

## SECOND DIVISION

[ G.R. No. 190620, June 18, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
HERMINIGILDO B. TABAYAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

On appeal is the Decision<sup>[1]</sup> dated 17 September 2009 of the Court of Appeals in CA-G.R. CR-M.C. No. 03363 affirming with modifications the Decision<sup>[2]</sup> dated 25 January 2008 of the Regional Trial Court (RTC) of Rosales, Pangasinan, Branch 53, in Criminal Case No. 5172-R finding herein appellant Herminigildo B. Tabayan guilty beyond reasonable doubt of the crime of rape committed against his granddaughter AAA,<sup>[3]</sup> thereby sentencing him to suffer the penalty of *reclusion perpetua* and ordering him to pay AAA the amounts of P75,000.00 as civil indemnity and P50,000.00 as moral damages. The Court of Appeals, however, increased the award of moral damages from P50,000.00 to P75,000.00 and, in addition awarded exemplary damages in the amount of P25,000.00.

In a Criminal Complaint<sup>[4]</sup> dated 28 July 2006, the appellant was charged with the crime of rape, in relation to Republic Act No. 7610,<sup>[5]</sup> committed as follows:

That sometimes in the evening of [24 July 2006] at Brgy. XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this Honorable Trial Court, the said [appellant] **by means of force and intimidation did, then and there, willfully[,] [u]nlawfully and feloniously raped his granddaughter AAA, 8 years old** which is in violation with the provision of RA 7610. (Emphasis supplied).

On arraignment, the appellant, with the assistance of counsel *de oficio*, pleaded NOT GUILTY to the crime charged.<sup>[6]</sup> After the pre-trial conference, trial on the merits ensued.

The prosecution presented AAA, the victim herself; Dr. Josephine Guiang (Dr. Guiang), Medical Officer of the OB-Gyne Department of the Eastern Pangasinan District Hospital (EPDII), who physically examined AAA; and Virgie Castillo (Castillo), Medical Technologist II and Chief of the Laboratory Section of the Eastern Pangasinan General Hospital. The midwife, Narcisa Aquinde, was one of the prosecution witnesses but her testimony was dispensed with alter the defense stipulated on the nature of her testimony to the effect that she was the one who extracted the specimen (vaginal smear) from AAA and forwarded the same to Castillo for examination.<sup>[7]</sup>

AAA is the granddaughter of the appellant as her father is the son of the appellant. She was only eight (8) years old when her ordeal at the hands of her own grandfather happened having been born on 1 July 1998.<sup>[8]</sup>

In the evening of 24 July 2006, AAA and her six (6) year old brother stayed at the appellant's house as their parents were out of town. Their grandmother, appellant's wife, was also not around so it was only AAA, her brother and the appellant who were at the latter's house on the said date. On that fateful night, they slept together in one room. While sleeping, AAA was awakened when she felt appellant removing her short pants and panty. The appellant then took off his short pants and inserted his penis into AAA's vagina but he was unable to make full penetration. AAA cried and exclaimed, "*it's painful Lolo*" to which the appellant replied, "*do not cry.*" After satiating his lust, the appellant donned his short pants and warned AAA not to tell anyone about the incident, otherwise, she would be harmed. Freely translated, he specifically told her "*If you will tell this, you have fault on me and I will spank you and if I will be placed in jail, nobody will till the land.*" Thereafter, the appellant left. AAA then put back her panty and short pants.<sup>[9]</sup>

The next day, AAA disclosed to her aunt her harrowing experience at the hands of her grandfather. AAA and her aunt, thereafter, went to AAA's grandmother (not the appellant's wife) to inform her about the incident. They subsequently proceeded to the police station, where AAA executed her sworn statement.<sup>[10]</sup>

