

## THIRD DIVISION

[ G.R. No. 207815, June 22, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SALVADOR A.K.A. "FELIX", ACCUSED-APPELLANT.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is an appeal<sup>[1]</sup> from the January 9, 2013 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 34484 which affirmed with modification appellant Jose Salvador's conviction for the crime of rape as defined under Article 266-A(2)<sup>[3]</sup> of the Revised Penal Code (RPC) in Criminal Case No. 4112.

AAA, BBB<sup>[4]</sup> and CCC are daughters of appellant, a tricycle driver. On February 5, 2009, appellant was charged with the crime of rape<sup>[5]</sup> against BBB before the Regional Trial Court (RTC), Branch 96, Baler, Aurora. The Information<sup>[6]</sup> read:

**[CRIM. CASE NO. 4112 FOR RAPE IN RELATION TO R.A. No. 7610:]**

The undersigned Asst. Provincial Prosecutor, upon the sworn complaint of [BBB], a 15 years (sic) old minor, assisted by her sister [AAA], Ms. Celestina Abellera of the MSWD and PO2 Myra Novilla of the WCPD of the PNP, Dipaculao, Aurora, accuses Jose Salvador @ Felix of the crime of Rape in relation to R.A. 7610, committed as follows:

That sometimes (sic) July 2007 and even prior thereto, in their house at Brgy. [XXX], Dipaculao, Aurora and within the jurisdiction of this Honorable Court, the above named accused, with carnal lust, force (sic) [BBB] to have sexual intercourse with him by inserting his finger and sexual organ into her, taking advantage of the latter['s] weakness, minority and moral ascendancy over the victim, being her father, feloniously, criminally, unlawfully, illegally had carnal knowledge upon said [BBB], such bestial act may impaired (sic) or tend to be prejudicial to the development of the child victim.

CONTRARY TO LAW.

Appellant was at the same time charged<sup>[7]</sup> with the crime of acts of lasciviousness against CCC.

On arraignment,<sup>[8]</sup> appellant pleaded not guilty for both crimes. Joint trial ensued after pre-trial.

The prosecution presented the testimonies of BBB, Celestina Abellera, PO3 Myra Novilla and Dr. Arturo A. Parilla, Jr. as evidence.

BBB<sup>[9]</sup> testified that she executed a *Sinumpaang Salaysay*<sup>[10]</sup> on July 11, 2007 when she was 15 years old and in 2<sup>nd</sup> year high school. BBB cried when she was asked to recount her experience and read her affidavit. She nonetheless affirmed the contents of her affidavit and identified appellant as the person who sexually assaulted her. In her affidavit, BBB stated that the appellant, her father, physically violated her when she was in Grade VI. She said that appellant touched and inserted his finger in her vagina and that she felt pain. The following day, appellant asked for a massage where he was only wearing his underwear. At this point BBB stated that appellant raped her inside his room. When asked why she delayed in reporting the incident, BBB answered that she was afraid that appellant might kill them because appellant owned a "*pamalo*" and a gun. On cross-examination, BBB clarified that when she said that appellant raped her, appellant was not actually able to insert his penis in her vagina.

Abellera, the Municipal Social Welfare Officer testified that she aided PO3 Novilla in taking the statements of BBB and CCC. She affirmed that both BBB and CCC were minors and presented the certified true copies of their birth certificates<sup>[11]</sup> issued by the local civil registrar. She conducted further interview for a social case study report.<sup>[12]</sup>

PO3 Novilla, Women and Children Protection Desk Officer of the Philippine National Police, Dipaculao, Aurora, stated that she took and recorded the sworn statements of BBB and CCC. When the court clarified AAA's role in the whole proceeding, PO3 Novilla said that AAA filed a statement with the Department of Social Welfare and Development and with the police that she had also been raped by appellant and begot a child. AAA however for her own reasons did not file charges against appellant.<sup>[13]</sup>

