

SECOND DIVISION

[G.R. No. 177144, July 23, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DIOSDADO CODILAN Y PALAJURIN, ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

On review is the November 29, 2006 Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02383 affirming, with modification, the May 16, 2001 Decision^[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, which found Diosdado Codilan (appellant) guilty beyond reasonable doubt of two counts of rape and two counts of acts of lasciviousness.

Except as to the dates of the commission of the offenses - September, October, November, and December 1998 - each of the four Informations^[3] charging appellant in Criminal Case Nos. 1487-M-99 to 1490-M-99 reads as follows:

X X X X

That in or about the month of . . ., 1998, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused taking advantage of the virginal innocence of his stepdaughter [AAA] who is eight (8) years old, did then and there willfully, unlawfully and feloniously, by means of threats and intimidation have carnal knowledge of [AAA], against her will and without her consent.^[4]

x x x x (Underscoring supplied)

On arraignment, appellant pleaded not guilty to the charges.^[5]

Through the testimony of AAA, the prosecution established as follows:

On the dates of the incidents, AAA was playing near the house of appellant, whom she calls "*Tatay*," in Gumaok West, San Jose Del Monte, Bulacan during which appellant - her uncle by affinity^[6] - pulled her towards a room of his house, and once inside, he perpetrated the acts complained of consisting of licking her genitalia and inserting his penis into her vagina.

Fearing appellant's threats that he would kill her if she divulged what he had done to her, AAA kept her travails to herself. She was, however, later prompted to narrate appellant's dastardly acts when she was confronted by appellant's daughter "Ate Bing Bing," her first cousin, the latter's mother and her (AAA's) father being siblings. It turned out that "Ate Bing Bing's" then 12-year-old daughter BBB

(appellant's granddaughter) had witnessed the December 1998 incident and divulged it to her mother in February 1999.

AAA thereupon executed on February 25, 1999 a sworn statement detailing the assaults made upon her by appellant. BBB also executed on February 26, 1999 a sworn statement in which she corroborated AAA's narration of the incident that occurred in December 1998.^[7] Like AAA, BBB echoed the contents of her sworn statement at the witness stand.

Through Dr. Ida De Pedro Daniel who conducted the physical examination of AAA on February 20, 1999, the prosecution also established that the examination showed that AAA's hymen was intact and no extra-genital injuries were noted on her body.

In defense, appellant claimed that the charges against him were fabricated by his own daughter, BBB's mother, who did not want him to return home after serving his eight-year prison sentence for illegal possession of firearms. His daughter, he added, held a grudge against him because he had hit her with a broom and had an altercation with her husband over the latter's change of religious affiliation.

By Decision of May 16, 2001, the trial court convicted appellant of two counts of rape and two counts of acts of lasciviousness, the latter for the acts committed in September^[8] and November 1998.^[9] Thus the trial court disposed:

WHEREFORE, judgment is hereby rendered, as follows:

1. In Criminal Case No. 1487-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum up to six (6) years of prision correccional as maximum and to pay the private complainant the amount of P20,000.00 as moral damages;
2. In Criminal Case No. 1488-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Rape under Arts. 266-A and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant the amount of P100,000.00 as moral damages;
3. In Criminal Case No. 1489-M-99, this Court finds the accused GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code and hereby sentences him to a prison term ranging from four (4) months and one (1) day of arresto mayor as minimum up to six (6) years of prision correccional as maximum and to pay the private complainant the amount of P20,000.00 as moral damages; and
4. In Criminal Case No. 1490-M-99, this Court finds the accused guilty beyond reasonable doubt of Rape under Arts. 266-A(d) and 266-B of the Revised Penal Code and hereby sentences him to suffer the penalty of Reclusion Perpetua and to pay the private complainant

the amount of P100,000.00 as moral damages.^[10] (Underscoring supplied)

On appeal to the Court of Appeals, appellant faulted the trial court in giving weight and credence to the testimonies of the prosecution witnesses and in convicting him of two counts of rape.

Modifying the trial court's decision, the appellate court awarded AAA for each count of rape civil indemnity in the amount of P50,000, reduced the award of moral damages to P50,000, and awarded exemplary damages of P25,000.

In awarding exemplary damages, the appellate court considered the aggravating circumstance of relationship, appellant being AAA's uncle by affinity, hence, a relative within the third civil degree.

