

FIRST DIVISION

[G.R. No. 209786, July 06, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY C. PALOTES, ACCUSED-APPELLANT.

DECISION

LEONARDO-DE CASTRO, J.:

The Court decides the appeal filed by the accused-appellant Jerry C. Palotes from the Decision^[1] dated June 28, 2013 of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 01301, which affirmed with modification the Decision^[2] dated February 10, 2011 of the Regional Trial Court (RTC) of Cebu City, Branch 14, in Criminal Case No. CBU-78851. The trial court adjudged the accused-appellant guilty of one count of rape.

On January 5, 2007, the prosecution charged the accused-appellant of committing rape against AAA^[3] in the following manner:

That on or about July, 2005 and for sometime prior and subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there willfully and unlawfully have carnal knowledge with one [AAA], a 14-year old MINOR with the mental abilities of an 8 to 9-year old child, without the consent and against the will of the latter and knowing the mental disability of said minor at the time of the commission of the crime.^[4]

The accused-appellant pleaded not guilty upon his arraignment.^[5] During trial, the prosecution presented the testimonies of the following witnesses: (1) AAA,^[6] the private complainant; (2) BBB,^[7] the mother of AAA; (3) Dr. Naomi N. Poca,^[8] the medico-legal officer who examined AAA; and (4) Rosemarie C. Gonato,^[9] a psychologist who examined AAA. The defense, on the other hand, presented the testimonies of (1) the accusedappellant Jerry Palotes;^[10] (2) Rose Bistes,^[11] a friend of the accusedappellant's common-law wife; and (3) Marina Abella,^[12] the owner of the house rented by the accused-appellant. Thereafter, Loren J. Borines,^[13] a forensic chemist from the National Bureau of Investigation (NBI), testified on the results of the court ordered Deoxyribonucleic acid (DNA) test that she conducted.

The Prosecution's Version of Events

As summarized in the Brief for the Appellee^[14] filed before the Court of Appeals, the prosecution's pertinent factual allegations are as follows:

The fourteen (14) years old minor victim, AAA, also known as ["ZZZ,"] lives with her mother BBB and her father CCC in YYY, Cebu City. AAA has the mental abilities of an 8-9 years old child. She is an illiterate and no longer goes to school.

Sometime prior to July 2005, AAA was asked by her neighbor, Dimple, to buy a diaper. While AAA was on her way back to her neighbor's house, she was pulled by appellant Jerry Palotes inside the latter's house. Appellant then held AAA, laid her down, removed her short pants and underwear. He then lowered down his brief up to his knees, kissed AAA's lips and neck and inserted his penis into AAA's vagina. When AAA felt pain, appellant stopped and told her to go home. Upon reaching home, she did not tell her mother about what happened because she was scared.

The second time that the appellant had sexual intercourse with AAA was when her friend called her to take care of her niece while Jerry was also inside the same house. Appellant then invited the minor victim to enter the house, pulled her inside and closed the door. He held AAA's hands, laid her down, removed her short pants and underwear, kissed her lips and neck and inserted his penis and pushed it inside AAA's vagina despite her pleas not to continue. When appellant kept on pushing his penis inside [her] vagina, AAA felt that her vagina was wet. Appellant Palotes took off his shirt and wiped her vagina with it. He advised AAA not to tell anyone about what happened and the latter went home.

The third time that appellant had sexual intercourse with AAA was when he was washing clothes in front of the minor victim's house. They had a chat, with appellant telling AAA that she was beautiful. She just smiled. He then rushed washing his clothes and told AAA to get inside the house while he hang dry his clothes. When AAA was inside the house, the appellant followed her and removed her short pants and panty. He then inserted his penis inside AAA's vagina just like what he did last time. He then told AAA not to tell anyone and it would be between the two of them. Afterwards, AAA went home.^[15] (Citations omitted.)

As regards the subsequent events and the medical examinations conducted on AAA, the prosecution stated that:

On September 23, 2005, AAA was brought by her mother, BBB, to her grandmother in [XXX], Cebu. Her grandmother noticed that AAA did not have her monthly period. BBB and the grandmother brought AAA to a Health Center in [XXX] where it was known that AAA was already pregnant for five (5) months. When BBB tried to ask AAA who impregnated her, AAA would just keep her silence and say nothing.

