

TWENTY-THIRD DIVISION

[CA-G.R. CR HC No. 01112, January 23, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GEORGE SANTILLAN Y VELEZ, ACCUSED-APPELLANT.**

D E C I S I O N

LLOREN, J.:

This is an appeal from the Decision^[1] dated August 17, 2012 of the Regional Trial Court of Cagayan de Oro City, 10th Judicial Region, Branch 22, convicting the accused-appellant George Santillan y Velez of the crime of Rape, the dispositive portion of which is quoted as follows:

"WHEREFORE, the foregoing premises considered judgment is hereby rendered finding the accused GEORGE SANTILLAN y VELEZ GUILTY beyond reasonable doubt for the crime of rape, and accordingly, he is hereby sentenced to suffer the penalty of reclusion perpetua, and he is also ordered to pay "AAA", P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

SO ORDERED."^[2]

The facts as culled from the records:

In an Information^[3] dated January 6, 2003, the appellant was charged of the crime of rape committed as follows:

"That on January 01, 2004 at more or less 2:00 o'clock dawn at Parola, Macabalan, Cagayan de Oro City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, step-father of the victim by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge of the offended party "AAA",^[4] eight (8) year old minor, his step-daughter without her consent and against her will.

Contrary to and in violation of Article 266-A (formerly Article 335) of the Revised Penal Code as amended by R.A 8353 otherwise known as the Anti-Rape Law of 1997."

When arraigned, the appellant, duly assisted by counsel, pleaded "Not Guilty" to the charges. Thereafter, trial on the merits ensued.

Version of the Prosecution

The version of the prosecution is summarized by the Office of the Solicitor General⁵ as follows:

"At around 2:00 o'clock in the early morning of January 1, 2004, private complainant was outside of their house at Parola, Macabalan, Cagayan de Oro City as her father, appellant in the instant case, and her mother were having a quarrel. Consequently, her mother also went outside of their house.

After her mother went outside, private complainant went inside their house to drink water. Unfortunately, appellant suddenly grabbed her and pulled her into the bed. Appellant then removed private complainant's panty and touched the latter's vagina. Afterwards, appellant removed his pants and inserted his finger into the private complainant's vagina. Appellant also inserted his penis into private complainant's private part. Appellant then made a rapid pumping motion as private complainant felt excruciating pain. All the while, private complainant could not resist appellant's sexual advances because appellant was so strong and the latter held her tightly. Private complainant could not also shout for help because appellant covered her mouth.

After doing the pumping motion, semen came out from the penis of appellant. Appellant then warned private complainant not to tell her mother about the incident or else he will cut off their heads and throw them to the sea. Despite said threat, however, private complainant told her mother about the incident. Consequently, they proceeded to the police station to report what just happened.

[Citations omitted]

Version of the Defense

In his defense, the appellant denied the accusation against him and testified that he did not rape AAA. At about 6:00 in the evening of December 31, 2003, he and his wife BBB went to Floramae's house for the new year's party. As it was a party, they had their drinking session. At about past 7:00 in the evening he asked his wife BBB to fetch AAA but she was not able to return until the next day. After the party, he went to the seashore where his pump boat was and slept there. At past 10:00 in the morning, he was awakened by BBB and AAA for him to take his breakfast but he just told them to go ahead because he was still sleepy. He woke up at around 3:00 in the afternoon and then went to eat in Floramae's house. After eating, he went back to the seashore to paint the boat of his companion and while doing that, around five (5) policemen approached him. With their guns pointed at him, they asked if he was Mr. Santillan, to which he answered "Yes". He was then invited to the police station. The following day, he came to know that he was charged of rape, and it was not BBB who filed the case, but rather her sibling CCC.^[7]

After trial, the court *a quo* rendered the assailed ^[8]. On appeal, the appellant assigns the following as lone error:

THE COURT A *QUO* ERRED WHEN IT CONVICTED THE APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.^[9]

The Ruling of this Court

We sustain the conviction.

