

## THIRD DIVISION

[ G.R. No. 212194, July 06, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROD  
FAMUDULAN<sup>[1]</sup> Y FEDELIN, ACCUSED-APPELLANT.**

### DECISION

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

Before us is an appeal<sup>[2]</sup> from the October 3, 2013 Decision<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05447 which affirmed with modification appellant Rod Famudulan's conviction for the crime of statutory rape as defined under Article 266-A(I)(d)<sup>[4]</sup> of the Revised Penal Code, as amended, (RPC) in Criminal Case No. P-7904 before the Regional Trial Court (RTC), Branch 41, Pinamalayan, Oriental Mindoro.

Appellant, a 42-year-old man, was accused and charged with the crime of statutory rape against AAA,<sup>[5]</sup> who, with her mother<sup>[6]</sup> and father,<sup>[7]</sup> filed an Information<sup>[8]</sup> with the provincial prosecutor which reads:

That on or about the 1<sup>ST</sup> day of January, 2010 at around 12:00 o'clock noon, in Barangay [XXX], Municipality of [YYY], Province of Oriental Mindoro, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, ROD FAMUDULAN y Fedelin, with lewd and unchaste designs, by means of violence, force and intimidation, did lie and succeeded in having sexual intercourse of one [AAA], a six (6) year-old-girl minor, against the latter's will and without her consent, acts which affects her moral, psychological and emotional growth, to her damage and prejudice.

CONTRARY TO ART. 335 of the RPC as amended by R.A. 7659, in relation to R.A. 7610.

Appellant pleaded not guilty on arraignment.<sup>[9]</sup> After pre-trial terminated, trial on the merits ensued.

The prosecution presented AAA and Dr. Adelaido Malaluan as its witnesses.

AAA,<sup>[10]</sup> a six-year-old girl,<sup>[11]</sup> testified that the appellant was her aunt's neighbor. She stated that on January 1, 2010, at around noon, she was cornered and ordered by the appellant to fellate him while he inserted his finger in her vaginal orifice. Thereafter, accused inserted his organ in her orifice. Accused threatened to kill her if she told anybody of what had happened. She positively identified accused as her assailant in open court.<sup>[12]</sup>

Dr. Malaluan, a Rural Health Physician, examined AAA and affirmed that he executed a Medico-Legal Report<sup>[13]</sup> with the following findings:

**FINDINGS:**

- > Contusion hematoma left frontal area;
- > Fresh complete laceration at 6 and 9 o'clock position on the part of the hymen.

**LABORATORY REPORT:**

**GRAM STAIN (CERVICO-VAGINAL SMEAR)** - No Sperm cell seen.

AAA was seven years old at the time of testimony. TSN, November 2, 2010, p. 1. AAA's Certificate of Live Birth was used to prove victim's age. Records, p 48 Dr. Malaluan stated that the injuries sustained by AAA, i.e., hematoma, contusion and fresh lacerations, may have been caused by a blunt object such as a hard penis.<sup>[14]</sup>

For its part, the defense presented appellant as its lone witness. Appellant denied the charge against him. He claimed that on January 1, 2010, at noontime, he went to his cousin Joel Falame's house to borrow P500.00 as bus fare to Batangas. Thereafter, he boarded a van bound for Calapan. Deciding that it was too late in the day for him to take the trip all the way to Batangas, appellant alighted in Banus and spent the night at the house of one Evelyn Rosas. The following day, he boarded the bus going to Batangas and arrived there the day after. He testified that he did not know of any reason why AAA or her family would file the case against him.

In its January 12, 2012 Decision,<sup>[15]</sup> the RTC found appellant guilty beyond reasonable doubt of the crime of statutory rape. The RTC gave credence to AAA's testimony since she was a child of tender years, AAA being only seven years old. Moreover, the testimony was delivered in a spontaneous and straightforward manner. On the other hand, appellant's defense of denial and alibi was left unsubstantiated by evidence. The RTC noted that Bansud is not too far from Banus. In light of the credible testimony and positive identification of the appellant by AAA and appellant's unsubstantiated defense, the RTC found appellant guilty beyond reasonable doubt of the crime of statutory rape. Thus:

ACCORDINGLY, premises considered, the court hereby finds ROD FAMUDULAN y Fedelin guilty beyond reasonable doubt of the crime of Statutory Rape and hereby sentences him to suffer the penalty of **Reclusion Perpetua**. To pay the offended party the amount of Fifty Thousand ([P]50,000.00) Pesos as civil indemnity; Fifty Thousand ([P]50,000.00) Pesos as moral damages; and to pay the costs.