They then brought AAA to the Pink Room of VSMMC for medical examination where it was confirmed that AAA was indeed pregnant. AAA finally told her mother that it was Jerry Palotes whom she had sexual intercourse [with] but she cannot recall when it happened. BBB identified appellant Jerry Palotes as their neighbor who lives in front of their house. She then asked the appellant but he strongly denied it. AAA gave birth

last April 5, 2006.

Dr. Naomi Poca, a resident physician at the Women and Children Protection Center of the Vicente Sotto Memorial Hospital in Cebu City, brought the medical records of the minor victim particularly the medical chart which includes the Medical Certificate, Intake Form, and Medico-Legal Certificate. She interviewed the victim and her mother and together with Dr. Amadora, the OB gynecologist connected with the Center, conducted a physical examination on AAA. The medical report stated that AAA suffered a complete transection at 6 o'clock position extending to the fossa navicularis and her ano-genital examination findings are definite for blunt or penetrative trauma to the hymen. Dr. Poca noted that the transection indicates that blunt forces were applied to the hymen of the vagina and the blunt penetrating trauma applied to the hymen caused its laceration.

Dr. Rosemarie Gonato, a psychiatrist, conducted a psychological evaluation on AAA. She confirmed that AAA's mental age is equivalent to 6 to 7 years of age and places her functioning within the mild mental retardation [range].^[16] (Citations omitted.)

The prosecution presented the following documentary evidence: (1) Exhibit A- the Affidavit^[17] of AAA; (2) Exhibit B the Affidavit^[18] of BBB; (3) Exhibit B-1 - the Birth Certificate^[19] of AAA; (4) Exhibit C the Medico-Legal Certificate^[20] of AAA; (5) Exhibit C-1 - the results of the Anogenital Examination^[21] on AAA; (6) Exhibit C-2 the Interview Sheet^[22] reflecting the interview of AAA conducted at the Vicente Sotto Memorial Hospital; and (7) Exhibit D - the Psychological Evaluation Report^[23] on AAA.

The Defense's Evidence

The defense countered the prosecution's statement of facts with the testimonies of its own witnesses which were condensed in the Brief for the Accused-Appellant^[24] filed before the Court of Appeals, thusly:

To refute the allegations of the prosecution, the defense presented the accused Jerry C. Palotes, Marina Abella and Rose Bistes.

Accused **Jerry C. Palotes** strongly denied the allegations against him and alleged that when this case was initially filed at the Office of the Barangay [YYY], [AAA] could not identify or remember who sexually abused her. She was merely prodded by her relatives to point him as the perpetrator in their desperate effort to get financial support for the child. He surmised that since the complainant gave birth to the child in April 2006, he could not have been the father of the child since he was always not in his rented house. Moreover, since he has a live-in partner, there was no opportunity for him to do the alleged act aside from the fact that he does not have any sexual desire on her because he treated her as a younger sister considering her mental condition and her being a child of tender age. Further, he heard from among the neighbors that the complainant would usually go with other people and was even seen

sleeping together with a certain Junjun, a balut vendor. There are also rumors that a certain Berto, a taxi driver, who frequently visited the place, was also seen together with complainant. Since complainant is very susceptible to suggestion, she merely adopted the suggestion by some of her relatives including her mother that he [the accused] should be pointed out as the one who fathered her new born child. Furthermore, on two occasions, [he] was approached by the mother of the complainant telling him that she would not pursue the filing of the case if he promise[d] to shoulder the hospital expenses when the complainant would give birth as well as the expenses for food, milk and other needs of the child.

Marina Abella testified that she is the owner of the house rented by the accused. She also lives within said vicinity and she can attest to the fact that accused is not usually at the rented house as he was busy in his work as a janitor. She also attests to the fact that she saw [AAA] in the company of several people; children, men, women and even strangers. The charge against accused was merely a product of prodding by some of the relatives of the complainant for the purpose of getting support from accused.

Rose Bistes testified that she is one of the neighbors of the accused. She can attest to the fact that accused is known to be good in their place.^[25] (Citations omitted.)

