

## SECOND DIVISION

**[ G.R. NO. 175880 (FORMERLY G.R. NO. 153217),  
July 06, 2007 ]**

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO  
COMANDA Y CAMOTE, APPELLANT.**

### D E C I S I O N

**TINGA, J.:**

Appellant Ricardo Comanda assails the decision<sup>[1]</sup> of the Court of Appeals dated 12 October 2006, affirming in toto the Judgment<sup>[2]</sup> of the Regional Trial Court (RTC), Br. 17,<sup>[3]</sup> Davao City, dated 20 December 2001, finding him guilty beyond reasonable doubt of the crime of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua*.

On 12 January 1998, appellant was charged with rape in an Information<sup>[4]</sup> filed by Prosecutor Rico T. Garcia, the text of which reads:

*Criminal Case No. 40, 254-98*

The undersigned accuses the above-named accused of the crime of RAPE, under Art. 335 of the Revised Penal Code, as amended by Presidential Decree<sup>[5]</sup> (sic) No. 7659, upon the instance of BBB<sup>[6]</sup> — mother of the complainant, whose affidavit is hereto attached and form part of this Information, committed as follows:

That on or about January 11, 1998, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there wilfully (sic), unlawfully and feloniously have carnal knowledge with (sic) the complainant — AAA,<sup>[7]</sup> nine (9) years old, against her will.

Contrary to law.

When arraigned, appellant pleaded not guilty. Before trial could proceed however, the RTC issued an Order<sup>[8]</sup> on 30 July 1998, granting appellant's request that he undergo psychiatric examination to determine his mental condition to withstand trial.

On 28 June 1999, Dr. Rowena Lacida, a medical officer at the Davao Medical Center, testified to confirm her report that based on her psychiatric evaluation of appellant and the psychological test conducted by psychologist Evangeline Castro, appellant was psychotic and was suffering from mental disorder. Thus, she concluded that he could not understand the accusation of a serious offense against him.<sup>[9]</sup> Further

proceedings were therefore held in abeyance by the RTC in an order<sup>[10]</sup> dated 22 July 1999, until such time that appellant's mental condition made him fit to stand trial. In the meantime, appellant was ordered to submit himself for further treatment.

Thereafter, the continuing examination of appellant was referred to Dr. Rosemina Laud-Quirapas, likewise a medical officer at the Davao Medical Center.<sup>[11]</sup> On 12 March 2001, she submitted her mental status report finding appellant competent to stand trial. On 13 March 2001, she affirmed, in open court, her conclusion that appellant's mental status examination and neurological test results show that he is already fit to stand trial.<sup>[12]</sup>

Hence, trial on the merits ensued. The evidence for the prosecution establishes the following facts:

While the Talandang Elementary School in Talandang, Davao City, where AAA was a Grade IV student, was in the midst of its "Bayanihan" project, at around 1 p.m. of 11 January 1998, AAA went with her father to the school where he was to do some carpentry work for the project. Appellant, AAA's paternal granduncle whom she called Uncle Dodo, likewise went with them. At some point, AAA was instructed by her teacher to request appellant to fetch another uncle of hers to help with the project. AAA relayed the request to appellant, who readily agreed. He brought her along. Appellant took a shortcut to their supposed destination, justifying the move to AAA with the ruse that her uncle, who lived with AAA's grandmother, was on the hill fetching his carabao. On their way, appellant suddenly laid down on a grassy area, unzipped his pants, lowered AAA's underwear and told her not to make any noise or to tell anybody. He forced AAA to lie on top of him, kissed her lips and embraced her tightly, unzipping the back of her dress in the process. AAA then felt appellant's penis penetrate her vagina.<sup>[13]</sup>

After about thirty (30) minutes, AAA heard her mother, BBB, shouting. AAA grabbed her underwear, hurriedly put it on and ran to her mother, crying. In her mother's embrace, AAA fell unconscious. She was brought to the house of her aunt, accompanied by her mother, grandmother, aunt and appellant. When they arrived thereat and upon regaining her senses, AAA told them that her Uncle Dodo was "yawa" and "bastos" (devil and uncouth).<sup>[14]</sup> She was later taken to the hospital for examination. The following day, accompanied by her parents, AAA went to the Mintal Police Station to report the incident.<sup>[15]</sup>

In her testimony, BBB presented AAA's birth certificate to establish that the latter was born on 22 April 1988 and was therefore only nine (9) years old at the time of the rape. She testified that on 11 January 1998, at around one o'clock in the afternoon, her husband, AAA and appellant went to Talandang Elementary School to help in the "Bayanihan" project. Her husband thrice returned to their house to get slabs of lumber for use in the school. When asked about AAA's whereabouts, he said that the latter went with appellant to her (BBB) mother-in-law's house.

Worried, BBB immediately proceeded to the said house but failed to find AAA and appellant thereat. She continued to search for them, all the while shouting and calling their names. Suddenly, AAA appeared from behind a thick shrub, running towards her and crying. Her dress was unzipped at the back and her underwear

lowered. AAA collapsed as she embraced BBB. Appellant soon after approached them from behind while buttoning his shirt. When asked what he did to AAA, appellant answered that she fell from the hill.

