

## NINETEENTH DIVISION

[ CA-G.R. CR-H.C. No. 01420, January 30, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL NIETES QUIATCHON, ACCUSED-APPELLANT.**

### DECISION

**LAGURA-YAP, J.:**

Accused-appellant, Joel Nietes Quiatchon (appellant), appeals the Decision<sup>[1]</sup> dated November 17, 2011, rendered by the Regional Trial Court (RTC), Branch 10, San Jose in Crim. Case No. 05-10-7297 finding him guilty beyond reasonable doubt of the crime of Rape and sentencing him to suffer the penalty of *Reclusion Perpetua*.

#### Factual Antecedents

In an Information<sup>[2]</sup> dated October 14, 2005, the appellant together with Victor Omallao (Victor) were charged for the crime of Rape, the accusatory portion whereof reads:

“That on or about the 3<sup>rd</sup> day of June, 2005, in the Municipality of San Jose, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, did then and there, willfully, unlawfully and feloniously, with lewd design, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of AAA<sup>[3]</sup> a minor three (3) years of age against her will.

Contrary to the provision of Article 266-A in relation to paragraph (d) of the Revised Penal Code, as amended.”

On November 29, 2005, both Victor and the appellant were arraigned in the dialect known and understood by them. They both pleaded “Not guilty” to the offense charged.<sup>[4]</sup>

During pre-trial conference, the following facts were admitted:

“xxx.

1. Name of the Victim in this case AAA;
2. That the person listed in the information are same persons who are now in custody, namely Joel Nietes Quiatchon and Victor Omallo;

3. The medical certificate attached to the records of this case as to the findings of the medical specialist who conducted the medical examination of the victim of this case.<sup>[5]</sup>”

Thereafter, trial on the merits ensued.

On August 6, 2008, Victor died<sup>[6]</sup> of Pneumonia. Hence, the case against him was dismissed by the RTC in its Order<sup>[7]</sup> dated September 16, 2008.

### ***Version of the Prosecution***

The prosecution’s version of the facts as synthesized by the RTC and adopted by the Office of the Solicitor General (OSG) in its brief are as follows:

“[The victim], a four[-]year old complainant in this case identified the two accused, Joel Quiatchon and Victor Omallao alias “Unge” in open Court. While watching bats in the house of Joel, the latter took off her panty and pricked her vagina with his penis in the bedroom. Victor likewise pricked her vagina with his penis but both accused failed to penetrate her. After that they gave her one peso to buy “bandi”. She went home and told her mother of the incident but her mother just slept and did not get angry.

Their house is quiet (*sic*) near from the house of Joel and she went there by herself. She did not play with anyone but just stayed there to watch the bats. Joel has male companions in their house but she does not know them. She was scared because Joel pricked her in her vagina six times. He was with alias “Unge” that same afternoon. Upon telling her mama of the incident she just put her to sleep in their house. Her papa spanked her when told of the incident.

Dr. Menchu V. Diana, testified that she specialized in obstetrics and gynecology. She is a fellow in obstetrics and a gynecologist. On June 14, 2005 she recalled having treated [the victim]. She was referred to her for having purulent vaginal discharges for five days, meaning that the patient has vaginal discharges which are pus-like in nature. The color is like that of pus which is yellowish. It is her findings that the patient has vaginal infection which may be caused by viral or bacterial infection. The same could be acquired by contact of private organs and not in any other way. The urethral smear done in the Municipal Health Office showed the presence of numerous pus cells, gram negative, and diplococci (*sic*). In layman's language there is an indication of the presence of gonorrhea. The patient was first checked at the Municipal Health Office and was referred to her for further management. Urethral smear is different from urinalysis. In the former it is done by getting a sample from urethral discharges by getting fluid from the urine passage. It is an abnormal discharge if the color is pus-like or yellowish and the medical technologist do a gram staining of the discharge. The procedure is to get a cotton swab and get a sample from the urethra. The urethra is the opening where urine passes and the medtech puts it on a slide and places it under a microscope to identify whatever organism is present. Since the findings is purulent vaginal discharges she did a repeat smear to confirm the

presence of gram negative diplococci and the same was positive. Since the patient is only three years old, she was referred to Dr. Tanchuan, so that the management may be done by a pediatrician.

It is possible for an adult to commit sexual intercourse with a three-year-old but only [there was] erythematous introitus, meaning at the area of the opening of the vaginal canal since it was reddened during the examination. This could be due to the inflammation which can be caused by infection. Because of the smallness of the vaginal canal, there was no laceration, so it is possible that there was no penile penetration. However, infection can be introduced only at the opening of the vagina. The sexual organ of a male adult cannot go beyond the opening of the vaginal canal because of the discrepancy of the size of the sexual organs.

She had physical examination with patient only on June 14, 2005. Witness communicated with the patient but his (sic) companion answered for her as she was only three years old. It is stated in the referral from the Municipal Health Office that there were purulent discharges and the specimen was sent to the laboratory for examination, after which she concluded that there was infection. In her record there was no allegation of sexual contact. But it is unusual for a child of that age to have discharges and she suspected there was a physical abuse.

Witness said there was a positive finding and there was infection because upon examination there was erythematous introitus or reddening at the introitus. Introitus is between the labia majora and the labia minora. The cause of the infection could be either bacterial or viral infection. In a bacterial infection, the manifestation is more of discharges and in viral infection one can see blisters. That of the patient is more of bacterial infection. The referral of the Municipal Health Office stated that there was a gram stained result and there was a clear positive gram negative tissue or that gonorrhea has set in. In the Medical Certificate there was no finding as to sexual contact and she could not conclude if there was.

