

FIRST DIVISION

[G.R. No. 193666, February 19, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON CASTILLO Y VALENCIA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This an appeal from the Decision^[1] dated April 23, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02999 denying the appeal of the accused-appellant Marlon Castillo and affirming, with modification as to the award of damages, the Decision^[2] dated April 11, 2007 of the Regional Trial Court (RTC) of Quezon City, Branch 86 in Criminal Case Nos. Q-03-119452 and Q-03-119453 which found the accused-appellant guilty of two counts of rape committed against his 12-year old daughter.

The Informations filed against the accused-appellant read:

A. Criminal Case No. Q-03-119452

That sometime during the period comprised between August 27, 1996 up to August 27, 1997, inclusive, in Quezon City, Philippines, the said accused, with grave abuse of authority, did then and there willfully, unlawfully and feloniously commit sexual assault upon his daughter Nene^[3], a minor, then only six (6) years of age, by rubbing his penis on the labia of the vagina of said complainant, licking her vagina and breast and inserting his finger inside her vagina, against her will and without her consent, which act further debase[d], degrade[d] or demean[ed] the intrinsic worth and human dignity of said offended party as a human being, to the damage and prejudice of the said Nene.^[4]

B. Criminal Case No. Q-03-119453

That on or about the month of November 2000, in Quezon City, Philippines, the said accused, with force, threat or intimidation and grave abuse of authority, did then and there willfully, unlawfully and feloniously commit sexual assault upon his daughter Nene, a minor, 12 years of age, by then and there mashing her breast, licking her vagina and breast and by vigorously rubbing his penis on the labia of her vagina, against her will and without her consent, which act further debase [d], degrade [d] or demean[ed] the intrinsic worth and human dignity of said offended party as a human being, to the damage and prejudice of the said Nene.

^[5]

The accused-appellant pleaded not guilty to the charge when arraigned.^[6] Pre-trial was conducted and, thereafter, trial ensued.

The prosecution established that Nene, the private offended party, is the child of the accused-appellant. She was born on August 27, 1990.^[7]

Nene could no longer remember the exact date her ordeal at the hands of the accused-appellant started. All she could remember was that the accused-appellant first molested her when she was six years old.^[8] Her mother was not around at that time and the accused-appellant told Nene's siblings to go outside the house. Her father abused her in the bed placed in a corner of their house. He mashed her breasts and rubbed his sex organ against her vagina. He licked her breasts. He also licked her vagina and inserted his finger in it.^[9] While he was doing these things to her, she resisted and cried but he scolded her and ordered her to be still. He also threatened to beat her and to kill her mother and brother.^[10]

Nene's defilement by the accused-appellant was repeated several times. Thus, disregarding the accused-appellant's threats, Nene summoned the courage to tell her mother about the accused-appellant's bestiality.^[11] A complaint was filed against the accused-appellant in the National Bureau of Investigation which led to his detention. Nene's mother subsequently pleaded with Nene however, and they subsequently desisted from pursuing the complaint against him.^[12] That was their mistake.

Sometime in the second week of November 2000, the accused-appellant abused Nene again by rubbing his penis against her vagina.^[13]

She underwent a medical examination which resulted to the following findings:

GENERAL PHYSICAL EXAMINATION

Height: 139.0 cm. Weight: 32.0 kg.

Fairly nourished, conscious, coherent, cooperative, ambulatory subject. Breasts, developing. Areolae, brown, measures 1.8 cm. in diameter. Nipples, brown, protruding, measures 0.4 cm. in diameter. No sign of extragenital physical injury was noted.

GENITAL EXAMINATION:

Pubic hair, no growth. Labia majora, and minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, crescentric, short, thin, intact. Hymenal orifice, measures 1.0 cm. in diameter. Vaginal walls and rugosities, cannot be reached by the examining finger.

CONCLUSIONS:

1. No evident sign of extragenital physical injury was noted on the body of the subject at the time of examination.
2. Hymen, intact and its orifice small (1.0 cm. in diameter) as to preclude

complete penetration by an average-sized adult Filipino male organ in full erection without producing any genital injury.^[14]

In his defense, the accused-appellant denied the charges against him. He believes that Nene and her mother, "Nena," accused him of raping Nene because they believed him to be a cruel husband and father. He admitted being harsh to his wife and children, attributing it to the stress of being the family's sole breadwinner. "Rosing," his sister-in-law, witnessed his cruelty to his children and encouraged his daughter and wife to file the cases against him.^[15]

After weighing the respective evidence of the parties, the trial court found the prosecution's evidence credible and sufficient to sustain the conviction of the accused-appellant. According to the trial court:

The rape consisted of rubbing the penis of the accused to the labia of the vagina of the private complainant. Prevailing jurisprudence is to the effect that "the slightest introduction of the male organ into the labia of the victim already constitutes rape["] x x x.^[16] (Citations omitted.)

Thus, in a Decision dated April 11, 2007, the trial court found the accused-appellant guilty beyond reasonable doubt of two counts of qualified rape by sexual intercourse under Article 266-A(I) in relation to the first qualifying circumstance mentioned in Article 266-B of the Revised Penal Code, as amended. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1) In Criminal Case No. Q-03-119452, finding the accused Marlon Castillo y Valencia, **guilty beyond reasonable doubt** of the crime of rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code, as amended, in relation to RA 7610 and hereby sentences said accused to suffer the penalty of **reclusion perpetua**.

2) In Criminal Case No. Q-03-119453, finding the accused Marlon Castillo y Valencia, **guilty beyond reasonable doubt** of the crime of rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code, as amended, in relation to RA 7610 and hereby sentences him to suffer the penalty of **reclusion perpetua**.