On the assailed credibility of AAA and the other prosecution witnesses, the appellate court cited settled jurisprudence that (1) the offended party's testimony, if credible, is sufficient to sustain a conviction, and (2) appellate courts will generally not disturb the findings of the trial court as the latter is in a better position to determine the credibility of witnesses whom it heard and whose deportment and manner of testifying it observed during trial.

These jurisprudential rules, the appellate court held, are particularly significant given its finding that AAA was merely eight years old at the time the offenses were committed. Like the trial court, the appellate court found AAA's testimony candid and straightforward to merit full faith and credit. It further found AAA's answers during the rigorous and at times misleading cross-examination to be clear and unflinching.

Respecting the medical findings which, appellant insisted, contradicted the charges of rape, the appellate court stressed that mere entry of the penis into the lips of the female genital organ, even without rupture or laceration of the hymen, suffices to convict the perpetrator of rape. For the hymen may be so elastic, it explained, as to stretch without laceration during intercourse, hence, the absence of lacerations in the hymen does not disprove sexual abuse especially when the victim is of tender age.

The appellate court further stressed that the physical examination of AAA took place several months after the occurrence of the incidents, hence, it was highly probable that traces of extra-genital injuries may have already disappeared at the time of the examination.

Moreover, the appellate court stated that lack of extra-genital injuries could also be explained by the fact that AAA did not resist the sexual advances of her uncle who, because of his moral ascendancy and the threats he made on her, had cowed her into submission and silence.

While the rapes committed in October and December 1998 were proven beyond reasonable doubt, the appellate court concurred with the trial court's finding that the incidents in September and November of the same year were not sufficiently established to amount to rape, hence, its affirmance of the trial court's conviction of appellant only for acts of lasciviousness. Amplifying its affirmance, the appellate

court noted that AAA did not state that she felt pain during those two incidents, unlike the two others in which she recalled having felt pain in the genital area. And so the appellate court surmised that the organ of appellant failed to touch, but merely grazed, AAA's labia or pudendum.

On the penalties imposed, the appellate court found that the trial court's conviction of appellant only for simple rape with respect to the October and December incidents was proper.

While the appellate court noted that AAA claimed that she was eight years old at the time the incidents were committed, it found no independent evidence to conclusively establish the same.

Respecting the relationship of appellant to AAA, the appellate court noted that what was established is that appellant is an uncle by affinity, he being married to her father's sister; and while this relationship is within the third civil degree, the Informations referred to appellant as AAA's stepfather.

The Court finds appellant's appeal to be bereft of merit.

Indeed, the trial court, which had the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies.^[11] Its findings are accorded great respect unless it overlooked or misconstrued some substantial facts which, if considered, might affect the result of the case,^[12] which circumstance does not obtain in this case.

As the transcripts of stenographic notes reflect, AAA's account of her harrowing experiences was candid and straightforward; and her answers during the rigorous cross-examination were definite and categorical as to the fact that appellant had molested her. Of the October incident, she testified on direct examination:

Public Pros.:

Q You stated earlier that the second time that he abused you was October, 1998, where did it happen?

A In their house, ma'am.

Q In the same place where he abused you in September 1998?

A Yes, ma'am.

Q Why were you there in October when this incident took place?

A We were playing with his nieces, ma'am.

Q As you were playing with his nieces, what happened?

A He lifted me towards his room, ma'am.

Q What time was it when this happened in October, 1998?

- A I cannot recall, ma'am.
- Q Was it morning, noontime, afternoon or nighttime?
- A Also noontime, ma'am.
- Q This time in October 1998 when he lifted you inside his room, were there other persons inside his house?
- A None, ma'am.
- Q You said that he lifted you towards his room, when you were already in his room, what happened?
- A He touched my private parts then he inserted his penis into my vagina and then he lipped [sic] my private parts, ma'am.
- Q What did you feel when he inserted his penis into your vagina?
- A It was painful, ma'am.
- Q What happened after that?
- A None, ma'am.
- Q What did you do?
- A I told him that I will just urinate, ma'am, but I did not go back anymore.
- Q Did you report this incident that took place in October, 1998 to anybody?
- A I did not tell anyone because he threatened me that he will kill me if I will tell anybody about that.^[13] (Underscoring supplied)

And on cross-examination, she testified:

- Q You mean, Ate Bing Bing when she asked you about what the accused did to you in front of your parents, that was the first time that she asked you about that?
- A Yes, sir.
- Q Your father and mother they were around when Ate Bing Bing asked you?
- A Yes, sir.
- Q Now, exactly what were the words used by Ate Bing Bing when she asked you?