Because of the gram stain it is possible that there was sexual contact. The infection could have been transferred by sexual contact alone.

Marian Deliquina is the aunt and neighbor of the victim x x x. Her house is a few arms length from their house. Joel Quiatchon is known to her by being an operator of a beerhouse nearby. Alias "Unge" is also known to her by being a worker of Mr. Quiatchon. On June 3, 2005 at around 10:00 o'clock in the morning, she saw the victim playing on the ground wearing an underwear. Then came Joel Quiatchon who bought a bubble gum and invited the victim to watch TV. The victim followed him at the beerhouse and stayed there for quite a long period of time. When she came out of the beerhouse, she was no longer wearing a panty and when asked where her panty was, she replied that it is with her Lolo Joel. She did not mind since the child comes and goes to the house of the accused. She did not entertain any doubts in her mind at that time until June 10, 2005 when the mother of the victim complained after seeing a doctor that the child is suffering from something that would result to AIDS. That was the time she told the mother of the June 3, 2005 incident.

She [Marian] is close to [the victim] and the latter even addressed the accused as Lolo Joel. She saw the victim enter the house of Joel Quiatchon at 10:00 o'clock in the morning but did not see what actually happened to them inside. She again saw the victim after lunch. She was able to talk to the mother of the victim on June 10, 2005 about the child. The mother as well as the child told her that she was molested by Joel Quiatchon. The mother confided to her that the child has sexually transmitted disease and told her that the same was caused by Joel Quiatchon. That was when she told the mother of the June 3, 2005 incident.<sup>[8]</sup> (*Citations omitted*)

### ***Version of the Appellant***

In his defense, the appellant denied all the charges against him. He testified that it is improbable that he committed the incident since it is inherently impossible to have been committed in broad daylight, where he was busy attending to his business, like going to the market, cooking food and serving his customers. Also, he denied that the incident happened in the premises of his day and night club because it has no television set where the victim could have allegedly viewed it.<sup>[9]</sup>

The appellant's denial and the impossibility of its commission was corroborated in every material point by his wife Wenifreda Quiatchon, and his employer, Gilson Capistrano.<sup>[10]</sup>

After trial, the RTC rendered the assailed Decision<sup>[11]</sup> against the appellant, the *fallo* whereof is hereunder quoted:

**"WHEREFORE,** in view of all the foregoing, judgment is hereby rendered the accused Joel Nietes Quiatchon **GUILTY** beyond reasonable doubt of the crime of Rape, and imposing upon him a prison term of **RECLUSION PERPETUA**. He is further ordered to pay the victim AAA, P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages, and to pay the costs.

SO ORDERED." (*Bold letters in the original*)

Hence, this appeal.

### ***Assignment of Errors***

The appellant proffered the following:

I.

THE LOWER COURT, ERRED IN ABSOLUTELY GIVING DUE COURSE TO THE SPECULATIVE AND UNTRUTHFUL ASSERTIONS OF THE PROSECUTION WITNESSES AGAINST ACCUSED.

II.

THAT THE LOWER COURT GRAVELY ERRED IN CONVICTING THE

ACCUSED TO BE THE PERPETRATOR OF THE ALLEGED ACT AGAINST THE VICTIM, VIS-A-VIS THE FINDINGS OF THE DOCTOR. [12]"

### ***The Ruling of this Court***

In this jurisdiction, the testimony of the private complainant in rape cases is scrutinized with utmost caution. The constitutional presumption of innocence requires no less than moral certainty beyond any scintilla of doubt. This applies with more vigor in rape cases where the evidence for the prosecution must stand or fall on its own merits and is not allowed to draw strength from the weakness of the evidence of the defense. As an inevitable consequence, it is the rape victim herself that is actually put on trial. [13] The case at bar is no exception.

Anent the first assignment of error, the appellant asserted that the trial court committed reversible error in convicting him of the crime of Rape. He argued that there are material inconsistencies in the prosecution's narration of facts which proved that they were lying. In his brief, the appellant pointed out the following:

1. As early as June 3, 2005, AAA and her mother talked about the incident and no complaint ever existed on that day. During the cross examination, AAA categorically stated that it happened in the afternoon. However, in a sudden twist of facts, prosecution witness, Marian Deliquinia (Marian), the aunt of AAA, alleged that the incident took place at 10:00 A.M.
2. Marian testified that it was on June 10, 2005, that the mother of AAA complained that her child might be suffering of AIDS after seeing the doctor. That was also the time that she told the mother of the victim about the incident. Again, this a complete lie because as early as June 3, 2005, the mother was already aware of the incident per allegation of the victim herself. Also, there was no doctor's assistance that took place on June 10, 2005 because it is a matter of record that the treatment was done by Dr. Menchu Diana on June 14, 2005.

The factual issues raised by the appellant would not exculpate him.

It is a time-tested rule that the evaluation of the credibility of witnesses and their testimonies is best undertaken by the trial court, because it had the opportunity to observe them firsthand and to note their demeanor and conduct on the witness stand. For this reason, its findings on such matters, absent any arbitrariness or oversight of facts or circumstances of weight and substance, are final and conclusive upon this Court. [14]

In this case, contrary to appellant's assertion, We find that the inconsistencies raised by him merely refer to minor details and collateral matters which does not affect the credibility of the minor victim.

The rule is well-settled that inconsistencies in the testimonies of witnesses when referring only to minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the accused. Such minor inconsistencies