

EIGHTEENTH DIVISION

[CA GR CEB CR. HC. NO. 01657, February 26, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARLON EMPENADO, ACCUSED-APPELLANT**

D E C I S I O N

INGLES, G. T., J.:

The Case

This is an appeal filed by accused-appellant Marlon Empenado of the Decision^[1] dated April 15, 2013 of the Regional Trial Court, Seventh Judicial Region, Branch 24, Cebu City in Crim. Case No. CBU-85055 which found accused-appellant guilty beyond reasonable doubt of the crime of simple rape.

The Facts

Version of the Prosecution

Around 9:00 AM, on January 7, 2003, while AAA^[2] was on her way to Adlaon Integrated National High School, Cebu City to attend her classes, she met her father at a sari-sari store and told him that she would just skip classes because she had a toothache. AAA went home and along the way, she saw accused-appellant who tried engage her in a conversation. AAA, however, continued walking and ignored accused-appellant.

AAA heard accused-appellant's voice and she stopped to look back. Accused-appellant asked her if she had school that day. She only smiled because she had a terrible toothache. Accused-appellant then approached her and suddenly grabbed her hands, hit her abdomen and she lost consciousness for a short period of time. Nobody was on the road at that time to witness what happened. AAA was then carried by accused-appellant to the forest and was made to lie down. Accused-appellant then removed his clothes and proceeded to remove AAA's school uniform, skirt and underwear. Accused-appellant kissed AAA and touched her breasts while spreading her legs apart. She was helpless because accused-appellant was so strong. As accused-appellant spread AAA's legs, he inserted his penis inside AAA's vagina. He pushed and pulled several times for about one minute until AAA's vagina bled. After accused-appellant finished, he threatened to kill AAA if he would report the incident to anyone. Accused-appellant then dressed himself and he gave AAA her clothes.

AAA put on her clothes, went home and was seen by Nina Menoza, her neighbor who asked her why she was crying and why her uniform was so dirty. AAA told Nina that she was raped. They both went to AAA's house where AAA reported to her

mother that she was raped.

AAA and her mother reported the incident to Barangay Councilors Esterlita Pador and Maria Elena Arejoal and Barangay Tanod Romeo Minoza. The barangay officials advised AAA and her mother to report the incident to the Police Women's Desk at the police station located at Gorordo, Cebu City. On their way to the police station, they met several people and overheard that the same person who allegedly raped the girl was already confined at the hospital because he was wounded.

In the afternoon of the same day, they proceeded to Cebu City Medical Center to verify the report they received regarding the suspect. Upon the permission of the security guards, AAA and her mother, together with the barangay officials entered the emergency room where accused-appellant was lying in one of the beds. AAA positively identified accused-appellant as the rapist. The barangay officials then contacted the Gorordo Police Station and informed the police officers that they had already seen accused-appellant and was identified by the victim. They requested for a policeman to watch accused-appellant since they would be going to Vicente Sotto Memorial Medical Center for AAA's physical examination. However, they were advised to leave behind Barangay Tanod Romeo Minoza since there was no available police man at that time.

On January 7, 2009, Dr. Marianne Naomi Poca of Vicente Sotto Memorial Medical Center conducted a physical and internal examination on AAA and issued a Medical Certificate with the following remarks:

"Tanner 4, redundant contusion from 4 o' clock to 6 o' clock, fresh laceration at the 6 o' clock position"

The Charge

In the Information^[3] dated January 8, 2009, accused-appellant was charged with rape, as follows:

"That on or about the 7th day of January, 2009, at about 8:00 o'clock in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a minor of only 17 years of age, by grabbing, punching her, hitting on her stomach and forcibly removing her clothes and lay on top of her and inserted his penis into the vagina of said AAA without her consent and against her will.

CONTRARY TO LAW."

Subsequently, accused-appellant was arraigned and pleaded "not guilty" to the crime charged.

Trial ensued. The prosecution presented the following witnesses: AAA, AAA's mother, Dr. Marianne Naomi Poca and Esterlita Pador while only accused-appellant testified in his defense.

Version of the Defense

Accused-appellant testified that he tills the land of a certain Nalida and on January 7, 2009, around noon time, he was tilling a portion of the land along the road located at sitio Tagaytay. He narrated that he was suddenly shot by two unknown assailants and the bullet hit him on his left lower arm which passed through his left cheek bone. Accused-appellant was shot once but was hit twice. He attested that he recognized their faces. Accused-appellant rolled towards the canal while the assailants fled. Subsequently, several persons on board five motorcycles arrived. He then asked for their help but they took turns in mauling him instead. He was shocked that they ganged up on him. His left eye was partially shot and his vision blurred. The next time he knew, he was already in the hospital. When he woke up, a man approached and suddenly boxed him. Accused-appellant identified the man as the father of the girl who charged him of rape. Incidentally, the person who shot him was also there which gave him the opportunity to identify his assailant.

