

SECOND DIVISION

[CA-G.R. CR. No. 35218, November 21, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LEONARDO BALLOT Y TOLENTINO, ACCUSED-APPELLANT.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated November 25, 2010 of the Regional Trial Court, National Capital Judicial Region, Branch 48, Manila in Criminal Case No. 09-265801 for Rape, entitled "*People of the Philippines, Plaintiff, vs. Leonardo Ballot y Tolentino, Accused.*", the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt for the felony of RAPE and he's sentenced to suffer prison term of 4 years, 2 months of *prison correccional* as minimum to 10 years as maximum of *prison mayor* and to pay the costs.

Accused is ordered committed to the National Bilibid Prison. The BJMP Manila is ordered to commit him at the National Penitentiary without unnecessary delay.

SO ORDERED."

The facts are:

Accused-appellant Leonardo Ballot y Tolentino alias "Lenny" (Ballot for brevity) was charged^[2] with Rape under Article 266-A, paragraph 2 of the Revised Penal Code (RPC) in relation to Republic Act No. 8353 (The Anti-Rape Law of 1997), committed as follows:

"That on or about December 23, 2008, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with lewd design and by means of force and intimidation, commit sexual assault upon said AAA,^[3] by then and there inserting his penis into her mouth and rubbing his penis to the latter's vagina, against her will and consent."

Contrary to law."

In the evening of December 23, 2008, the victim's father, BBB, through the help of the police, apprehended accused-appellant Ballot who was initially detained at the

Pandacan Police Station, and later transferred to the Manila City Jail.^[4] Upon arraignment on February 3, 2009, accused-appellant Ballot pleaded not guilty to the offense charged.^[5] At the Pre-trial conference held on February 24, 2009, the identity of accused-appellant Ballot as the person charged in the case was admitted.^[6]

Thereafter, trial on the merits ensued.

The prosecution presented BBB^[9], the victim, AAA, SPO2 Josette G. Saturnino and Dr. Merle Tan, as witnesses.

BBB, the victim's father, testified^[7] that: AAA is his daughter as shown in the latter's Certificate of Live Birth^[8]; he knows accused-appellant Ballot, and he identified him in open court^[9]; accused-appellant Ballot is his Brother-in-Christ as they are both members of the religious organizations, Knights of Columbus^[10] and the Holy Name Society under the Most Holy Trinity Parish; he hired accused-appellant Ballot to help him in his lubricant business and they agreed that his salary would be Php5,000.00 with free board and lodging; he hired him as a stay-in staff because accused-appellant Ballot used to live in the slum area, and he thought that the latter's presence in his house would help protect his family in his absence since only his eight (8)-year old daughter, AAA, the maid and himself are living in the house; on December 23, 2008, at around 6:00 o'clock in the evening, he, AAA and accused-appellant Ballot went to his warehouse in Sampaloc; while he was in the warehouse, he bumped into his former housemaid, Beth, who told him that she witnessed accused-appellant Ballot molesting AAA; upon learning about this, he brought AAA to his room in the warehouse and asked her about what accused-appellant Ballot did to her; AAA told him, "*pinasubo daw ang ari nya sa bibig nya*" and accused-appellant Ballot also lifted the skirt of AAA and rubbed his organ on her organ; when he heard AAA's reply, he wanted that accused-appellant Ballot be arrested; so he asked his son to accompany them back to their house in Pandacan; when they reached the house, he made up a story that he was fetching someone at the airport but when he left he enlisted the help of his friend, Col. Rodrigo Bonifacio, and they went to the Pandacan Police Station; he texted his son to make sure that accused-appellant Ballot was still in their house, then he took the police with him to have the latter arrested; he told accused-appellant Ballot about his complaint when he was arrested by the police; accused-appellant Ballot replied that he did not mean to do what he did, and said, "*nademonyo ako, di ko alam kung ano pumasok sa akin.*"; on December 24, 2008 he brought AAA to the Child Protection Unit at the Philippine General Hospital to file their complaint with the Social Worker; on the same day, AAA was interviewed and examined^[11]; and, on December 25, 2008, he executed an affidavit in relation to the case, "*Salaysay ng Pagkakadakip*^[12]", which he also identified.