AAA was also brought by her grandmother to the BPDH in Tayug, Pangasinan<sup>[11]</sup> on 28 July 2006, where she was subjected to physical examination by Dr. Guiang, whose findings revealed that: (1) AAA's hymen was intact, or without any laceration, but there was greenish vaginal discharge at the vaginal opening caused by a sexually transmitted disease (STD) called *gonorrhea*; and (2) there was also *erythematous*, meaning the *labia* is reddish in color, which could have been caused either by the contact of a penis with the private organ of AAA, or by the discharge, which is already pathologic. Dr. Guiang explained that the reddening of the *labia* would result even if there was no actual deep penetration of the vagina but only a contact on the surface of the *labia*.<sup>[12]</sup>

Castillo confirmed the findings that AAA was positive for *gonococcal* infection or *gonorrhea* as she was the one who examined the vaginal smear of AAA as requested to by Dr. Guiang.<sup>[13]</sup>

The defense, for its part, presented the appellant as its sole witness, who relied principally on denial for his defense.

The appellant alleged that on 24 July 2006, he was inside their house with his wife, AAA, and the latter's brother. Between 8:00 p.m. and 9:00 p.m. of the said date, they all slept in the same room. His wife slept on the bed while he and his grandchildren slept on the floor. He insisted that he never raped AAA but merely touched the latter's vagina for a short period of time. Although AAA was awakened when he touched her vagina, she merely turned around without saying a word. He also stated that he was a little bit drunk that night, thus, he was not aware of what he was doing. He likewise denied that he was afflicted with STD.<sup>[14]</sup>

On the other hand, the appellant admitted that AAA is his granddaughter, being the daughter of his son. He likewise affirmed that there was no existing grudge between him and AAA's parents. He was also unaware of any reason why AAA would implicate him in such a serious offense.<sup>[15]</sup>

After the parties adduced their testimonial and documentary evidence, the trial court rendered its Decision on 25 January 2008, finding the appellant guilty beyond reasonable doubt of the crime charged and sentencing him to suffer the penalty of *reclusion perpetua*. The decretal portion of the decision reads:

**WHEREFORE, this Court finds the wherein appellant] Herminigildo B. Tabayan guilty beyond reasonable doubt of the crime of Rape,** defined and penalized under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659,<sup>[16]</sup> **and hereby sentences him to suffer the penalty of RECLUSION PERPETUA.** The [appellant is also ordered to pay the victim [AAA] the following:

1. Seventy Five Thousand Pesos (P75,000.00) as civil indemnity; and
2. Fifty Thousand Pesos (P50,000.00) as moral damages.<sup>[17]</sup>  
(Emphasis supplied).

The appellant appealed<sup>[18]</sup> the judgment of conviction to the Court of Appeals.

In its Decision dated 17 September 2009, the Court of Appeals affirmed the guilty verdict and the sentence imposed by the trial court. It, however, increased the award of moral damages from P50,000.00 to P75,000.00 and, in addition, awarded exemplary damages in the amount of P25,000.00. The dispositive portion of the decision reads:

**WHEREFORE,** premises considered, the instant appeal is hereby **DENIED.** The Decision dated [25 January 2008] of the [RFC], Branch 53, Rosales, Pangasinan[,] finding [herein] appellant Herminigildo B. Tabayan guilty beyond reasonable doubt of the crime of Rape and imposing on him the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION** in that in addition to the court *a quo's* award of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS as civil indemnity *ex-delicto*. appellant is further **ORDERED** to pay private complainant the amount of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS as moral damages<sup>[19]</sup> and TWENTY FIVE THOUSAND [(P25,000.00)] [PESOS] as exemplary damages.<sup>[20]</sup>

Hence, the instant recourse.<sup>[21]</sup>

In his brief, the appellant raises the lone assigned error that:

THE COURT A QUO GRAVELY ERRED IN FINDING THE [HEREIN APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.<sup>[22]</sup>

The appellant vehemently believes that the prosecution miserably failed to prove his guilt beyond reasonable doubt as there was no physical evidence on record that will

conclusively support AAA's testimony that she was raped by him or that there was sexual intercourse between them. *Firstly*, the result of AAA's medical examination disclosed that her hymen was intact or without any laceration, thus, negating the allegation that the appellant inserted his penis into her vagina. *Secondly*, neither the greenish vaginal discharge found at AAA's vaginal opening nor the reddening of her *labia* established sexual intercourse between her and the appellant. As testified to by Dr. Guiang herself, aside from *gonorrhea*, such greenish vaginal discharge may also be caused by *pseudomonas* infection, which can be acquired through droplet transmission. In the same way, the reddening of AAA's *labia* could have been caused either by the contact of the penis or by the discharge itself.

