

## ELEVENTH DIVISION

[ CA-G.R. CR HC No. 05969, April 23, 2014 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANNY BANAYAT Y ZAMORA, ACCUSED-APPELLANT.

LANTION, J.A.C., J.:

Before Us is an appeal from the Judgment<sup>[1]</sup> dated 02 February 2012 of the Regional Trial Court of Urdaneta, Pangasinan, Branch 49 ("**court a quo**" for brevity) in Criminal Case No. U-15922, the dispositive portion of which is as follows:

"WHEREFORE, this Court finds the accused Danny Banayat y Zamora guilty beyond reasonable doubt of the crime of rape under Article 266-A of Republic Act 8353.

Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Accused is ordered to indemnify the offended party AAA,<sup>[2]</sup> the amount of Fifty Thousand Pesos (P50,000.00) and to pay her Fifty Thousand Pesos (P50, 0000.00) as moral damages.

Accused is ordered committed to the Bureau of Corrections, Muntinlupa City for the service of his sentence without unnecessary delay.

SO ORDERED."

#### THE FACTS

Accused-appellant Danny Banayat y Zamora ("**accused-appellant**" for brevity) was charged with the crime of Rape in an Information, which states that:

"That on or about 10:00 o' clock in the evening of November 11, 2008 at Brgy. Cabanban, Manaoag, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, while armed with a knife, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said AAA, a minor, sixteen (16) years old, against her will and without her consent to her damage and prejudice.

CONTRARY to Article 266-A, paragraph 1(a) in relation to Article 266-B paragraph 2 of the Revised Penal Code as amended, by R.A. No. 8353 (The Anti-Rape Law of 1997)."<sup>[3]</sup>

When arraigned on 02 April 2009, accused-appellant pleaded "NOT GUILTY" to the offense charged.<sup>[4]</sup>

During the pre-trial conference on 12 May 2009, the parties arrived at the following stipulations:

- “1. The identities of the accused and the private complainant;
2. The due execution and veracity of the medico-legal report issued by one Dr. Marlene A. Quimboy of the Region I Medical Center, Dagupan City to AAA;
3. The due execution of the sworn statement of the private complainant which shall serve as her direct testimony if summoned at the trial, without prejudice to supplemental direct and cross examination;
4. The private complainant was then a minor at the time of the incident in question being 16 years old;
5. The amount of P100,000 shall be awarded to the private complainant as civil indemnity in the event of judgment of conviction.”<sup>[5]</sup>

Trial commenced thereafter.

The Prosecution's version is synthesized by the Office of the Solicitor General in this wise:

“On 11 November 2008 at around 8 o' clock in the evening, AAA asked permission from her father to attend the wake of one Benigna Velora with her friend. At around 10 o' clock in the evening, she went to a store to buy some snacks to fill her hunger.

It was at the store where she saw appellant, a long time neighbor, drinking “Red Horse.” At around 11 o' clock in the evening, AAA went back to the wake. It was at this instance where appellant forcibly dragged her, threatened her with a knife and brought her to an abandoned house owned by one Tessie Estrada.

Appellant undressed himself and took off AAA's pants and panty. Then appellant forcibly inserted his penis into AAA's vagina. Thereafter, AAA was warned and threatened by appellant that he will kill her if she told anyone about the incident, which prevented AAA from informing her parents. Since AAA was not feeling well, she eventually told her grandmother about the incident. Then they reported the matter to Brgy. Captain Benjamin Castillo (AAA's Sworn Affidavit dated 17 November 2008; Records, p. 6, 109; RTC Judgment, p. 2; TSN, 03 August 2009, pp. 4-7; 14 September 2009, pp. 3-6; 05 November, pp. 2-3)

AAA underwent medical examination at the Region I Medical Center in Dagupan City, the findings of which revealed “fresh erythematous abrasion at perihymenal area, ten o' clock position,” and fresh erythematous abrasion at four o' clock position,” and “fresh laceration at six o' clock and ten o' clock position” (*Medico-Legal Report dated 17 November 2008; Records, p. 8*).<sup>[6]</sup>

The Prosecution then submitted its formal offer of evidence consisting of the following: a) Sworn Statement of AAA; b) Certification of the Police Blotter Entry No. 161 issued by the PNP Manaoag Police Station; c) Medico Legal Report prepared by

Dr. Marlene A. Quimboy; and d) Social Case Study Report conducted by the Local Municipal Social Welfare & Development Officer of Manaoag, Pangasinan on AAA.<sup>[7]</sup>

Accused-appellants' version, on the other hand, is as follows:

"On November 11, 2008, DANNY BANAYAT [herein accused-appellant] was at his grandmother's wake. At 8:00 o' clock in the evening, he never saw AAA at the wake.

He vehemently denies the allegations that he dragged AAA to an abandoned house and raped her. He was wondering why he was being charged of rape because he did not have any misunderstanding with AAA prior to November 11, 2008. As far as he knows, it was his Uncle who had a misunderstanding with AAA's father.

Around 10:00 o' clock in the evening of November 11, 2008, MAGDALENA GARCIA was at the store when Danny came and drank two (2) bottles of Red Horse. After a while, a girl arrived with a male companion. The girl is known as Mayang whose real name is AAA. They brought from her {Magdalena Garcia} two (2) bottles of Red Horse. Likewise, she noticed that the two were displaying an amorous relationship. After they finished drinking the beer, the two [AAA and her companion] left. At around 11 o' clock in the evening, Danny left home and nothing else happened after."<sup>[8]</sup>

On 10 November 2011, the case was deemed submitted for decision considering that the Defense had no documentary exhibits to formally offer.<sup>[9]</sup>

On 02 February 2012, the court *a quo* issued the herein assailed Judgment,<sup>[10]</sup> convicting accused-appellant of the crime of Rape.

Hence, this appeal.

#### ASSIGNMENT OF ERRORS

Accused-appellant seeks his acquittal based on the following grounds, *viz*:

##### I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

##### II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE UNRELIABILITY OF THE PRIVATE COMPLAINANT'S TESTIMONY.<sup>[11]</sup>

#### OUR RULING

Accused-appellant alleges that the Prosecution failed to prove his guilt beyond

reasonable doubt for which he deserves an acquittal. He avers that the element of force and intimidation is wanting as the victim merely "narrated that the accused was armed with a bladed weapon which was a knife, but as to how the knife was used to threaten her, it was not revealed." He further alleges that AAA failed to categorically describe how accused-appellant "communicated fear" to her.<sup>[12]</sup>

Article 266-A of the Revised Penal Code, as amended by R.A. 8353, defines when and how the felony of rape is committed, to wit:

Art. 266-A. 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 is otherwise unconscious;

2. By means of fraudulent machination or grave abuse of authority;

When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

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.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>[13]</sup>

Here, accused-appellant is being charged of the crime of Rape for having carnal knowledge of AAA through the use of force or intimidation.

In her *Sworn Statement*,<sup>[14]</sup> which was adopted as her direct testimony,<sup>[15]</sup> AAA narrated how accused-appellant had carnal knowledge with her through force or intimidation, to wit:

"Q: And so, will you narrate, how was (sic) the incident happened?

A: At around 8:00 o' clock in the evening of November 11, 2008, I asked permission from my father to attend on (sic) the wake of Benigna Veloria, at around 10:00 o' clock in the evening I felt hungry so I decided to