On cross-examination he disclosed^[13] that: the entries in the Certificate of Live Birth presented in court are not all true because he is not AAA's biological father; AAA is the daughter of his niece and he adopted her when she was six (6) months old; he reared AAA as his own daughter ever since she was placed in his custody; the date of birth^[14] of AAA is an information supplied to him by his niece, and he has no personal knowledge as to whether AAA was actually born on such date.

AAA, the victim testified^[15] that: she is eight (8) years old, an elementary student, and can read Tagalog and English; she is a Catholic, she goes to church, believes and relies on God to solve their problems; she can tell what is right from what is wrong; she did not celebrate her birthday^[16] in 2008 because she had to see a doctor after her Tito Leny (referring to accused-appellant Ballot, whom she identified in court^[17]) asked her to rub, hold and suck his penis; the incident happened in the early morning of December 23, 2008, near the dirty kitchen while accused-appellant Ballot was cooking and she was looking at what he was cooking; accused-appellant Ballot put down his zipper and brought out his penis; she saw his penis, it was color brown with pubic hair; then, he ordered her to put his penis into her mouth ("*pinasubo*"); his penis was stiff, and at least an inch of his penis was inserted into her mouth (using a ball pen as a reference for length); he was standing at a distance of about two (2) feet while she was on bended knees when he inserted his penis into his mouth; then, he lowered her panty up to her knees and asked her to rub his penis ("*pinakiskis*") on her vagina; she was asked to stand facing him and bend her knees as he rubbed his penis on her vagina; he forced her to do said acts, and he was holding her waist as the incident happened; she was angry at accused-appellant Ballot because what he did to her was bad and she wanted him to be incarcerated; after the incident, accused-appellant Ballot went upstairs to get his clothes from his room and then he proceeded to the comfort room; in the afternoon of December 23, 2008, she went with her father and accused-appellant Ballot to the warehouse; while she was there, she had a conversation with her father about what happened to her; after this conversation, they proceeded to the Pandacan Police Station where a policewoman investigated what happened to her; and, at the police station, she also executed an affidavit^[18] relative to the case which she identified.

On cross-examination, she stated^[19] that: she was in the kitchen of their house in Pandacan on December 23, 2008 and she was looking at accused-appellant Ballot who was then cooking, but, she could not remember what he was cooking; there were five (5) people, including her, in the house at the time the incident happened; the size of the kitchen is 2x4 meters, while their house is 4x8 meters big; the kitchen is located inside their house; the "*sala*" and the kitchen is divided by a wall ("*harang*"); because of the dividing wall, it is not easy for the people to see what is happening inside the house; she stayed in the kitchen for only a while; accused-appellant Ballot asked her to put something in her mouth; she had not seen, smelled, nor tasted that object before; the object reached her tongue a little, but she does not know its taste; she does not know what that object is and nobody told her that the object is a penis, but she knows that what was inserted in her mouth was a penis.

On re-direct examination, she maintained^[20] that: when the incident happened there were people in the kitchen and in the living room, and accused-appellant Ballot was cooking dinner but she does not remember what he was cooking.

SPO2 Josette G. Saturnino (SPO2 Saturnino for brevity) is the police officer from Pandacan Police Station No. 10 who handled the case,^[21] and she was presented as a witness to identify^[22] the documents she prepared for inquest such as the "*Sinumpaang Salaysay*^[23]" of AAA, the "*Salaysay ng Pagkakadakip*^[24]" executed by BBB, and the Booking and Information Sheet^[25] regarding the arrest of accused-appellant Ballot.

During cross-examination, she stated^[26] that: she merely prepared the documents for inquest but had no participation in the arrest of accused-appellant Ballot; it was the father of the victim, BBB, who arrested accused-appellant Ballot; the case was referred for inquest to the inquest fiscal; rape cases in relation to R.A. No. 7610 and cases of warrantless arrest where the perpetrator was caught *in flagrante delicto* are usually referred for inquest; she has no personal knowledge of the case; and, the accused-appellant Ballot was detained.

