

FIRST DIVISION

[G.R. No. 182230, September 19, 2012]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDGARDO LUPAC Y FLORES, ACCUSED-APPELLANT.**

D E C I S I O N

BERSAMIN, J.:

Under appeal is the decision promulgated on November 23, 2007,^[1] whereby the Court of Appeals (CA) affirmed the rape conviction of Edgardo Lupac y Flores but modified the trial court's characterization of the offense as statutory rape because of the failure of the People to properly establish the victim's minority under 12 years at the time of the commission of the rape.

The information filed on August 16, 1999 under which Lupac was arraigned and tried for statutory rape alleged as follows:

That on or about the 21st day of May, 1999 in the Municipality of Taytay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd designs and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one, AAA,^[2] his niece, 10 years old against her will and consent.

CONTRARY TO LAW.^[3]

The version of the Prosecution follows. AAA, her mother (BBB), and Lupac (allegedly BBB's brother) had originally been living together in the same house, but he eventually transferred to another place in the neighborhood. His transfer notwithstanding, he continued going to BBB's house, where he occasionally took afternoon naps in the bedroom of the house. On May 21, 1999, BBB left AAA in the house alone with Lupac to sell peanuts in Mandaluyong City. At around 1:30 p.m., AAA told him that she was going to take a nap in the bedroom. She did not lock the bedroom door as was her usual practice.

Waking up around 2:30 p.m., AAA was aghast to find herself naked from the waist down. She felt soreness in her body and pain in her genitalia. Momentarily, she noticed Lupac standing inside the bedroom near her, clad only in his underwear. He was apologetic towards her, saying that "he really did not intend to do 'that' to her."^[4] He quietly handed her a towel. As soon as she absorbed what had happened, she started to cry. He opened the windows and unlocked the door of the house.^[5] Seeing the chance, she rushed out of the house, and ran to the place of Tita Terry, a neighbor, who was a friend of her mother's. AAA revealed to Tita Terry what he had

done to her, saying: *Inano ako ni Kuya Ega*.^[6] She uttered the word *hindot*^[7] – vernacular for sexual intercourse. She and Tita Terry left together to find BBB and inform her about what had happened to AAA.^[8] The three of them reported the rape to the *barangay*. A *barangay kagawad* accompanied them to the Taytay Police Station to lodge a complaint for rape against Lupac. AAA submitted to a medico-legal examination, which found her to have suffered injuries inflicted deep inside her genitalia (described as congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position of the hymen, and abraded and u-shape posterior fourchette).

During the trial, Dr. Emmanuel N. Reyes, the medico-legal officer who had examined AAA, attested that he had found AAA at the time of the examination to have recently lost her virginity based on her hymen revealing "a deep fresh bleeding at 9:00 o'clock position."^[9]

Lupac's defense consisted of denial and *alibi*.

Lupac denied being related to AAA, either by consanguinity or otherwise, but admitted being her neighbor for a long time. He also denied the accusation, insisting that he had been asleep in his own house during the time of the rape. Nonetheless, he conceded not being aware of any motive for AAA to falsely charge him with rape.

After trial, on August 11, 2006, the Regional Trial Court, Branch 73, in Antipolo City (RTC) convicted Lupac of statutory rape,^[10] disposing:

WHEREFORE, PREMISES CONSIDERED, Edgardo Lupac is hereby found guilty of the crime of statutory rape and is sentenced to suffer the penalty of RECLUSION PERPETUA. He is also ordered to pay private complainant P50,000.00 as civil indemnity and P50,000.00 in moral damages plus the cost of the suit.

SO ORDERED.

In convicting Lupac of statutory rape as defined and penalized under paragraph 1(d), Article 266-A of the *Revised Penal Code*, as amended by Republic Act No. 8353, the RTC concluded that although the qualifying circumstance of relationship had not been proven, AAA's testimony showing her age of only 11 years at the time of the rape, being born on December 23, 1988, sufficed to prove her age as an essential element in statutory rape. On intermediate appeal, Lupac assailed the credibility of AAA and argued that the RTC erred in accepting AAA's testimony as proof of her date of birth and her minority under 12 years.

On November 23, 2007, the CA affirmed the conviction,^[11] but modified it by holding that Lupac was guilty of simple rape under Article 266-A, paragraph 1(b) of the *Revised Penal Code*. It noted that the Prosecution was not able to effectively establish the victim's minority under 12 years because of the non-submission of AAA's birth certificate, such fact being essential in qualifying the offense to statutory rape. It observed, however, that the lack of consent as an element of rape was properly alleged in the information and duly established by the evidence showing

that AAA had been asleep and unconscious at the time of the commission of the rape. It held that the variance in the mode of the commission of the rape was really a non-issue because he did not challenge the information at the arraignment, during the trial and even on appeal. It disposed:

IN VIEW THEREOF, the assailed Decision convicting the accused is hereby AFFIRMED. The penalty and the damages are likewise AFFIRMED.

SO ORDERED.

In his appeal, Lupac insists on his innocence, still impugning the credibility of AAA.

We affirm the CA.

Firstly, both the RTC and the CA considered AAA as a credible witness. We accord great weight to their assessment of the credibility of AAA as a witness as well as of her version. Verily, the personal observation of AAA's conduct and demeanor enabled the trial judge to discern if she was telling the truth or inventing it.^[12] The trial judge's evaluation, which the CA affirmed, now binds the Court, leaving to the accused the burden to bring to our attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted but would materially affect the disposition of the case differently if duly considered.^[13] Alas, the accused made no showing that the RTC, in the first instance, and the CA, on review, had ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.^[14]

Secondly, the CA rectified the mistaken characterization by the RTC of the crime as statutory rape. We concur with the CA. Although the information alleged that AAA had been only 10 years of age at the time of the commission of the rape, the State did not reliably establish such age of the victim in accordance with the guidelines for competently proving such age laid down by the Court in *People v. Pruna*,^[15] to wit:

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be

sufficient under the following circumstances:

- a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
 6. The trial court should always make a categorical finding as to the age of the victim.^[16]

The foregoing guidelines (*Pruna* guidelines, for short) apply herein despite their being promulgated subsequent to the filing of the information, for they were only an amalgamation of the norms on proving the age of the victim in rape variously defined in jurisprudence. With the minority under 12 years of AAA being an element in statutory rape, the proof of such minority age should conform to the *Pruna* guidelines in order that such essential element would be established beyond reasonable doubt. That was not done because the evidence adduced by the Prosecution did not satisfy *Pruna* guidelines 4 and 5, *supra*, to wit:

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

As such, the RTC erred in giving credence to AAA's declaration about her being under 12 years at the time of the rape.

Thirdly, the conviction of Lupac for rape is upheld despite AAA's minority under 12 years not being competently proved. This is because the information also properly charged him with raping AAA by its express averment that the carnal knowledge of