Dr. Parilla, Jr., Municipal Health Officer of Dipaculao, Aurora, testified that he conducted the physical examination<sup>[14]</sup> of BBB and consequently issued a Medico-Legal Report<sup>[15]</sup> where he found "no evident injury at the time of exam" nor was there any discharge found.<sup>[16]</sup> On the lower portion of the report, he noted that the "medical evaluation does not exclude sexual abuse".<sup>[17]</sup>

The defense presented appellant as its lone witness. Appellant claimed that, while in prison, his daughter AAA came to visit him and confided that the complaints of BBB and CCC were fabrications. Appellant posited that AAA urged her sisters to file false complaints against him to extort money from him in order to fund her husband's overseas job application. He also said that AAA took particular advantage of BBB's resentment against him because of his strict attitude towards dating.

In its July 22, 2011 Decision,<sup>[18]</sup> the RTC found appellant guilty of rape by sexual assault but acquitted him of the crime of acts of lasciviousness. The RTC gave credence to BBB's testimony because it was delivered in a categorical, straightforward, spontaneous and frank manner. On the other hand, it noted that appellant's defense was unsupported by evidence. It also stated that while the medico-legal report did not contain any finding of injury, the same is not necessary

to prove the commission of rape. There being uncertainty of whether there was actual touching of the penis to the labia, the RTC said that the crime committed was only sexual assault under Article 266-A, paragraph 2 of the RPC as amended, thus:

**WHEREFORE**, above premises considered, the Court hereby renders judgment as follows:

1. For failure of the prosecution to establish the guilt of accused Jose Salvador @ "Felix", with the required quantum of evidence in Criminal Case No. 4113, the Court hereby **ACQUITS** him of the crime of Acts of Lasciviousness; and
2. Finding accused JOSE SALVADOR @ "Felix" **GUILTY** beyond reasonable doubt in Criminal Case No. 4112 for RAPE defined under Article 266-A, paragraph 2 (sexual assault) and punished under 266-B of the Revised Penal Code, the Court hereby sentences him to suffer the indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fourteen (14) years and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, and to pay [BBB] the amount of [P]50,000.00 as civil indemnity, [P]50,000.00 as moral damages, and [P]25,000.00 as exemplary damages.

**SO ORDERED.**<sup>[19]</sup>

On appeal, the CA affirmed with modification the RTC's July 22, 2011 Decision.<sup>[20]</sup> The CA did not find any error in the RTC's appreciation of the facts and circumstances of the case since "exactness, detailedness and flawlessness [of] recollection"<sup>[21]</sup> cannot be imposed on minor victims. Moreover, the CA stated that appellant's defense of denial cannot overcome BBB's affirmative and categorical declarations of his culpability. It, however, modified the penalty pursuant to Article 266-B<sup>[22]</sup> of the RPC.

Since it was established that appellant was BBB's father and that BBB was below 18 years of age, the CA concluded that the crime committed was qualified rape. Consequently, the CA increased the penalty imposed as well as the award of damages. The CA ruled:

WHEREFORE, in light of the foregoing, the instant appeal is DENIED. The July 22, 2011 Joint Decision of the Regional Trial Court, Branch 96, Baler, Aurora in CRIM. CASE No. 4112, finding the herein appellant Jose Salvador a.k.a. "Felix" guilty beyond reasonable doubt of rape committed against [BBB], is hereby **AFFIRMED** with the **MODIFICATIONS that the penalty to be imposed upon him must be *reclusion perpetua* with no eligibility of parole and the award of civil indemnity is increased to P75,000.00.** No costs.

**SO ORDERED.**<sup>[23]</sup>

Hence, this appeal.

The lone issue for our consideration is whether appellant's guilt was proven beyond

reasonable doubt.

Appellant contests the finding of guilt beyond reasonable doubt by the RTC and CA contending that the prosecution failed to prove the elements of the crime of rape. Moreover, he states that the witnesses presented gave inconsistent testimonies. Lastly, appellant reiterates that the medico-legal report does not support the finding of rape.