The RTC Ruling:

On April 15, 2013, the Regional Trial Court, Seventh Judicial Region, Branch 24, Cebu City, rendered a Decision against accused-appellant, the pertinent portion of which is as follows:

"IN VIEW OF THE FOREGOING, the court finds accused Marlon Empenado GUILTY beyond reasonable doubt of the crime of Simple Rape in accordance with par. 1(a) of Art. 266-A of the Revised Penal Code, as amended. He is therefore sentenced to suffer the penalty of an imprisonment of reclusion perpetua.

Actual and moral damages are awarded in the amounts of Fifty Thousand Pesos (P50,000.00) for each kind.

Let a mitimus be issued transferring his commitment at the New Bilibid Prisons, Muntinlupa City. His period of preventive imprisonment shall be credited in his favor.

SO ORDERED."

Aggrieved, accused-appellant now comes to this Court seeking a reversal of his conviction and assigning as sole error, thus:

"THE COURT A QUO ERRED IN PRONOUNCING THE GUILT OF MARLON EMPENADO DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

THIS COURT'S RULING:

Accused-appellant contends that the court a quo erred in finding him guilty beyond reasonable doubt in view of the alleged victim's questionable credibility. He points out that standing alone, the victim's narration of the incident seemed flawless. Accused-appellant claims that the description itself given by the victim foreclosed the probability of the complained incident. Pertinent is the following testimony:

"Atty. Mira: (To witness – cross-examination)

Q: For your house in Gubangbukid to your school, you traversed usually in street, am I correct?

A: Yes sir.

Q: Now, you said to this Honorable Court that the incident, according to you, that you were raped occurred in this street that you usually take in going to school, am I right?

A: Yes.

Q: In fact, this street that you usually passed by, Miss AAA, is also the same street used by schoolmate of yours?

A: Yes.

Q: You testified before this Honorable Court, Miss AAA, that the incident you narrated occurred at around 8:00 in the morning, am I right?

A: More or less.

Xxx xxx xxx

Atty. Mira:

Q: Your father, am I correct, AAA, traversed the same street you usually passed by going to school, am I correct?

Witness: A: Yes.

Q: So, this street you are saying to us is the street usually used by many persons?

A: Yes.

Q: This is a barangay road specifically, AAA, am I correct?

A: Yes sir.

Q: 8:00 in the morning many people would usually used that street going to school and going to their work, am I correct?

A: Yes."

TSN, January 11, 2010, pp. 4-5

From the foregoing, accused-appellant posits that the incident described by the victim is highly suspicious. The alleged victim testified that when accused-appellant grabbed her from behind, she put up a resistance which proved futile to his strength. Accused-appellant avers that a rape incident usually commences with aggression resulting to the consummation of the assailant's bestial desire but this is true only in a place where aid is non-existent or at least, remote. As opposed to this scenario, the incident described by the victim occurred in a place where assistance is readily available – a crowded place where the victim is a resident herself. Thus, accused-appellant insists that it is in itself a deterrent to any sexual aggression against the victim.

Further, according to accused-appellant, the narration becomes even more immensely suspect after the victim admitted that the sexual assault was done merely ten feet away from said roadside which was frequently crowded, preventing any violent sexual aggression.

It is also the contention of accused-appellant that the bare statements of the victim that she was sexually assaulted or raped by him are insufficient to establish his

guilt. Whatever may be the motive or lack thereof or its reason, cannot be the basis for drawing the conclusion that her statements are truthful and any inference to the contrary is immediately brushed aside on the principle that the burden of proof lies with the prosecution to prove the guilt of the accused. Accused-appellant insists that he cannot be penalized for failing to prove motive on the part of the victim to falsify herself. Hence, accused-appellants asserts that the court a quo erred in relying on the victim's statements devoid of any corroborative evidence. The testimony of the offended party in a rape case should not be received with precipitate credulity for the charge can easily be concocted.

There is no merit in the appeal.

Simple rape is committed under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age (statutory rape) or is demented.^[4]

In reviewing rape cases, We are guided by the following principles: (1) to accuse someone of rape is easy, but to disprove it is difficult though the accused may be innocent; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.^[5] Corollary to these is the dictum that where a victim of rape says that she has been defiled, she says in effect all that is necessary to show that rape has been inflicted on her, and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.^[6] In the light of these principles, we examined the testimony of the victim and found no reason to overturn the trial court's assessment of her credibility.

In rape cases, the issue more often than not, is the credibility of the victim. Rape is generally unwitnessed and very often, the victim is left to testify for herself. Her testimony is most vital and must be received with utmost caution. AAA's testimony of the narration of events leading to her rape was correctly found by the trial court to be positive, categorical and straightforward. She did not waiver in her account of her experience under the grueling cross-examination.

Accused-appellant's argument that the place where the victim was allegedly raped, ie. frequently crowded with passers-by and near the road does not mean that rape is automatically improbable. AAA testified that she was dragged ten feet from the road where there were no inhabitants and no one could hear her pleas for help. However, in ***People vs Malana, GR No. 185716, September 29, 2010***, the Supreme Court held that rape can even be committed in the same room with the rapist's spouse or where other members of the family are also sleeping,^[7] in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission. Lust, it has been said before, is apparently no respecter of time and place. Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.^[8]

Likewise, the alleged inconsistencies in AAA's testimony do not weaken her