

## THIRD DIVISION

[ G.R. No. 186379, August 19, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
BIENVENIDO LAZARO @ BENING, ACCUSED -APPELLANT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

For review is the Decision<sup>[1]</sup> dated 14 August 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02381, which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Odiongan, Romblon, Branch 82, finding appellant Bienvenido Lazaro *alias* Benny (Bienvenido) guilty of the crime of rape in Criminal Case No. OD-875.

Bienvenido was charged before the RTC with the complex crime of Forcible Abduction with Rape. The accusatory portion of the Complaint reads:

That on or about the 31<sup>st</sup> day of August, 1995 at around 6:00 o'clock in the morning, in Barangay XXX, Municipality of Odiongan, Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, did then and there willfully and feloniously take by force and abduct the undersigned offended party by then and there taking and bringing her to the house of said accused, against her consent and by means of violence, and had carnal knowledge with her, against the latter's will.<sup>[3]</sup>

Upon arraignment on 4 March 1996, Bienvenido, assisted by counsel, pleaded not guilty to the charge.<sup>[4]</sup>

The evidence of the prosecution, as gathered from the testimonies of the victim AAA<sup>[5]</sup>, the victim's uncle BBB, and Dr. Aida Dusaban Atienza, the government physician who examined AAA, are as follows:

AAA, an eleven-year-old girl, was born on 24 December 1984.<sup>[6]</sup> She lived with her grandmother at the latter's house in Barangay XXX, Odiongan, Romblon. At 6:00 o'clock in the morning of 31 August 1995, while AAA was walking on her way to school, Bienvenido, whom AAA called *Lo/lo*, stopped her and brought her to his house.<sup>[7]</sup> There, Bienvenido removed AAA's panties and made her lie down on the floor, with her face up. Bienvenido took off his pants and inserted his penis into AAA's vagina and made the push and pull movement.<sup>[8]</sup> Thereafter, Bienvenido donned his pants and threatened to kill AAA if she divulged his bestial act to anyone. Afraid of Bienvenido's threatening words, AAA cried. She went back to her

grandmother's house. When AAA arrived, her aunt was there, but she did not tell her aunt about the incident. On 29 September 1995, worried about AAA's changing demeanor, AAA's uncle, BBB, insistently questioned her. It was then that AAA revealed her ordeal. BBB wasted no time and brought her to the health center where she was examined by Dr. Aida Atienza. Dr. Atienza's examination showed that AAA's breast was still on its pre-puberty stage. AAA's vaginal wall had been penetrated possibly by fingers or by a penis, and there were healed complete lacerations at the 4:00, 5:00 and 9:00 o'clock positions.

The defense interposed the defense of denial and alibi and presented the testimonies of Bienvenido and his niece, Yolanda Forcadas.

Bienvenido denied molesting AAA. He said that at 5:00 in the morning of 31 August 1995, he went to the port of Poctoy, Odiongan, Romblon to sell his crops. At around 12:00 noon when his goods were sold, he went to the house of his nephew, Rolando Forcadas, which was situated near the port, where he stayed until 6:00 in the morning of the following day.

At around 9:00 a.m. of 31 August 1995, he saw AAA together with a certain Felmor Perater, Jr. embracing each other. He called the attention of the two, saying that he would report the incident to AAA's grandmother. He did not report the said incident to AAA's grandmother.

However, on re-direct examination, Bienvenido made another declaration that at around 6:00 in the morning of 31 August 1995, he was in Barangay XXX, Odiongan, Romblon, harvesting corn. Thereafter, he went back to his house and took a rest. The next day, while he was in the field, he caught AAA and Felmor Perater, Jr. engaged in sexual intercourse. He scolded the two and reported the matter to AAA's grandmother. He also claimed he was the one who accompanied AAA to the Rural Health Officer for a medical examination.<sup>[9]</sup>

For her part, Yolanda Forcadas testified that on 11 August 1995, Bienvenido visited her in Barangay Batiano, Odiongan, Romblon. In the morning of 12 August 1995, Bienvenido returned to his place.

The RTC, in a decision dated 24 July 2001, convicted Bienvenido of the crime of rape only. The RTC ruled out forcible abduction, since evidence tended to show that the victim was lured by the perpetrator to go with him to his house. This was buttressed by AAA's admission that she had been given money by Bienvenido twice, and that she had been to the house of the former once. The RTC imposed upon Bienvenido the penalty of *reclusion perpetua* and ordered him to indemnify the victim in the amount of P50,000.00 and to pay the costs. The decretal portion reads:

WHEREFORE, premises considered, accused BIENVENIDO LAZARO is hereby found GUILTY of rape and is hereby meted the penalty of reclusion perpetua, with all the accessory penalties of the law, to indemnify the victim in the amount of P50,000.00 and to pay the costs.

