

## FIRST DIVISION

[ G.R. No. 188849, February 13, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JONATHAN "UTO" VELOSO Y RAMA, ACCUSED-APPELLANT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before this Court is an appeal of the March 30, 2009 **Decision**<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR.-H.C. No. 03132<sup>[2]</sup> affirming with modification the March 6, 2007 **Decision**<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 20, Naga City in Crim. Case Nos. RTC'02-0102-A and RTC 2002-0103, entitled *People of the Philippines v. Jonathan "Uto" Veloso y Rama*, which found appellant Jonathan Veloso guilty beyond reasonable doubt of two counts of rape as defined in Article 266-A of the Revised Penal Code for violating AAA,<sup>[4]</sup> a 12-year old minor.

Against Women and their Children.

On April 6, 2002, the following informations were filed against appellant by AAA's mother, BBB, acting on her behalf:

Criminal Case No. RTC'02-0102-A<sup>[5]</sup>

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.

Criminal Case No. RTC'02-0103<sup>[6]</sup>

That on or about April 4, 2002, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did, then and there, willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a minor, 12 years old, daughter of herein private complainant, against her will, to her damage and prejudice.

In addition, appellant was also charged with two other offenses: rape by sexual assault<sup>[7]</sup> under Criminal Case No. RTC 2002-0104 and frustrated homicide<sup>[8]</sup> under Criminal Case No. RTC 2002-0106.

On arraignment, appellant pleaded not guilty to all the crimes charged.<sup>[9]</sup> After pre-trial was conducted, the cases were consolidated and trial ensued.

The following facts are culled from the respective records and decisions of the RTC and the Court of Appeals.

In order to establish its case, the prosecution presented the testimonies of Oscar Boral (Boral), a neighbor of BBB and appellant, Dr. Adelwisso Jesus Badong, Jr., Dr. Mayvelyn Talag, BBB, and AAA.

On the other hand, appellant served as the lone witness in his defense.

On April 4, 2002, at around 12:00 noon, appellant went looking for BBB's brother. He went to BBB's house asking her to accompany him to her brother's house. Since BBB was indisposed, she declined. Appellant then insisted that AAA, BBB's daughter, accompany him instead. BBB consented. Thus, AAA with CCC, BBB's nephew, left the house with appellant. Instead of taking a *padyak* or tricycle, appellant opted to take a boat. It was while they were in the middle of the river that appellant threatened to hit CCC with a paddle if he would not jump off the boat. Immediately after CCC jumped off the boat, appellant steered the boat towards the riverbank and pulled AAA out of the boat. Thereafter, appellant made AAA lie in the water lily- and grass-covered banks and proceeded to violate her, all the while threatening to drown her. AAA tried to fight appellant but was unsuccessful. After satisfying his lust twice, appellant boxed AAA on her face, lips, stomach and thighs. Appellant kicked AAA on the stomach, slapped and smashed her face to the ground, and choked her until she became unconscious.

Boral found a conscious but dazed, naked, and bloodied AAA along the grassy portion of the riverbank. He shouted and called for BBB. Upon BBB's arrival, she saw her daughter's state. She asked AAA what happened. AAA, however, could only say "Uto." BBB then covered AAA's body with a shirt and brought her to a nearby hospital where she was advised to proceed to Bicol Medical Center. There, AAA was examined by Dr. Adelwisso Jesus Badong, Jr. and Dr. Mayvelyn Talag. The findings of the physical examination<sup>[10]</sup> of AAA dated April 4, 2002 at 2:35 p.m., are as follows:

The following lesions/findings were noted:

Surgery notes:

Multiple abrasions secondary to Rape/Mauling  
R/O Blunt Abdominal Injury

OB notes:

NOI: Alleged Rape  
TOI: 1 pm  
POI: Riverside, Sabang, Naga City  
DOI: 4-04-02

Findings:

Grossly normal-looking external genitalia; (+) intact

fourchette

(+)Hyperemic borders of hymen

(+)Superficial, hyperemic laceration at 4 o'clock position

Admits one finger with ease

In his defense, appellant said that on April 4, 2002 he went to Pili, Camarines Sur to attend a birthday party with his cousin Francisco Rama. He left his house at 9:00 a.m. He arrived in Pili at 10:00 a.m. and returned to his house at 3:00 p.m. Upon his return, he was arrested by police officers on the charge of rape filed by BBB. On cross-examination, he admitted that he went to his neighbor, BBB's house, in the morning of April 4, 2002 to ask about the whereabouts of BBB's brother.

