

FIRST DIVISION

[G.R. No. 193664, March 23, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO BANAN Y LUMIDO, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

The Case

This is an appeal from the March 31, 2010 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 03732 entitled *People of the Philippines v. Domingo Banan y Lumido*, which affirmed the November 24, 2008 Judgment^[2] of the Regional Trial Court (RTC), Branch 4 in Tuguegarao City. The RTC found accused Domingo Banan y Lumido guilty of statutory rape and acts of lasciviousness.

The Facts

The charges against Banan stemmed from the following Informations:

CRIMINAL CASE NO. 10980
(Statutory Rape)

That on or about July 09, 2005, in the Municipality of [PPP],^[3] Province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design, did, then and there, willfully, unlawfully, and feloniously have sexual intercourse with the aforesaid offended party, [AAA] a minor under 12 years of age against her will.

Contrary to law.^[4]

CRIMINAL CASE NO. 10995
(Acts of Lasciviousness)

That on or about July 18, 2005 in the Municipality of [PPP], Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, DOMINGO BANAN, with lewd design and by use of force and intimidation, did, then and there, willfully, unlawfully and feloniously embrace, kiss the lips and caress the vagina of the aforesaid offended party, [AAA] a minor under 12 years of age against her will, thereby degrading, debasing and demeaning the intrinsic worth and dignity of the complainant as a human being prejudicial to her physical, [psychological] and intellectual development.

Contrary to law.^[5]

On January 26, 2006, Banan was arraigned, and he pleaded "not guilty" to the charges.^[6] After pre-trial, trial on the merits ensued.

During trial, the prosecution presented as its sole witness the private complainant, AAA. On the other hand, the defense presented Banan and his wife, Florentina, as its witnesses.

The facts, culled from the records, are as follows:

AAA, born on March 30, 1994 as certified by her birth certificate, ^[7] is the daughter of BBB and CCC. AAA has two brothers, DDD and EEE.

Sometime in 2005, BBB, AAA's mother, worked as a laundrywoman in another place in Tuguegarao City. As a result, she left AAA, who was eleven (11) years old at that time, and AAA's two brothers in the care of her friend, Florentina Calagui, in PPP, Cagayan. Florentina had two houses that were adjacent to each other.^[8] While AAA and her brothers stayed in one, the other was occupied by Florentina and her husband, accused Banan.^[9]

On July 9, 2005, Banan asked permission from his wife, Florentina, to keep AAA and her brothers company in the other house. While AAA and her brothers were sleeping, Banan poked a knife at the neck of AAA.^[10] He then removed the pants and underwear of AAA and kissed her.^[11] Afterwards, he went on top of her and inserted his penis into her vagina.^[12] She was not able to shout because Banan covered her mouth with his hand, but she was able to kick him.^[13] She felt pain in her vagina thereafter.^[14]

On July 12, 2005, Banan again decided to go to the house where AAA and her brothers were staying. However, Florentina cautioned him from doing so, telling him not to disturb them anymore.^[15] As a result, Banan got angry and pushed Florentina.^[16] Still, he proceeded to the other house and went up the stairs where AAA and her brother, DDD, were resting. Again, he poked a knife at AAA but it was parried by DDD, who got hit with the knife below the eye.^[17] Because of this commotion, Banan was not able to push through with his intent to molest the complainant for the second time.

On July 18, 2005, at around 1:00 p.m., AAA was about to go to school with her friends when Florentina's mother, Ining Calagui, called her and told her that Banan was going to give her allowance in his house.^[18] At first, AAA was reluctant to go to Banan but upon the advice of one of her friends, she went to his house. When AAA got there, Banan pulled her into the room of the house he shared with Florentina and suddenly kissed her lips and held her vagina.^[19] He was armed with a long bolo tucked in his waist. However, nothing happened because AAA's friends barged in and were able to help her.^[20]

AAA did not report these incidents immediately because she was afraid that Banan would kill her entire family.

Nevertheless, AAA later related the events to her aunt, FFF, who brought her to the police station. On August 1, 2005, she gave her statement before Police Officer Jane Dalumay of the PPP Police Station. Likewise, she was examined by Dr. Mila Lingan-Simangan, Municipal Health Officer of PPP, Cagayan. Her findings are as follows:

Pelvic Examination:

Normal looking external genitalia

Healed hymenal laceration at 6 & 7 o'clock position

Vagina admits tip of index finger easily

Adnexae unremarkable.^[21]

Subsequently, the testimony of Dr. Lingan-Simangan was dispensed with upon agreement by both parties. A similar stipulation was likewise made with respect to the testimonies of AAA's mother and brother.^[22]

On the other hand, Banan interposed the lone defense of alibi. He alleged that he was employed as a caretaker of fighting cocks by a certain Ric Gammad in Tuguegarao City.^[23] He testified that he did not go home from July 9, 2005 to July 19, 2005.^[24] On cross-examination, he revealed that the travel time from his place of work to his house is only 15 minutes.^[25]

