freely together with her paramour.

The RTC, on November 28, 2011, convicted the appellant on both counts of rape, the dispositive portion of the Joint Decision reads as follows:

WHEREFORE, premises considered, the Court finds, accused Napoleon [Bensurto] y Bolohabo GUILTY of:

1. Qualified Rape in Criminal Case No. 10225, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

2. Qualified Rape in Criminal Case No. 10226, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" P75,000.00 as civil indemnity, P75,000.00 as moral damages and P50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;

The period of detention of accused Napoleon [Bensurto, Jr.] y Bolohabo shall be credited in his favor.

The Provincial Jail Warden of the Provincial Jail, Masbate is directed to immediately transfer Napoleon [Bensurto Jr.] y Bolohabo to the National Bilibid Prison, Muntinlupa City.

SO ORDERED.<sup>[4]</sup>

Notwithstanding the recantation of AAA, the RTC gave credence to her earlier testimony wherein she clearly narrated how the appellant raped her.

On appeal, the CA, in its Decision dated March 28, 2014, dismissed the same with the following disposition:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DENIED and, consequently, DISMISSED. The appealed Joint Decision rendered by Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City dated November 28, 2011 in Criminal Cases Nos. 10225-26 is hereby AFFIRMED,

SO ORDERED.<sup>[5]</sup>

According to the CA, the presence of healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by the appellant months before the date of examination. The CA added that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to do conclude, having the opportunity to observe the witnesses' demeanor and deportment on the stand and the manner in which they gave their testimony. It was also adjudged that it was not adequately and convincingly shown that the trial court had overlooked or disregarded significant facts and circumstances which, when considered, would have affected the outcome of the case or justify a departure from the assessments and findings of the trial court. Furthermore, it ruled that a recantation or an affidavit of desistance is viewed with suspicion and reservation. According to the CA, it is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when AAA was already 19 years old and, as noted by the trial court, unemployed. It was also ruled that the failure of AAA to shout for help or resist the sexual advances of the appellant is not equivalent to consent. Lastly, the CA ruled that long silence and delay in reporting the crime is not an indication that the accusations are false.

Hence, the present appeal where appellant insists that the prosecution was not able to prove his guilt beyond reasonable doubt.

The appeal has no merit.

Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.<sup>[6]</sup> All the elements, therefore, are present. The clear and straightforward testimony of AAA, as corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was

raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.<sup>[7]</sup>

The appellant claims that the medical evidence, with respect to the lacerations on the hymen of AAA, failed to convincingly corroborate the crime of rape as the cause of the same was not determined with possibility. This is a flawed argument. The medical report revealed that AAA suffered hymenal lacerations at 10 o'clock position and it must be emphasized that the said examination was made in November 2000, or months after the incidents of rape occurred in February of 1999 and June of 2000. Thus, the CA was correct when it ruled that the presence of such healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by appellant months before the date of the medical examination.

<sup>[8]</sup> The healed lacerations on the victim's hymen do not disprove that accused-appellant raped the victim and cannot serve to acquit him.<sup>[9]</sup> Proof of hymenal laceration is not even an element of rape, so long as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ.<sup>[10]</sup>

Appellant also contends that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, however, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.<sup>[11]</sup> Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.<sup>[12]</sup>

As to the retraction of AAA, this Court has ruled that when a rape victim's testimony is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.<sup>[13]</sup> As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly, because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation.<sup>[14]</sup> Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it.<sup>[15]</sup> The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a