According to BBB, when the victim's shock receded, she heard her shout at appellant, uttering "yawa ka," "bastos ka," "isumbong tika ni papa" (you're a devil, uncouth, I will tell my father).<sup>[16]</sup> BBB took her daughter home and the latter complained of difficulty in urinating. AAA then told her that appellant made her lie on top of him and inserted his penis inside her vagina. BBB immediately brought AAA to the hospital. Thereafter, they proceeded to the Mintal Police Station.<sup>[17]</sup>

BBB claims that following appellant's arrest, the latter repeatedly asked for forgiveness and, after the case was already filed, even wrote them a letter begging for forgiveness.<sup>[18]</sup>

Prosecution witness SPO1 Kervin Magno, a police officer of Mintal police precinct, Tugbok, Davao City, identified appellant in open court, as well as the police blotter of AAA's complaint dated 11 January 1998.<sup>[19]</sup> The prosecution was unable to locate and present Dr. Daruesa, the physician who personally conducted the physical examination of the victim. Nonetheless, it submitted the doctor's examination report of AAA.

The defense presented appellant as its sole witness. In his testimony, appellant asserted that he could not remember having been with the victim on 11 January 1998 or any incident proximate to the date of his arrest.<sup>[20]</sup> However, appellant admitted that AAA was known to him since her birth and that she was a sickly child who suffered from periodic convulsions.<sup>[21]</sup>

The trial court found appellant guilty of rape and sentenced him to suffer the penalty of *reclusion perpetua*, to indemnify the victim for damages in the amount of P50,000.00 by way of civil indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages.<sup>[22]</sup>

Conformably with this Court's decision in *People v. Mateo*,<sup>[23]</sup> appellant's appeal by way of automatic review was transferred to the Court of Appeals. Finding no sufficient basis to disturb the finding and conclusions of the trial court, the appellate court, on 12 October 2006, rendered its decision affirming *in toto* appellant's conviction.<sup>[24]</sup>

Now, the case is with the Court again.

In his brief,<sup>[25]</sup> appellant makes a lone assignment of error, maintaining that the court *a quo* gravely erred in finding him guilty of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.

According to appellant, AAA simply stated that she lay on top of him while he was embracing her and trying to insert his penis into her vagina, without any showing from her narration that her legs were

ever spread apart. Thus, he concludes that it is inconceivable that he successfully

inserted his penis into her vagina in such a position.<sup>[26]</sup> Moreover, appellant avers that AAA's assertion that his penis penetrated her vagina for thirty (30) minutes is preposterous. If this were true, he argues, then AAA should have bled profusely considering that this was presumably her first sexual experience.<sup>[27]</sup> Thus, the defense maintains that assuming appellant was the one who molested AAA, he should only be convicted for acts of lasciviousness.<sup>[28]</sup>

We affirm the decision of the Court of Appeals.

Preliminarily, we note that the Information makes an erroneous designation of the statute violated and appears to have been drafted with the old rape law in mind even though Republic Act No. 8353 was then already in effect.<sup>[29]</sup> Nonetheless, the oversight has no detrimental effect on the sufficiency of the Information. There is no significant difference in the treatment of statutory rape of females under the old and new rape laws.<sup>[30]</sup> The allegations of force and intimidation in the Information are mere superfluities, since they are not constitutive of or elemental to statutory rape. The real nature of the criminal charge cannot be determined from the caption or preamble of the Information or from the mere reference to a particular provision of law alleged to have been violated because they are conclusions of law. On the contrary, it is determined by the actual recital of facts in the complaint or information.<sup>[31]</sup> Thus, an incorrect caption is not a fatal mistake.<sup>[32]</sup>

On the matter of the prosecution proving the charge beyond reasonable doubt, we find it pertinent to reiterate the settled rule that the determination of the competence and credibility of a witness rests primarily with the trial court,<sup>[33]</sup> because it has the unique position of observing the witness' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the assessments and conclusions of the trial court, the reviewing court is generally bound by the former's findings.<sup>[34]</sup>

In rape cases particularly, the conviction or acquittal of the accused, more often than not, depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime, it is generally unwitnessed and usually the victim is left to testify for herself.<sup>[35]</sup> Her testimony is most vital and must be received with the utmost caution.<sup>[36]</sup> However, when a rape victim's testimony is straightforward, unflawed by any material or significant inconsistency, then it deserves full faith and credit and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.<sup>[37]</sup>

In scrutinizing such credibility, jurisprudence has established the following doctrinal guidelines: (1) the reviewing court will not disturb the findings of the lower court unless there is a showing that it had overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that could affect the result of the case; (2) the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect and even finality as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testified in a clear, positive and convincing manner and remained consistent on cross-examination is a credible witness.<sup>[38]</sup>

Applying the principles to the instant case, we find AAA's narration of her harrowing experience trustworthy and convincing:

x x x

x

Atty. Olaguer:

Q Where were you on January 11, 1998?

A I was in school.

Q Where? What school?

A At Talandang Elementary School.

Q Who were you with in school at that time?

A I was with my father.

Q Did you not have any classes at that time?

A None.

Q Why were you in school together with your father?

A I went with him.

Q Were there any other persons in your school at that time?

A Yes, sir.

Q What time did you arrived (sic) in school at that time?

A 1:00 p.m.

Q What were you and your father doing in school together with the other people in school?

A They were doing carpentry job.

Q Why were they doing carpentry job?

A It was a school project.

Q What happened when you were there?

A I was send (sic) for an errand by my teacher.

Q Who was your teacher?

A Mrs. Ferolino

Q Where did she send you?

A To a store.

Q Did you go to the store?

A Yes, sir.

Q Who was your companion?

A I was alone.

Q After that, you went back to the school?

A Yes, sir.

Q After that, what happened next?

A Mrs. Ferolino asked me to tell my uncle Dodo to tell my