Florentina, Banan's wife, corroborated his alibi.^[26] But upon cross-examination, she testified that Banan came home on July 12, 2005 to commemorate the death of her father and that they also quarreled.^[27]

Ruling of the Trial Court

After trial, the RTC found Banan guilty. The dispositive portion of its Judgment reads:

ACCORDINGLY, this Court finds accused DOMINGO BANAN y LUMIDO, GUILTY BEYOND REASONABLE DOUBT of Rape in Criminal Case No. 10980 defined and penalized under Article 266-A, No. 1 in relation to Article 266 B No. 1 of Republic Act No. 8353 amending Article 335 of the Revised Penal Code, and imposes upon him the penalty of RECLUSION PERPETUA. He is likewise liable to pay AAA, the amount of Fifty Thousand (P50,000.00) Pesos as indemnity and Fifty Thousand (50,000.00) Pesos as moral damages. Accused is equally found guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in Criminal Case No. 10995 and he shall suffer the indeterminate penalty of x x x ONE (1) MONTH and ONE (1) DAY OF ARRESTO MAYOR as minimum to SIX (6) MONTHS and ONE (1) DAY of PRISION CORRECCIONAL as maximum.

No pronouncement as to costs.^[28]

Ruling of the Appellate Court

On March 31, 2010, the CA affirmed the Judgment of the trial court. The dispositive portion of the Judgment reads:

WHEREFORE, the appealed Decision of the Regional Trial Court of Tuguegarao City, Branch 4, dated 24 November, 2008, is AFFIRMED with the MODIFICATION that, in Criminal Case No. 10995, appellant is sentenced to one (1) month and one (1) day of arresto mayor to two (2) years, four (4) months and one (1) day of *prision correccional* medium and is ORDERED to pay AAA Twenty Thousand (P20,000) as civil indemnity and Thirty Thousand (P30,000) as moral damages.

SO ORDERED.^[29]

The Issue

Banan alleges the following lone issue in his *Brief*:^[30]

The court a quo gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crimes of rape and acts of lasciviousness.

The Court's Ruling

The appeal has no merit.

In his *Brief*, accused-appellant argues that the prosecution failed to prove his guilt beyond reasonable doubt. First, he contends that there were inconsistencies in the testimony of the complainant, particularly the date of the incident, that affected its veracity and credibility. Second, he maintains that there was no credible and admissible evidence that he had sexual congress with the private complainant, because the physician who conducted the medical examination did not testify in court. And lastly, he disputes private complainant's identification of him as her rapist considering the circumstances at the time of the incident. He points to her testimony where she stated that the room was very dark and that she could not see anything, nor could she recognize any person who would go upstairs to their room.

We are not convinced.

It is a time-honored doctrine that the trial court's assessment of the credibility of witnesses is "entitled to great weight and is even conclusive and binding, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence,"^[31] the reason being the trial judge enjoys the peculiar advantage of observing firsthand the deportment of the witnesses while testifying, and is, therefore, in a better position to form accurate impressions and conclusions.^[32]

In this case, the testimony of the private complainant was very clear on the events

that transpired and the person who raped her. We quote the pertinent portions of her testimony:

Q Why do you remember July 9, 2005?

A Because that was the day Domingo Banan did something wrong to me.

Q What did Domingo Banan do to you?

A He touched (hinipuan) my leg, sir.

Q Where did that happen?

A At their house, sir.

Q Around what time was that?

A Night time, sir.

Q Now, what were you doing when Domingo Banan did something wrong to you?

A I was sleeping with my two brothers because Domingo told Floring Calagui that she will stay there first because she does not have any companion.

Q Can you please name your brothers who slept with you that night?

A [DDD] and the old man, sir.

Q Where did you sleep witness?

A In front of the stairs.

x x x x

Q So while you were sleeping, what happened?

A Domingo Banan went up at the second floor of the house and instructed me that if I will not follow his order he will kill me.

Q After that what did Domingo Banan do if there was any?

A He was holding a knife, sir.

Q What did he do with the knife?

x x x x

A Domingo Banan pointed the knife at my neck, sir.

Q While pointing the knife at your neck, what did he do?

A When Domingo Banan pointed the knife at my neck, my brother [DDD] parried it and it was my brother who was hit.

COURT: Why, where was your brother at that time?

A My brother was just beside me, your honor.

Q Now, what part of the body of your brother was hit?

A Below his eye.

PROSECUTOR Now after that, what did Domingo Banan do?

A Domingo Banan covered my mouth, sir.

Q What else did he do to you?

A He removed my pants, sir.

x x x x

Q What else did Domingo Banan take off?

x x x x

A He also removed my underwear, sir.

Q After removing your short pants and underwear, what else did Domingo Banan do to you?

A He inserted his penis, sir.

Q Where did he insert his penis?

A He inserted his penis into my vagina, sir.

COURT Was your brother present at that time?