We dismiss the appeal but modify the penalty imposed.

## **EVALUATION OF THE CREDIBILITY OF WITNESSES IS BEST LEFT TO THE TRIAL COURTS**

This Court has reiterated that the credibility of witnesses is a question best addressed by the trial court because of its opportunity to observe their demeanor while testifying on the stand: an opportunity denied to the appellate courts.<sup>[24]</sup> Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, especially when no significant fact nor circumstance is shown to have been overlooked or disregarded which when considered could affect the outcome of the case.<sup>[25]</sup> The rule is strictly applied when the appellate court affirms the finding of the lower court.

This Court has acknowledged that it is difficult to have corroborating testimonies in rape cases since in majority of the cases only the offended party's testimony is available. The Court has affirmed a conviction of rape as long as it is supported by a conclusive, logical and probable testimony by the offended party.<sup>[26]</sup>

Here, BBB affirmed her *Sinumpaang Salaysay* in open court. There she narrated what started out as innocent teasing, escalated into a situation where appellant, her father, inserted his finger in her vagina. She stated that:

04.T: Maaari mo bang isalaysay ang buong pangyayari sa sinasabi mong panghahalay sa iyo ng iyong tatay na si JOSE SALVADOR @ FELIX.

S: Ganito [po] yon, noong una binibiro-biro po ako ni tatay FELIX sa pamamagitan ng paghihihipo niya sa aking pepe (vagina) at suso (breast). Pagkatapos ay nagpapahilot na siya sa akin simula sa kamay hanggang sa katawan na nakabrief o nakashorts. Pagkatapos ay sinasabihan na niya ako na ipapasok na ang daliri niya sa ari ko at sabi ko ay hwag pero ipinasok na niya at umiiyak ako at nasaktan ako at hindi ko kaya. Pagkatapos ng ilang araw ay nagpahilot uli siya at doon na [nangyari] ang unang paghalay niya sa akin sa [loob] ng kwarto niya. Nasaktan ako at umiiyak ako at sinabi nya na huli na iyon. Pero naulit ng maraming beses sa tuwing hapon kapag nasa biyahe ang aking ina na si MARINA. Noong dumating ang aking ate na si [AAA] ay pinagtapat niya ako kung ano ang ginagawa ni Tatay FELIX sa akin ay nagsabi na ako sa kanya na ako ay hinahalay na ni tatay ng maraming beses.<sup>[27]</sup>

On cross-examination, BBB stated categorically what appellant had done to her. She recounted her experience:

ATTY. TORREGOSA

Can you recall how did he do that to you?

A He placed his finger into my vagina, Ma'am.

THE COURT:

And thereafter, what else did he do to you?

A After that, no more, your Honor.

THE COURT:

You mean to say, he did not place his penis into your vagina?

A Yes, Your Honor.

THE COURT:

How come you said awhile ago, and in fact it was stated in your affidavit that at first, your father placed his fingers into your vagina and thereafter he raped you many times. When you said "hinalay", did he place his penis into your vagina? Tell us the truth?

A He did not insert his penis, but he just "itinutok" (pointed) his penis into my vagina, Your Honor.

THE COURT:

You mean to say his penis was placed into your vagina although it was not inserted?

A Yes, Your Honor. <sup>[28]</sup>

The appellant's only defense was to deny that he had sexually abused his daughter. This Court has often stated that to be believed, denial must be buttressed by strong evidence of non-culpability otherwise, it is purely self-serving and without merit. <sup>[29]</sup> Here, appellant interposes an extortion scheme masterminded by his eldest daughter, AAA. However, he did not present any evidence to support his contention. Thus, in the face of a categorical testimony by BBB, appellant's defense of denial must fail absent any evidence of his non-culpability.

### **Crime committed was Rape by Sexual Assault**

This Court has stated that under Article 266-A of the RPC there are two ways by which the crime of rape may be committed: by *sexual intercourse* or by *sexual assault*. <sup>[30]</sup>