Accused is entitled to full time of his preventive imprisonment pursuant to Art. 29 of the Revised Penal Code.<sup>[10]</sup>

Bienvenido appealed the judgment of conviction to the Court of Appeals. In its decision dated 14 August 2008, the Court of Appeals affirmed the guilty verdict and the sentence imposed by the RTC. In addition to the award of P50,000.00 as civil indemnity, the Court of Appeals ordered Bienvenido to pay the victim P75,000.00 as moral damages, thus:

WHEREFORE, in view of the foregoing premises, the assailed decision of the Regional Trial Court, Branch 82, in Odiongan, Romblon in Crim. Case No. OD-875, finding accused-appellant Bienvenido Lazaro guilty of the crime of rape and imposing the penalty of reclusion perpetua, is hereby AFFIRMED with the MODIFICATION that accused-appellant is further ordered to pay the victim P75,000.00 as moral damages.<sup>[11]</sup>

Hence, the instant recourse.

Bienvenido claims that it was witness BBB, the victim's uncle, who initiated the filing of the criminal complaint against him. Since Article 344<sup>[12]</sup> of the Revised Penal Code and Section 5, Rule 110<sup>[13]</sup> of the Revised Rules of Court require that the right to file an action be given to the parents, grandparents or guardians of the minor, the filing by BBB of the complaint renders the same defective.

In a bid to be exculpated from the charge, Bienvenido contends that AAA's testimony had material inconsistency as to the date of the commission, since at one point AAA declared that the rape happened on 12 August 1995; and in the rest of her testimony, she said it occurred on 31 August of the same year.

In determining the guilt or innocence of the accused in cases of rape, the courts have been traditionally guided by three settled principles, namely: (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.<sup>[14]</sup>

Since the crime of rape is essentially one committed in relative isolation or even secrecy, it is usually only the victim who can testify with regard to the fact of the forced *coitus*.<sup>[15]</sup> In its prosecution, therefore, the credibility of the victim is almost always the single and most important issue to deal with.<sup>[16]</sup> 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.<sup>[17]</sup>

In this case, upon assessing the victim's testimony, the RTC found her credible, thus:

There is no evidence to show any dubious reason or improper motive why the victim in the case would testify falsely against the accused or falsely implicate him in a heinous crime.

x x x x

The laceration on the vagina of the girl who was examined weeks after the incident by Dra. Atienza is indicative of some object having entered it. Adding to this is the testimony of AAA that accused rode on her body and made a "pull and push movement."<sup>[18]</sup>

This Court itself has diligently pored over the transcripts of stenographic notes of this case and, like the RTC, it finds the victim's testimony on the incident forthright or straightforward, consistent with an honest and realistic account of the tragedy that befell her. She narrated the incident and the circumstances immediately after it in this manner:

Q: Upon arriving in his house, where did he bring you?

A: In the upper part of his house.

Q: Upon reaching there, what did he do to you?

A: He took off my panty.

Q: After he took off your panty, what did he do to you?

A: He made me lie down.

Q: Face up or face down?

A: Face up.

Q: Where did you lie down?

A: On the floor.

Q: After making you lie down on the floor of his house, what did the accused do?

A: He took off his pants.

Q: After taking off his pants, what did he do to you?

A: He put his penis in my vagina.

Q: How did you feel when his penis was placed in your vagina?

A: It was painful.

Q: After placing his penis to your vagina, what did the accused do?

A: He made the push and pull movement.

Q: How long is this push and pull movement last?

A: About two minutes.

Q: After that push and pull movement, what did the accused do?

A: He stood up.

Q: And what did he do since he had taken off his pants?

A: He put on his pants.

Q: According to you, your panty was taken off by the accused, what did you do after that push and pull?

A: I put on my panty.

Q: After putting on your panty, what did the accused tell you, if any?

A: Don't tell anybody, if you tell I will kill you.

Q: After warning you not to tell anybody otherwise you will be killed, what did you do?

A: I cried.

x x x x

Q: On 29 September 1995, do you know where was uncle Rolly Venus?

A: In their house.

Q: Did you see him?

A: Yes, sir.

Q: When you saw your uncle on that date, what if any transpired between you and your uncle?

A: He asked me why I am lonely and weak.

Q: What did you answer him?

A: I relayed the incident.

Q: That incident of August 31, 1995?

A: Yes, sir. [19]

On cross examination, AAA held fast to her declaration that she was molested by