SO ORDERED.<sup>[16]</sup>

Appellant moved for reconsideration, but the same was denied in the RTC's January 26, 2012 Order.<sup>[17]</sup>

On appeal, the CA affirmed the RTC's ruling but modified the award of damages. The CA stated that all the elements of the crime of statutory rape were proven by the prosecution. It also stated that AAA's age was established by a certified true copy of

her Certificate of Live Birth,<sup>[18]</sup> the best evidence to prove age. Moreover, the CA sustained the RTC's finding that AAA was a credible witness owing to her clear, candid and spontaneous testimony. Absent any iota that the trial court overlooked or arbitrarily disregarded facts and circumstances of significance, the appellate court will not disturb the credence placed by the trial courts to the testimony of witnesses, the RTC being in the best position to assess the credibility of witnesses. The CA thus affirmed the conviction, but increased the award of damages. The CA ruled:

**WHEREFORE**, the appeal is **DENIED**. The assailed *Decision* and *Order* in Criminal Case No. P-7904 is **AFFIRMED with the MODIFICATION** that accused-appellant ROD FAMUDULAN y FEDELIN is ordered to indemnify AAA the amount of [P]75,000.00 as civil indemnity, [P]75,000.00 as moral damages, [P]30,000.00 as exemplary damages and that all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of the finality of the judgment until fully paid.

The sentence of imprisonment is maintained.

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

Hence, this appeal.

On January 14, 2015, this Court required the parties to file their supplemental briefs, but both parties manifested that they would no longer file the pleadings and opted to replead and adopt the arguments submitted before the CA.<sup>[20]</sup>

The issue for our consideration is whether the CA erred in affirming appellant's guilt beyond reasonable doubt.

We dismiss the appeal but modify the penalty imposed.

The crime of statutory rape is defined by Article 266-A(l)(d) of the RPC which reads:

ART. 266-A. *Rape, When and How Committed*. — Rape is committed -

1. By a man who shall have **carnal knowledge** of a woman under any of the following circumstances:

xxxx

d. When the **offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

xxxx (Emphasis supplied.)

Sexual congress with a girl under 12 years old is always rape.<sup>[21]</sup> We have thus ruled that in the prosecution of statutory rape the following elements must exist: (1) the victim is a female under 12 years of age or is demented; and (2) the offender had carnal knowledge of the victim.<sup>[22]</sup> In order to successfully convict an accused for statutory rape therefore, it is imperative that the prosecution prove that the

woman is under 12 years of age and carnal knowledge took place.<sup>[23]</sup>

Here, we agree with both the CA and the RTC that appellant is guilty beyond reasonable doubt of the crime of statutory rape.

One, appellant's objection that AAA's birth certificate was not offered in evidence is unfounded. That AAA was six years old at the time of the incident was proven when her Certificate of Live Birth<sup>[24]</sup> was introduced in evidence.<sup>[25]</sup>

Two, we agree that appellant had carnal knowledge of AAA.

In the recent case of *People of the Philippines v. Jose Estalin Prodenciado*,<sup>[26]</sup> we reiterated the guidelines in addressing the issue of credibility of witnesses. First, this Court gives the highest respect to the RTC's evaluation of the testimony of the witness, it having the distinct opportunity of observing the witness' demeanor on the stand.<sup>[27]</sup> Second, absent substantial reasons, i.e., significant facts and circumstances, affecting the outcome of the case, that are shown to have been overlooked or disregarded, which would warrant the reversal of the RTC's evaluation, the appellate court is generally bound by the lower court's findings.<sup>[28]</sup> Lastly, the rule is stringently applied when the CA affirms the lower court's ruling.<sup>[29]</sup>

Here, appellant presents no compelling reason to disturb the RTC and the CA's assessment of AAA's credibility. He merely attacks AAA's testimony for its supposed lack of detail. We disagree.

AAA testified that appellant ordered her to perform fellatio on him while simultaneously inserting his fingers in her genitals whereafter he had sexual relations with her. At this point in the court proceedings, AAA testified in the following manner:

Q.- [AAA], do you know Rod Famudolan?

A.- Yes, sir.

Q.- Why do you know Rod Famudolan?

A.- Because he was residing in our place.

Q.- Do you know the house of Rod Famudolan?

A.- Yes, sir.

Q.- Where is it situated?

A.- He is a neighbor of my Auntie.

Q.- You are a victim in this case and you executed an affidavit?

A.- Yes, sir.