After considering the evidence presented by both parties, the RTC rendered the March 6, 2007 Decision finding appellant guilty of the crime of rape, to wit:

WHEREFORE, premise in the foregoing (sic), [appellant] Jonathan "Uto" Veloso is hereby found guilty beyond reasonable doubt of the crime of rape as charged in Criminal Case Nos. RTC 2002-0102-A and RTC 2002-0103 and sentenced him (sic) to suffer the penalty of **RECLUSION PERPETUA for each case.**

[Appellant] is hereby ordered to pay the victim as follows:

1. One Hundred Thousand (P100,000.00) Pesos as moral damages for two (2) counts of rape;
2. One Hundred Thousand (P100,000.00) Pesos as civil indemnity for two (2) counts of rape;
3. Seventy Thousand (P70,000.00) Pesos as exemplary damages for two (2) counts of rape; and
4. To pay the costs.

With respect to Criminal Case No. RTC 2002-0104, [appellant] is hereby **ACQUITTED** due to insufficiency of evidence. In Criminal Case No. RTC 2002-0106, the case is hereby ordered **DISMISSED** the same having been absorbed in Criminal Case Nos. RTC 2002-0102-A and RTC 2002-0103, all for rape.<sup>[11]</sup>

Appellant filed his notice of appeal on March 21, 2007.<sup>[12]</sup>

The Court of Appeals in its March 30, 2009 Decision found no merit in the appeal, taking note of the injuries that AAA sustained and the fact that she was 12 years old at the time of the incident. It found AAA to be a credible witness and stressed that the gravamen of the crime of rape is carnal knowledge of a woman under any of the circumstances provided by law.<sup>[13]</sup> It further noted that the defense of alibi

interposed by appellant was never corroborated. He even admitted to being in BBB's house in the morning of April 4, 2002. The Court of Appeals, thus, affirmed the findings of the trial court but modified the award of damages by deleting exemplary damages due to the lack of any aggravating circumstance to justify its award, to wit:

WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 20), dated 6 March 2007, in Criminal Cases Nos. RTC 2002-0102-A and RTC 2002-0103, is AFFIRMED with the MODIFICATION that the award of exemplary damages is DELETED.<sup>[14]</sup>

Appellant filed his notice of appeal before this Court on April 7, 2009.<sup>[15]</sup>

Both the Office of the Solicitor General and appellant manifested that they would adopt the pleadings filed in the Court of Appeals in lieu of supplemental briefs.<sup>[16]</sup>

Appellant's lone assignment of error is stated as follows:

THE COURT A *QUO* GRAVELY ERRED IN FINDING [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.<sup>[17]</sup>

Appellant argues that AAA's testimony that she was made to lie down on a water lily and thereafter raped her was improbable since it was impossible for the water lily to have supported their combined weights. Moreover, appellant questions AAA's non-resistance to the rape except by kicking. Lastly, appellant claims that the time of the physical examination preceded that of the rape incident. Thus, appellant claims that due to the inconsistencies in AAA's testimonies, his guilt for the crimes charged was not proven beyond reasonable doubt by the prosecution.

The appeal must be dismissed for lack of merit.

The applicable law in this case is Article 266-A of the Revised Penal Code, which states that:

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:

- a. Through force, threat or intimidation;
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- 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.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

We have often reiterated the jurisprudential principle of affording great respect and even finality to the trial court's assessment of the credibility of witnesses. The trial judge is the one who hears the testimony of the witnesses presented firsthand and sees their demeanor and body language. The trial judge, therefore, can better determine if the witnesses are telling the truth being in the ideal position to weigh conflicting testimonies.<sup>[18]</sup> We also have stated that:

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. **The rule finds an even more stringent application where said findings are sustained by the [Court of Appeals].**<sup>[19]</sup> (Citation omitted, emphasis added.)

In dealing with cases for rape, this Court has often acknowledged that there is often a want of witnesses. In *People v. Dion*,<sup>[20]</sup> this Court said that:

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. **Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.** x x x. (Citations omitted, emphasis added.)

In the present case, defendant argues that AAA's testimony is improbable, especially her testimony under cross-examination where she stated that appellant placed her on top of a water lily floating on the water.

We agree with the Court of Appeals when it said: