

## SECOND DIVISION

[ G.R. No. 190348, February 09, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO  
COLENTAVA, ACCUSED-APPELLANT.**

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

**DEL CASTILLO, J.:**

On appeal is the May 29, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00760, which affirmed with modification the April 23, 2007 Joint Judgment<sup>[2]</sup> of the Regional Trial Court (RTC) of Bayawan City, Negros Oriental, Branch 63 in Criminal Cases Nos. 205, 206, and 207. The RTC found appellant Nilo Colentava (appellant) guilty beyond reasonable doubt of three counts of qualified rape and sentenced him to suffer imprisonment of *reclusion perpetua* and to pay the victim "AAA"<sup>[3]</sup> P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P25,000.00 as exemplary damages in each case.

#### ***Factual Antecedents***

Appellant was charged with qualified rape defined and penalized under paragraph (1) of Article 266-A of the Revised Penal Code (RPC), in relation to paragraph (1) of Article 266-B thereof, in three separate Informations, viz:

#### Crim. Case No. 205

That on or about June 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] "AAA," his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of the Revised Penal Code.<sup>[4]</sup>

#### Crim. Case No. 206

That on or about the 29<sup>th</sup> day of July 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] "AAA," his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of

the Revised Penal Code.<sup>[5]</sup>

Crim. Case No. 207

That on or about the 4<sup>th</sup> day of August 2003, in the City of Bayawan, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of intimidation, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge [of] "AAA," his daughter, a minor, sixteen (16) years old, against her will.

Contrary to Article 266-A, in relation to Paragraph 1 of Article 266-B of the Revised Penal Code.<sup>[6]</sup>

Upon arraignment on April 19, 2004, appellant, assisted by counsel *de parte*, entered a plea of not guilty to each charge. After pre-trial was terminated, trial on the merits followed.

***Version of the Prosecution***

According to the prosecution's evidence, "AAA," who was born on February 3, 1987, was 16 years old when the alleged incidents of rape were committed against her by her own father, the appellant in this case, in the months of June, July, and August in the year 2003. Its version of the incidents is as follows:

When "AAA" was just eight months old, her parents left her to the care and custody of her grandmother "BBB," who is appellant's mother. They lived in Brgy. Tayawan, Bayawan City, Negros Oriental. In 2002, appellant returned to Brgy. Tayawan and stayed in a house at Sitio Baco,<sup>[7]</sup> which is near "BBB's" house in Tayawan.

Sometime in June 2003, "BBB" instructed "AAA" to go to her father in Sitio Baco. Upon arriving thereat at 5:00 p.m., "AAA" did the household chores.<sup>[8]</sup> Once done, "AAA" ate dinner by herself since appellant at that time was still out. Afterwards, she went to sleep.

At around 10:00 in the evening, "AAA" was roused from her sleep by appellant who ordered her to open the main door for him. "AAA" noticed that appellant was drunk.<sup>[9]</sup> After opening the door, "AAA" went back to her room, but appellant followed her and lay down beside her. He started kissing and hugging "AAA." Thereafter, he pointed his .357 magnum pistol at her and took off her clothes.<sup>[10]</sup> Appellant then positioned himself on top of "AAA" and inserted his penis into her vagina. Once satiated, he threatened "AAA" not to tell "BBB" or else he would kill her.<sup>[11]</sup> Out of fear, "AAA" kept to her herself what appellant did to her.

About a month later or on July 29, 2003, "AAA" was again at home with appellant in Sitio Baco. After they finished dinner, "AAA" went up to her room to rest. Appellant followed and lay down beside her. He embraced and kissed "AAA" and took off her clothes. He then inserted his penis into "AAA's" vagina.<sup>[12]</sup> When done, appellant pointed his pistol at "AAA" and threatened to kill her and "BBB" if she would disclose her ordeal to anyone.

On August 21, 2003, appellant once more entered "AAA's" room after they finished supper. He lay down beside "AAA," hugged and kissed her and slowly removed her clothes. Afterwards, he positioned himself on top of "AAA" and inserted his penis into her vagina.<sup>[13]</sup> After having intercourse with "AAA," appellant again brought out his pistol, pointed it at "AAA," and sternly reminded her not to tell her grandmother, otherwise he would kill them both.

It was only after the third rape incident that "AAA" finally mustered the courage to reveal to her grandmother what had happened. As a result, her grandmother disallowed her to return to appellant's house and instead sent her to her aunt in Kabankalan. However, she went back to her grandmother's house so she could continue her schooling.

On September 11, 2003, "AAA," together with two friends, reported the rape incidents to the Department of Social Welfare and Development. There, she was asked if she wanted her father to be arrested. When she replied in the affirmative, she was subjected to a medical examination.

Dr. Edalin L. Dacula (Dr. Dacula), the City Health Officer of Bayawan City who conducted the medical examination on "AAA" on September 11, 2003, issued a Medico Legal Report showing that "AAA's" vaginal orifice is open with healed lacerations at 3:00 and 12:00 o'clock positions.<sup>[14]</sup> According to Dr. Dacula, these lacerations were caused by previous sexual intercourse.<sup>[15]</sup>

### ***Version of the Defense***

Appellant denied the accusations of rape against him. He claimed that he had been staying in Manila since 1990 for work. It was only in May of 2003 that he again saw "AAA" when he returned to Bayawan City, Negros Oriental. He was prompted to come home because he received a letter from "BBB" informing him that his daughter was frequently out with her friends and at times even failed to go home.<sup>[16]</sup>

When appellant confronted "AAA" about her ways, the latter got furious and exclaimed that appellant does not have the right to scold her because he was never present when she was growing up.<sup>[17]</sup> Appellant was shocked by "AAA's" actuation that he held her hair and slapped her.<sup>[18]</sup> After a while, appellant entered "AAA's" room and tried to apologize for hurting her. However, they had another argument prompting appellant to again lay his hands on her.