In addition to the above penalties, the accused is hereby ordered to indemnify the private complainant the amount of P75,000.00 as moral damages.^[17]

The accused-appellant appealed his case to the Court of Appeals. For him, the RTC erred in giving undue credence to the testimonies of the prosecution witnesses, particularly Nene. He claimed that Nene's testimony contained many inconsistencies, improbabilities, ambiguities, and contradictions. She testified that she was six years old the first time the accused-appellant raped her while her mother was outside the house and at work, but stated in her *Sinumpaang Salaysay* dated November 23, 2000 that she was only four years old when the accused-

appellant started sexually molesting her while her mother was inside the house sleeping. She also testified that the accused-appellant raped her by mashing her breast and trying to insert his sex organ into hers or rubbing his penis against her vagina, but she stated in her *Sinumpaang Salaysay* that he licked her breast and vagina, and inserted his penis and finger in her vagina.^[18]

The accused-appellant also pointed to the inconsistency between Nene's testimony that she was born on August 27, 1990 and her statement that she was twelve years old when the accused-appellant raped her in November 2000. He also argued that he could not have raped Nene as she herself testified that she neither felt any pain nor did her genitalia bleed. The medical report even showed that Nene's hymen was still intact and showed no sign of any genital injury. According to the accused-appellant, these inconsistencies cast serious doubt on the truthfulness of Nene's rape allegations.^[19]

In a Decision dated April 23, 2010, the Court of Appeals rejected the contentions of the accused-appellant. It found credible Nene's account during her testimony of her age and the manner she was ravished by her father. It held that the alleged inconsistencies in Nene's testimony were trivial and insufficient to render her account doubtful.^[20] It further ruled that the accused-appellant committed rape by sexual assault under Article 266-A(2) of the Revised Penal Code, as amended. According to the appellate court:

[Nene's] testimony and *Sinumpaang Salaysay* agreed on the following matters: a) appellant licked her vagina; and b) appellant inserted his penis and finger into her vagina. As stated, she experienced all these lurid acts from her own father. Appellant cannot negate his liability by breaking down these acts and treating them separately. In any event, whether he penetrated his daughter with his penis or his finger does not affect his criminal liability for rape. Under Article 266-A of the Revised Penal Code, rape is committed by one who under any of the circumstances mentioned in paragraph 1, shall commit an act of sexual assault by inserting his penis into another's mouth or anal orifice or any instrument or object, into the genital or anal orifice of another person.^[21]

Thus, the Court of Appeals denied the accused-appellant's appeal and affirmed the decision of the trial court, with modification as to the award of damages:

ACCORDINGLY, We **AFFIRM** the appealed Decision with **MODIFICATION** granting P75,000 as civil indemnity and P25,000 as exemplary damages in addition to the trial court's award of P75,000 as moral damages.^[22]

The accused-appellant brings this appeal based on the very same grounds of his appeal in the Court of Appeals.^[23] Like the Court of Appeals, however, we deny the accused-appellant's appeal.

The alleged contradictions and inconsistencies refer to trivial matters. They are not material to the issue of whether or not the accused-appellant committed the acts for which he has been charged, tried and convicted.

Besides, Nene was only ten years old when she answered the questions contained in the *Sinumpaang Salaysay* and she was only fourteen years old when she testified. Error-free testimony cannot be expected, most especially when a witness is recounting details of a harrowing experience, one which even an adult would like to bury in oblivion.^[24]

The age of Nene when the incidents of rape happened has been established by her birth certificate which shows that she was born on August 27, 1990.^[25] With that data, the age of Nene at the time of the first incident sometime in October 1996 to October 1997 and her age at the time of the second incident in November 2000 become a simple matter of mathematical computation.

Moreover, as regards Nene's age when the first incident of rape happened, Nene clarified what the accused-appellant perceives to be an inconsistency in her part. In her answer to the clarificatory questioning of the prosecutor, she categorically stated that she was six years old at that time:

ACP Taylor: Now, in Par. 10 of your complaint affida.vit[/*Sinumpaang Salaysay*], it did not state [how] the incident transpired and where. Please tell me clearly, in connection with Par. 10 of your complaint affidavit[/*Sinumpaang Salaysay*] dated 23 Nov. 2000, when did this incident transpire?

[Nene]: **Hindi ko na po maalaala pero ang sigurado po ako ay ako ay six years old po lamang ako noon.**^[26] (Emphasis supplied.)

The alleged contradiction about the whereabouts of Nene's mother at the time of the first incident of rape is inconsequential to the fact that the accused-appellant raped Nene at that time. Whether her mother, who is the accused-appellant's wife, was outside the house or sleeping inside the house at that time would not disprove the accused-appellant's rape of Nene. Case law proves that circumstances of time, place, and even the presence of other persons are not considerations in the commission of rape. Thus, we have held in *People v. Mendoza*^[27]:

[R]ape is no respecter of time and place. It can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping. (Citations omitted.)

The alleged variance in the narration in Nene's *Sinumpaang Salaysay* and during her testimony of the specific acts of the accused-appellant which constituted the rape is more apparent than real. During trial, Nene affirmed and confirmed the truthfulness of the statements contained in her *Sinumpaang Salaysay*.^[28] The *Sinumpaang Salaysay* was formally offered as evidence for the prosecution.^[29] When a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which complements and completes the testimony on the witness stand.^[30] Indeed, Nene's *Sinumpaang Salaysay* and testimony during trial complement, rather than contradict, each other. Thus, taken together, they give a more complete account of the dastardly acts done by the accused-appellant against his own daughter.