

## FIRST DIVISION

[ G.R. No. 149075, August 07, 2003 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RODRIGO  
BALLENO Y PERNETES, APPELLANT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

This is an appeal from the decision<sup>[1]</sup> dated January 17, 2001, of the Regional Trial Court of Pasay City, Branch 109, in Criminal Case No. 00-0408, finding accused-appellant Rodrigo Balleno y Pernetes guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

The Information reads:

That on or about the 18<sup>th</sup> day of March 2000, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of complainant AAA, a minor 13 years of age, with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with complainant against her will and consent.

Contrary to law.<sup>[2]</sup>

Upon arraignment, appellant pleaded "not guilty" to the crime charged. Trial on the merits ensued.

The facts of the case as established by the prosecution:

At 12:15 p.m. of March 18, 2000, thirteen year-old AAA was with her step-sisters, [REDACTED] and [REDACTED], inside the room of their home located at [REDACTED], Pasay City. Appellant Rodrigo Balleno, the live-in partner of AAA's mother, [REDACTED], entered the room and ordered [REDACTED] and [REDACTED] to go out.<sup>[3]</sup> When they were alone, appellant sat at the side of the bed where AAA was lying down. Then he touched her thighs, placed her hands on her back and covered her mouth. He then removed AAA's shorts and panties, lay on top of her and kissed her lips. He took off his shorts and inserted his penis into AAA's vagina who tried to push him away.<sup>[4]</sup>

AAA went to her friends, Tootie, Nanette and Mylene and related to them what happened. They accompanied her to the local barangay where she reported the incident. On the same day, barangay officials Luis Alintana, Efren Bais and Rogelio Basagre arrested appellant Rodrigo Balleno.<sup>[5]</sup> AAA executed her "Sinumpaang

Salaysay"[6] and submitted herself to a medical examination.[7]

Dr. Estela Guerrero Manalo, a physician assigned at the Child Protection Unit of the Philippine General Hospital, Manila, conducted a physical and genital examination on AAA on March 20, 2000. Her examination showed that the victim's external genitalia and hymen were normal.[8] There was no evidence of spermatozoa. She, however, claimed that it was possible that the victim was sexually abused even if the result of the examination showed a normal genital.[9]

In his defense, appellant denied the charge against him, and claimed that on March 18, 2000, he had a drinking spree at home with his cousin Lito Balleno and [REDACTED], uncle of AAA, from 11 a.m. to 1 p.m. They consumed three bottles of gin.[10] He admitted that he kissed AAA because the latter took care of his youngest child. Thereafter, AAA pushed him away and left. He fell asleep and was awakened by the barangay officials who arrested him. Appellant further alleged that the crime was imputed to him because AAA wanted her real father, [REDACTED], to be reunited with her mother.[11]

After trial, judgment was rendered against appellant, the dispositive portion of which reads:

WHEREFORE, for failure of the prosecution to prove the qualifying circumstance of stepparent relationship between the accused and the complainant, as alleged in the information, this Court finds the accused guilty for simple rape.

It would appear therefore that accused Rodrigo Balleno y Pernetes and the mother of the victim were not married to each other and therefore not the stepfather of the victim, hence, the Court finds the accused guilty of simple rape and hereby sentences him to *reclusion perpetua*. He is likewise ordered to pay civil indemnity in the amount of P75,000.00 and moral damages in the amount of P50,000.00 to the victim AAA with subsidiary imprisonment in case of insolvency.

SO ORDERED.[12]

In this appeal, appellant contends that:

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

The appeal lacks merit.

Appellant assails AAA's credibility by referring to the inconsistency between her testimony and her sworn statement. In her statement before the police, AAA stated that there was no insertion of the penis inside her vagina - "*Hindi ko naramdaman na naipasok niya kasi po sa may itaas po ng pepe ko ito naramdaman. Sa loob ng*

*labi ng ari ko.*"<sup>[13]</sup> In open court, however, she testified that appellant inserted his penis inside her vagina.<sup>[14]</sup>

It has been held that some discrepancies between the affidavit and the testimony of the witness in open court do not necessarily impair the credibility of her testimony, for affidavits are generally taken *ex parte* and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer.<sup>[15]</sup> An affidavit is not a complete reproduction of what the declarant has in mind because it is generally prepared by the administering officer and the affiant simply signs it after it has been read to him. In any case, open court declarations take precedence over written affidavits in the hierarchy of evidence. Unlike written statements, there is flexibility on the part of the questioner to adapt his questions to elicit the desired answer in order to ferret out the truth.<sup>[16]</sup>

