

SECOND DIVISION

[G.R. No. 174195, December 10, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CATALINO MINGMING Y DISCALSO, ACCUSED-APPELLANT.**

D E C I S I O N

BRION, J.:

The subject of this mandatory appeal is the Decision dated July 28, 2005 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 00149^[1] which affirmed with modification the decision dated March 22, 2004 of the Regional Trial Court (RTC), Branch 128, Caloocan City, in Criminal Case Nos. C-54195, C-54196, and C-54197. ^[2] The RTC convicted accused-appellant Catalino Mingming y Discalso^[3] (*Catalino*) of three (3) counts of *statutory rape* and imposed on him the penalty of *reclusion perpetua* for each count. The Informations (all dated July 6, 1998) under which he was prosecuted read:

Criminal Case No. C-54195

That sometime on (sic) May, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

Criminal Case No. C-54196

That on or about the 29th day of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin, and 10 years of age.

Contrary to Law.

and,

Criminal Case No. C-54197

That on or about the 29th of June, 1998 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable

Court, the above-named accused, did then and there willfully (sic), unlawfully and feloniously succeeded in sexually abusing or having sexual intercourse with one AAA, a virgin and 10 years of age.

Contrary to Law.

Catalino was arraigned on September 1, 1998 with the assistance of counsel and pleaded "not guilty" to the charges. At the trial on the merits, the prosecution presented testimonial^[4] and documentary^[5] evidence, while the defense relied on *denial* and *alibi* testified to by the accused himself.

ANTECEDENT FACTS

Ten-year old AAA^[6] and her younger brother, CCC, were residents of Barangay Deparo, Caloocan City. They lived in the house of Alfonso Obispo (*Alfonso*) to whom their father entrusted their care. Catalino was their neighbor.

Sometime in May 1998 at noontime, AAA answered the call of nature outside Alfonso's house.^[7] She went to a vacant lot behind a Petron gas station located away from Alfonso's house. While there, Catalino appeared, grabbed and pulled her right ankle, causing her to fall to the ground. AAA tried to break away but Catalino clung to her ankle and pulled her to a portion of the lot with tall grasses where he laid her down on bundles of wood (*pahigang kahoy*). To subdue her, Catalino covered her mouth and poked a kitchen knife at her neck, at the same time undressing her by removing her shorts and panty. Thereafter, he removed his own shorts, placed himself on top of AAA, and proceeded to have sexual intercourse with her by inserting his penis into her vagina. During the sexual intercourse, Catalino held AAA's hands to prevent her from pushing him. Done with the act, he threatened her, "*Huwag kang magsusumbong, papatayin ko kayo.*"^[8] AAA went home and kept what transpired to herself.

The incident was repeated in the morning of June 29, 1998 when Catalino tricked AAA into going to his house, ostensibly to get money for cigarettes he had ordered AAA to buy. Catalino followed her and there, pulled her and again threatened her with a knife.^[9] He then undressed her and himself, and proceeded to have sexual intercourse with her. The sexual abuse was repeated on the same day before AAA went home.

This time, AAA reported the incidents to the Obispos. Alfonso, his son (Joel Obispo)^[10] and AAA reported the rapes to then Barangay Executive Officer Humphrey Durana,^[11] who endorsed the report to the police. SPO1 Emilio E. Mabalot^[12] conducted the police investigation and thereafter referred AAA to Dr. Anthony Llamas, a Philippine National Police medico-legal officer, for medical examination. The genital examination disclosed a deep-healed laceration at the 6 o'clock position of her hymen indicating that she was no longer a virgin. The Initial Laboratory Report^[13] dated July 2, 1998 states:

GENITAL:

... On separating the same disclosed a congested posterior fourchette and a membranous-type hymen with a deep healed laceration at the

6[o]' clock position. External vaginal orifice admits the tip of the examiner's smallest finger.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of physical trauma.

[14]

BBB,^[15] the mother of AAA, learned that her daughter had been sexually molested when she received a letter from the Department of Social Welfare and Development, Caloocan City. She allegedly suffered mental anguish for what happened to AAA and also incurred expenses in filing cases against Catalino.

Catalino denied raping AAA although he admitted knowing her.^[16] He claimed that he seldom saw her since he went to work early and came home late.^[17] He further claimed that at the time of the alleged first incident, AAA had been with her father and only returned to the Obispos on June 20, 1998.^[18] He also claimed that the cases were filed against him because he refused to lend the P3,000.00 that the Obispos needed for their rental payment.^[19] In fact, Joel Obispo even remarked to him that "*Madamot ka, may mangyayari sa inyo.*" It was after that incident that Alfonso and Joel had him arrested on the charge of raping AAA. They brought him to the barangay office where a *tanod* boxed him to force him to admit the rape.^[20]

The RTC rejected Catalino's defenses of *denial* and *alibi* and found him guilty of three counts of rape. On appeal,^[21] the CA affirmed Catalino's conviction with a modification on the award of damages.^[22] The dispositive portion of the appellate court's decision states:

WHEREFORE, premises considered, the decision of the court *a quo* finding Catalino Mingming y Discalso guilty of three (3) counts of Statutory rape is **AFFIRMED** with the **MODIFICATION** that the accused-appellant is sentenced to suffer the penalty of three (3) *reclusion perpetua* to be served *successively* and that the accused-appellant is ordered to pay the victim, for each count of rape, the amount of P50,000.00 as civil indemnity and P25,000.00 as exemplary damages, in addition to the P50,000.00 moral damages awarded by the trial court.