Dr. Merle Tan (Dr. Tan for brevity) is the doctor from the Child Protection Unit of the Philippine General Hospital (CPU-PGH) who examined the victim, AAA, on December 24, 2008.^[27] During her direct examination, Dr. Tan identified her Medical Report^[28] and testified^[29] that: she conducted a medical interview and a thorough physical examination including ano-genital examination on AAA on December 24, 2008 with the consent of the latter's father, who brought her to their office; during the medical interview, she only asked the name of AAA, her age, where she goes to school, and whether she was already interviewed by the police; for the general physical examination, she looked at the whole body of AAA, the hands, eyes, ears, nose including the genitalia, and she did not find any injury or bruises on AAA's body; likewise, no injury was found on the external genitalia and hymen of AAA; this notwithstanding, the medical evaluation does not rule out sexual abuse because there are "non-contact" forms of sexual abuse (like taking pictures of the victim's body, showing pictures to the victim, or asking the victim to undress and looking at the victim's naked body) which usually do not leave any injury on the victim's body, thus there is a need for further investigation, such as witnesses accounts or a careful questioning of the child is required.

Meanwhile, accused-appellant Ballot was the sole witness for the defense, and he testified^[30] that: he was a stay-in employee at the house of Brother BBB, and he was told that he would be the caretaker of a warehouse which BBB is building for the latter's use in his oil business; but he worked as a painter for Brother BBB for less than a month; he was at BBB's home in the morning of December 23, 2008 because he slept there and he lived there; aside from him, Brother BBB also employed a helper, the babysitter of AAA; around noontime on December 23, 2008, he went with AAA and BBB to the latter's warehouse in Sampaloc and stayed there until 5:00 o'clock in the afternoon; at around 6:00 o'clock in the evening, they went back to BBB's house in Pandacan on board the latter's vehicle; he was at the back of the house, getting an oil container when the police arrived and arrested him; he was being accused of rape when he was arrested in the evening of December 23, 2008; thereafter, he was brought to the Police Station for questioning; at the Police Station, they asked him about what he did to AAA, but he denied doing anything to her; at the inquest held on December 24, 2008, he did not admit the charges imputed against him; he denied knowledge of the case filed against him; he was detained at the police precinct from December 23, 2008 until January 15, 2009 before he was transferred to the Manila City Jail.

On cross-examination, he declared^[31] that: prior to the incident, he was living in the house of Brother BBB; he was there in the morning of December 23, 2008 and only left the house after lunch to go to Sampaloc with Brother BBB and his companions; he had breakfast at the said house and he helped cook the same, but he allegedly did not know that the incident happened before breakfast.

After trial, the lower court rendered a judgment of conviction against accused-appellant Ballot.^[32] Hence, this appeal raising a lone assignment of error:^[33]

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

The appeal is without merit.

A successful prosecution of rape by sexual assault defined under the second paragraph of Article 226-A of the Revised Penal Code^[34] burdens the prosecution to prove the following elements:^[35]

"xxx (1) That the offender commits an act of sexual assault;
(2) That the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice;
(3) That the act of sexual assault is accomplished by the use of force or intimidation. Xxx"

A thorough review of the records supports accused-appellant Ballot's conviction as the elements of rape by sexual assault are clearly established in the following statements of AAA:

"xxx Atty. Gudaran: AAA, after Tito Leny showed to you his penis, what did Tito Leny do next?

A: He ordered me to put his penis into my mouth, "*pinasubo*."

Q: Was Tito Leny able to insert his penis into your mouth?

A: Yes. Sir.

Q: Was the penis of Tito Leny stiff or very hard?

A: Stiff, Sir.

Q: How long was Tito Leny's penis inserted inside your mouth?

A: (At this juncture, the Interpreter is holding a ball pen and showing the same to the witness, she pointed a measurement of more than an inch.)

Q: Will you please show this Honorable Court the position by putting that ball pen to your mouth the length of the penis that was inserted to your mouth?

A: Over the black ball pen which has a length or measurement of two (2) inches, half of that, Sir. One (1) inch, Sir.