In the case at bar, appellant has not shown any material discrepancy between the sworn statement and testimony of the victim that would seriously taint her credibility and warrant a reversal of the trial court's factual findings. Even assuming for the sake of argument, that there was no penile penetration of private complainant's vagina because her legs were not spread apart, it has been consistently ruled that the mere touching of the labia of the woman consummates the crime of rape.<sup>[17]</sup> Hence, the fact that no laceration and no ruptured hymen were found in this case, does not necessarily negate rape. The fact that the hymen was intact upon examination does not, likewise, belie rape, for a broken hymen is not an essential element of rape, nor does the fact that the victim remained a virgin exclude the crime. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, which the prosecution in this case was able to prove beyond reasonable doubt.<sup>[18]</sup> In any event, a medical examination is not essential in the prosecution of a rape case. A medical examination and a medical certificate are merely corroborative in character. They are not indispensable requirements for conviction, for what matters greatly is the clear, unequivocal and credible testimony of the victim.<sup>[19]</sup>

Similarly, it must be stressed that the absence of spermatozoa in the victim's sex organ does not disprove rape. It could be that the victim washed or urinated prior to her examination, which may well explain the absence of spermatozoa.<sup>[20]</sup>

Appellant contends that he could not have possibly raped AAA inside a room in a thickly populated squatter's area wherein a commotion can be easily heard by their neighbors and where houses were built close to each other. The argument deserves scant consideration. Lust is no respecter of time and place. Several times, we held that rape can be committed even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which, to many, would appear unlikely and high risk venues for its commission.<sup>[21]</sup>

Moreover, appellant's allegation that there was no force or intimidation because private complainant did not suffer injuries and her clothes were not torn is not well taken. The testimony of AAA established the fact that, through force and intimidation, appellant pinned her hands at her back, covered her mouth and

succeeded in abusing her. The absence of external signs of physical injuries does not prove that rape was not committed, for proof thereof is not an essential element of the crime of rape.<sup>[22]</sup> Settled is the rule that the force employed in rape need not be irresistible so long as it is present and brings the desired result. All that is necessary is that the force be sufficient to fulfill its evil end, or that it be successfully used; it need not be so great or be of such a character that it could not be repelled.<sup>[23]</sup> Indeed, the degree of force or intimidation required for the act to constitute rape is relative, and must be viewed in the light of the complainant's perception and judgment at the time of the commission of the offense.<sup>[24]</sup>

In the case at bar, AAA's testimony is clear, candid, straightforward and consistent. She had positively identified appellant as her malefactor. No ulterior motive was offered to explain why the victim would concoct a story charging appellant with the crime of rape. AAA testified:

Q: As a matter of fact, you do not treat your stepfather, the suspect in this case, as your father?

A: I consider him as my father.

X X X X X X X X

Q: Was it true that before this incident happened on March 18, 2000 your mother [REDACTED] and your stepfather has a serious quarrel?

A: No, sir.

Q: Your father [REDACTED] is not the friend of your stepfather, am I correct?

A: Yes, they are friends.

Q: They have quarreled before this incident, am I correct?

A: None.<sup>[25]</sup>

Time and again, we have consistently held that when a woman, more so if a minor, states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assaults to her person, open herself to examination of her private parts and later be subjected to public trial or ridicule if she was not, in truth, a victim of rape and impelled to seek justice for the wrong done to her.<sup>[26]</sup> Hence, we find no basis to depart from the well-settled rule that trial court's assessment of the credibility of complainant's testimony is entitled to great weight, absent any showing that some facts were overlooked which, if considered, would affect the outcome of the case.<sup>[27]</sup>

The Information alleged that appellant was the stepfather of the victim. This was inaccurate. The word "step", when used as prefix in conjunction with a degree of kinship, is repugnant to blood relationship and is indicative of a relationship by affinity.<sup>[28]</sup> Since appellant and the victim's mother were not married, no such relationship by affinity existed between appellant and the victim. The records indicate that the victim's mother, [REDACTED], and the appellant were "live-in partners,"