Costs against the accused-appellant.

SO ORDERED.^[23]

The CA affirmed the RTC decision on the basis of AAA's testimony which it found credible. The CA, in this regard, said:

The testimony of AAA is positive while that of the accused is negative. The positive prevails over the negative. Being a ten-year old minor, AAA, a victim of sexual assault, is credible. She has not yet absorbed the wiles of the world. Her testimony, considering her very young age, was

straightforward and candid. It is sufficient to convict the accused.

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.... The spontaneity with which the victim has detailed the incidents of rape, the tears she has shed at the stand while recounting her experience, and her consistency almost throughout her account dispel any insinuation of a rehearsed testimony. The eloquent testimony of the victim coupled with the medical findings attesting to her non-virgin state, should be enough to confirm the truth of her charges.^[24]

At the same time, the CA disbelieved Catalino's defense that AAA had ill motives and was influenced by Joel Obispo who bore a grudge against Catalino. The CA took note that it was AAA herself who caused the filing of the cases against him.^[25] Similarly, the CA discredited the defense's argument that the absence of injuries negated the commission of rape; to the CA, the physical evidence, as established from the medical findings of Dr. Llamas, corroborated her testimony that she had been raped.^[26] The CA noted that rape can be established even in *the absence of external signs or physical injuries or a medical finding relating to such fact as these are not indispensable requisites in proving a crime of rape.*^[27]

Catalino filed the present petition after the CA denied his motion for reconsideration in its Resolution dated May 8, 2006.

ASSIGNMENT OF ERRORS

Catalino argues that the CA committed the following errors:

1. giving credence to the speculative, incredible, and inconsistent testimony of the private complainant; and
2. finding him guilty beyond reasonable doubt of the crime charged.

Jointly discussing these issues in his *Brief*,^[28] Catalino highlights the errors committed by both the CA and the RTC in believing AAA's testimony. He phrased this argument in the following terms:^[29]

In prosecution for rape, the testimony of the victim is generally scrutinized with great caution for the crime is usually known to her and the rapist (**People vs. Ibay, 312 SCRA 153**). In the case at bar, the private complainant's testimony is not convincing.

He advances the view that AAA's testimony suffered from serious flaws that should generate disbelief for being contrary to human experience. Catalino further submits that: AAA's failure to report the rape; her lack of physical injuries; her testimony that he was holding a knife on one hand, and at the same time covering her mouth with the other while he was undressing her; and that she even went to his house after the first incident - all demonstrate the incredibility of her testimony. Catalino posits that the rape charges against him were concocted by AAA because she was

mad at him.^[30] He particularly emphasizes that the medical findings of Dr. Llamas showed that a mere three (3) days after the alleged rape, the laceration found in AAA's genital organ was already healed,^[31] thus medically giving lie to the rape charge.

Catalino finally avers that his defenses of *denial* and *alibi* have been amply established and should not be disregarded given that the private complainant's credibility is doubtful.

The Office of the Solicitor General maintains the correctness of Catalino's conviction as the prosecution's evidence -- premised on the credible testimony of AAA -- established his guilt beyond reasonable doubt on all three counts of *statutory* rape.

OUR RULING

We affirm Catalino's conviction in Criminal Cases No. C-54195 and No. C-54196 but acquit him in Criminal Case No. C-54197.

In undertaking this appellate review, we shall be guided by the outlined considerations and by the principle that an appeal opens the entire case for review.^[32]

First, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.

Second, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.

Third, in rape cases, since the conviction of the accused is usually based on the accusation and testimony of the victim-complainant, her testimony should be scrutinized with utmost caution and must show clearly and definitely the commission of the rape and the identity of its perpetrator.

Fourth, the assessment of the credibility of the prosecution witnesses, in general, and of the rape complainant, in particular, is a duty firmly lodged on the trial judge owing to his unique position; he sees, perceives and appreciates details in the case that an appellate reviewing court is realistically deprived of. Accordingly, utmost credit is given to the trial judge's findings in the absence of any showing that he misappreciated, misapprehended, or overlooked any evidentiary fact or circumstance material to the outcome of the case.

Lastly, Catalino was charged with and convicted of three counts of *statutory* rape that, although *tried jointly*, must be treated and viewed as *separate and distinct* from each other. Thus, the elements of the offense must be proven for each count of rape, save only for the element of age which runs commonly for the three counts.

Statutory rape is committed by sexual intercourse with a woman below twelve years of age regardless of her consent, or the lack of it, to the sexual act.^[33] Proof of force, intimidation or consent is unnecessary; they are not elements of *statutory*