Art. 266-A of the Revised Penal Code, states to wit: Rape: When and how committed

Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Based on the foregoing, all elements of rape were duly alleged and proved during the trial.

The appellant claims that AAA's testimony failed to meet the test of credibility.^[10] However, We have meticulously examined the records as well as the transcripts of stenographic notes and find no cause to overturn the findings of fact of the trial court. The relevant portion of AAA's testimony^[11] is as follows:

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Q: Do you still remember where are you on January 1, 2004, at more or less, 2:00 o'clock dawn?

A: Yes.

Q: Where are you at that time?

A: I was outside.

Q: Outside of what?

A: Outside at the back portion of our house.

Q: At Parola, Macabalan?

A: Yes.

Q: What happened when you were there outside at the back portion of your house at Parola, Macabalan?

A: My mother and my father were having a quarrel at that time.

Q: And what else happened, if you can remember?

A: My mother were (sic) outside also.

Q: Outside your house?

A: Yes.

Q: After your mother went outside your house, what did you do?

A: I went inside our house.

Q: Why did you go inside your house?

A: I went inside to drink water.

Q: Were you able to drink water at that time?

A: No.
Q: Why?
A: Because my father grabbed me.
Q: What else did your father do to you after that?
A: He removed my panty.
Q: Your father according to you grabbed you and pulled you to what place?
A: To the bed.
Q: And what happened when you were already in the bed?
A: He mashed my vagina.
Q: Before your father mashed and touched your vagina, what happened to your panty you were wearing at that time?
A: He removed by panty.
Q: And after your father removed your panty, what did he do to his pants?
A: He also removed his pants.
Q: You said that your vagina was touched and mashed by your father, what did he do to your vagina?
A: He inserted his finger into my vagina.
Q: After he inserted his finger into your vagina, what else did he do to you?
A: He inserted his penis into my vagina.
Q: What else did he do to you?
A: His penis was not able to penetrate into my vagina.
Q: What else did he do to you because according to you his penis does not able to penetrate your vagina?
A: He made a pumping motion rapidly.
Q: Now, what did you feel as far as your vagina is concerned when you step father made that rapid pumping motion in you?
A: I felt pain.
Q: You said that the penis of your step father was not able to penetrate your vagina? Do you know what part of your vagina was penetrated?
A: No.^[12]

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Q: Assuming if this is your vagina, what part of your vagina was hit by the penis of your step father?
A: (Witness is pointing to the hymenal orifice)^[13]

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Q: Now, you told the honorable court that your step-father make a rapid pumping motion by push and pull movement in your genitalia, what happened after that?
A: Something came out from his penis.
Q: What is that something, if you can describe?
A: Semen.
Q: After that, what happened?

A: He told me.
Q: What did he tell you?
A: He told me that if I will tell my mother about the incident, he will cut our heads.
Q: Whom is she referring as the head, your head or what?
A: My head and my mother's head.^[14]

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Q: What else did he tell you after he told you to cut your head?
A: He told me that our head will be thrown to the sea of Punta Gorda.^[15]

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Q: On January 1, 2004, please tell the honorable court how old are you then?
A: I am seven years of age.^[16]

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Based on the foregoing, AAA narrated vividly and unequivocally how appellant sexually assaulted her. AAA's testimony was corroborated by the findings of Dr. Agnes Cagadas^[17] who examined AAA.

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Q: Will you please tell us how you examined the person AAA?
A: I did the physical examination and also examined her genitalia.
Q: And what did you find in your examination?
A: The only remarkable finding is the healed laceration at six o'clock.
Q: What was the age of the child at that time?
A: She was eight (8) years old.
Q: Is it possible that when she was sexually abused at 8 years old and up to the time she was examined, it was healed?
A: Possibly.
Q: What did you ask her the first time?
A: I asked her, "What happened?"
Q: What did she tell you?
A: She answered in the vernacular that the suspect brought her to "ilaya" and he "intercourse me." (sic)
Q: Did she reveal the name of the suspect?
A: Yes sir. She said Boy Santillan.^[18]

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