"CCC," the older brother of "AAA," testified that he resided with appellant from June to August of 2003 at Sitio Baco. He claimed that during that time, "AAA" never lived with them because she stayed with their grandmother in Tayawan proper.<sup>[19]</sup> He also testified that at that time, "AAA" had a boyfriend named Jovito Sulpot with whom "AAA" exchanged love letters.<sup>[20]</sup> The said letters, however, were already burned.<sup>[21]</sup>

"BBB," for her part, confirmed that "AAA" lived with her in Brgy. Tayawan since she was born. When asked during trial if there was ever a time when the appellant

stayed and slept with "AAA," "BBB" answered in the negative.<sup>[22]</sup> "BBB" claimed that appellant lived in a different house located in Sitio Baco since he was working on their land there. She testified that the distance between appellant's house in Sitio Baco and her house in Tayawan is about 1½ kilometers and could be traversed in 45 minutes by foot.<sup>[23]</sup>

### ***Ruling of the Regional Trial Court***

In a Joint Judgment<sup>[24]</sup> dated April 23, 2007, the RTC found appellant guilty as charged, viz:

WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A in relation to paragraph 1 of Article 266-B of the Revised Penal Code, accused NILO COLENTAVA is CONVICTED of triple rape and sentenced to triple Reclusion Perpetua. He is hereby ordered to pay complainant [AAA], for each count, the sum of Seventy Five Thousand Pesos (Php75,000.00) or a total of Two Hundred Twenty Five Thousand Pesos (Php225,000.00) as civil indemnity; Fifty Thousand Pesos (Php50,000.00) for each count or a total of One Hundred Fifty Thousand Pesos (Php150,000.00) as moral damages; and Twenty Five Thousand Pesos (Php25,000.00) each or a total of Seventy Five Thousand Pesos (Php75,000.00) as exemplary damages.

Finally, the entire records of these cases are hereby directed transmitted to the Court of Appeals Visayas, Cebu City for automatic review as these cases involve the imposition of the capital punishment.

SO ORDERED.<sup>[25]</sup>

### ***Ruling of the Court of Appeals***

On appeal, the CA affirmed with modification the RTC's conviction of appellant in a Decision<sup>[26]</sup> dated May 29, 2009, thus:

WHEREFORE, premises considered, the appealed decision is hereby AFFIRMED with MODIFICATION. Appellant NILO COLENTAVA is found GUILTY beyond reasonable doubt of three (3) counts of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* for each count without eligibility of parole and for each count of rape; he is hereby ordered to pay private complainant P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P25,000.00 as exemplary damages on the three (3) counts. Costs against appellant.

SO ORDERED.<sup>[27]</sup>

Hence, the present appeal.

## ***Assignment of Errors***

Appellant submits the following assignment of errors:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THREE (3) COUNTS OF RAPE DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.<sup>[28]</sup>

THE PRIVATE COMPLAINANT'S ACTUATIONS AFTER THE INCIDENTS NEGATE THE POSSIBILITY OF RAPE.<sup>[29]</sup>

THE PROSECUTION UTTERLY FAILED TO PROVE THE ELEMENT OF INTIMIDATION.<sup>[30]</sup>

Appellant argues that the charges against him should not have been given credence because "AAA's" narration of the events leading to the alleged rape were vague and highly improbable. The surrounding circumstances leading to the alleged three incidents of rape were all the same which is highly unusual and contrary to common experience. Appellant also contends that "AAA's" conduct after the alleged rape incidents is questionable. Appellant argues that if he indeed raped "AAA," then the latter should have avoided returning to his house at Sitio Baco after the alleged first incident of rape. Appellant also suggests that the normal thing to do on the part of "AAA" was to report the rape to her grandmother which she failed to do. Appellant likewise posits that the prosecution failed to rebut his allegation that "AAA" was mad at him because he chastised her due to her improper ways. According to appellant, this could have been the reason why "AAA" pressed charges against him.

Appellant further argues that the prosecution failed to prove the attendance of intimidation in the commission of the crimes.

### **Our Ruling**

The appeal is without merit.

At the outset, we note that in his brief<sup>[31]</sup> filed with the CA, appellant challenged "AAA's" credibility by highlighting the discrepancy between her testimony and the allegation in the Information in Criminal Case No. 207 as to the date of the commission of the third rape. "AAA" asserted that the third rape happened on August 21, 2003, while the Information stated that it occurred on August 4, 2003. In debunking appellant's argument, the CA held:

The alleged inconsistency in the date of the third rape is trivial and forgivable, since a victim of rape cannot possibly give an exacting detail for each of the previous incidents as these may just be but mere fragments of a prolonged and continuing nightmare, a bad experience she might even be struggling to forget. Verily, the exact date of rape is not an essential element of the crime, and the mere failure to give a precise date, let alone an incorrect estimate, will not discredit the testimony of the victim.<sup>[32]</sup>