The defense also submitted in evidence the following documents: (1) Exhibit 1 - the Counter-Affidavit^[26] of the accused-appellant; (2) Exhibit 2 the Affidavit^[27] of Rose Bistes; and (3) Exhibit 3 - the Affidavit^[28] of Marina Abella.

During trial, the defense requested for the conduct of a DNA test in order to prove that the accused-appellant was not the father of AAA's child.^[29] The RTC granted this request in an Order^[30] dated May 21, 2009. On May 6, 2010, Loren J. Borines, the NBI forensic chemist who conducted the DNA testing, testified that she analyzed the buccal swabs and blood samples taken from the accused-appellant, AAA and DDD, AAA's child. The results of her examination were contained in a report designated as DNA Case No. DNA-09-32, wherein she concluded that "there is a 99.9995% Probability of Paternity that [the accused-appellant] is the biological father of [DDD]."^[31]

The prosecution marked as its Exhibits E and E-1, respectively, the report of Borines entitled DNA Case No. DNA-09-32 and the visual aid^[32] she displayed when she testified in court.^[33]

The Decision of the RTC

The RTC convicted the accused-appellant of one count of rape in its Decision dated February 10, 2011. The dispositive portion thereof provides:

WHEREFORE, in view of the foregoing premises, judgment is rendered finding accused, GERRY C. PALOTES, GUILTY as principal beyond reasonable doubt of RAPE pursuant to Article 266-A of the Revised Penal

Code, as amended, by R.A. 8353 and sentences him to an indivisible penalty of *reclusion perpetua* under the first paragraph of Article 266-B.

He is also ordered to pay the minor through h[er] parents the amount of FIFTY THOUSAND (Php50,000.00[]), for and as civil damages.

Costs de oficio.^[34]

The trial court ruled that the testimonies of the prosecution witnesses established the fact that AAA was not only a 14-year old minor but she had the mental abilities of an eight to nine-year old child. According to the RTC, the accused-appellant himself admitted that he treated AAA as a younger sister given her mental condition and her being a child of tender age. Likewise, Marina Abella, a witness for the defense, acknowledged that AAA was mentally deficient.

The RTC ascribed greater weight to the testimony of AAA. The trial court noted that the same was replete with specifics on how the accused appellant sexually abused AAA and she alone could have supplied such details. The RTC further observed that AAA's testimony was given in a straightforward manner. If there were inconsistencies therein, the trial court deemed the same inconsequential given AAA's mental condition. As regards the corroborative testimonies of the defense witnesses Marina Abella and Rose Bistes, the trial court concluded that the same were hearsay evidence. Given that so many persons allegedly talked to said witnesses, not one of them testified for the defense. The RTC added that the insistence of the accused-appellant that he be subjected to a DNA test together with AAA and DDD, and the positive result of said test, had no bearing on the outcome of the case since paternity is not an element of rape.

The Judgment of the Court of Appeals

On appeal,^[35] the Court of Appeals affirmed the conviction of the accused-appellant for one count of rape in this wise:

WHEREFORE, the appeal is **DENIED** for lack of merit. Accordingly, the February 10, 2011 Decision of the Regional Trial Court, Branch 14 of Cebu City is **AFFIRMED** subject to the **MODIFICATION** that the accused-appellant JERRY PALOTES is **ORDERED** to pay AAA, [through] her parents, the amount of Fifty Thousand Pesos (Php50,000.00) as civil indemnity plus interest of 6% per annum reckoned from the finality of this judgment until full payment thereof.^[36]

The Court of Appeals found that despite AAA's mental condition, she clearly identified the accused-appellant as the perpetrator of the rape and the father of her child. The appellate court posited that AAA's testimony was complete with specifics on how the accused-appellant sexually abused her. Her categorical. and consistent identification of the accused-appellant was devoid of any showing of ill motive and the same, therefore, prevailed over the latter's defenses of alibi and denial. The Court of Appeals also ruled as credible and consistent the sworn statement of AAA dated April 27, 2006, wherein she made a candid and straightforward narration of how the accused-appellant raped her. To the appellate court, AAA's mental retardation per se did not affect her credibility and the inconsistencies in AAA's testimony on collateral and minor matters were not enough to discredit the same.