The appellant maintains that he could only be held liable for acts of lasciviousness and not for rape because what has been clearly established is the fact that he merely touched AAA's vagina as he himself admitted it.

The appellant also puts emphasis on the inconsistencies between AAA's testimony in open court and in her sworn statement before the police authorities regarding the act of rape allegedly committed against her by the appellant. While the Information and her testimony in open court pertain only to a singular act of rape allegedly committed against her by the appellant on 24 July 2006, her sworn statement executed on 28 July 2006 refers to several commissions of rape which allegedly occurred from December 2005 until 24 July 2006.

With all the foregoing, the appellant insists that his guilt was not proven beyond reasonable doubt; hence, he must be acquitted of the crime charged.

This Court holds otherwise.

To determine the guilt or innocence of the accused in rape cases, the courts are guided by three settled principles: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.

[23]

Rape is essentially committed in relative isolation or even secrecy. As such, it is usually only the victim who can testify with regard to the fact of the forced *coitus*. In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with. If her testimony meets the test of credibility, the accused can justifiably be convicted on the basis thereof; otherwise, he should be acquitted of the crime.[24]

After poring through the records and the transcript of stenographic notes, this Court finds AAA's testimony, who was only eight (8) years old when the rape occurred on 24 July 2006, to be clear, credible, convincing and worthy of belief.

AAA's narration, spread in the transcript of stenographic notes, of how the appellant ravaged her was candid, categorical and straightforward such that despite the grueling cross examination, she never faltered in her testimony. She categorically described before the court *a quo* how her own grandfather took advantage of her. She recounted in details that while she was sleeping, she was suddenly awakened

when she felt the appellant removing her short pants and panty. Subsequently, the appellant took off his short pants and inserted his penis into her vagina, but he was unable to make full penetration. She cried out in pain but the appellant merely told her not to cry. After fulfilling his bestial desires, the appellant put on his short pants and warned her not to tell anyone about the incident, otherwise, she would be harmed. Thereafter, the appellant left. She then put back her panty and short pants.  
[25]

Equally, the trial court and the Court of Appeals gave full faith and credence to the testimony of AAA. They found it clear, categorical and credible, thus, sufficient to convict the appellant of the crime charged. Considering that all the elements of the crime of rape are present in this case, *i.e.*, carnal knowledge of a woman who is under 12 years of age, this Court finds no compelling reason to deviate from the findings of the trial court as affirmed by the Court of Appeals. Settled is the rule that when it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.  
[26]

Moreover, the prevailing rule is that the testimony of rape victims who are young and immature deserves full credence.  
[27] No woman, especially one of tender age, practically only a girl, would concoct a story of defloration, allow an examination of her private parts and thereafter expose herself to a public trial, if she was not motivated solely by the desire to have the culprit apprehended and punished.  
[28] As in this case, considering the tender age of AAA, who was only eight (8) years old when she was raped, it was very unlikely for her to expose herself to the rigors of a public trial and impute such a grave offense to her very own grandfather if the same was not true or if she was not motivated by a strong desire to seek justice for the wrong done against her.

Further, there is no evidence on record, as none was adduced by the appellant, of any ill-motive on the part of AAA as to why she would testify adversely against him in the way that she did. In a litany of cases, this Court has ruled that when there is no showing of any improper motive on the part of the victim to testify falsely against the accused or to falsely implicate the latter in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence.  
[29] Stated otherwise, where no compelling and cogent reason is established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.  
[30]

Given the foregoing, it cannot be denied that AAA is a credible witness and her sole testimony is sufficient to convict the appellant.

Now, going to the appellant's contention that the absence of hymenal lacerations on the private part of AAA negates the fact of rape, this Court finds it specious.

As a review for reminders, this Court recalls the rudiments of rape decisions.