Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 184600 : March 9, 2010

PEOPLE OF THE PHILIPPINES, Appellee, vs. **ANACITO DIMANAWA,** Appellant.

R E S O L U T I O N

NACHURA, *J.:*

Incestuous rape, especially one committed by a father against his own daughter, is a dastardly and repulsive crime that has no place in our society,[1] and, time and again, has been condemned by this Court. This case is no different.

On appeal is the April 30, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02722, which affirmed with modifications the January 12, 2007 decision[3] of the Regional Trial Court (RTC) of Sorsogon, Branch 65, in Criminal Case No. 05-722, finding appellant Anacito Dimanawa (appellant) guilty beyond reasonable doubt of rape, and sentencing him to suffer the penalty of reclusion perpetua.

In an Information dated January 25, 2005, appellant was indicted before the RTC for rape against his minor daughter AAA.[4] The accusatory portion of the Information reads:

That on or about the 23rd day of January 2005[,] at more or less 8:00 oclock in the evening[,] [in] Barangay Nasuje, municipality of Bulan, province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] with lewd designs, by means of force and intimidation and taking advantage of the tender age of the victim, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a minor, 12 years of age, who cannot take care of herself, without her consent and against her will, which acts likewise constitute child abuse as it debases, demeans and degrades the intrinsic worth and dignity of a child as a human being, to her damage and prejudice.

The commission of the crime is qualified by the fact that the victim is only 12 years of age and the offender is the father of the victim.[5]

When arraigned, appellant entered a plea of not guilty. Trial on the merits then ensued.

The Peoples version of the facts, culled from the testimonies of the victims and other witnesses, is as follows:

Private complainant AAA was born on August 30, 1992. She is the third among the four children of appellant and his wife BBB.

AAA resides with her father and siblings at Nasuje, Bulan, Sorsogon while her mother works in Metro Manila (TSN dated March 13, 2006, p. 4). However, sometime before January 23, 2005, AAA, then 12 years old, stayed in Manila with her mother for more than one month.

In the afternoon of January 23, 2005, AAA arrived at their residence in Nasuje from Manila. After a while, appellant left home and went to Costanera, which was about a half (1/2) kilometers away from Nasuje (TSN dated May 10, 2005, p. 4). Around 6:00 o clock in the evening, appellant returned to their house, drunk (TSN dated May 17, 2005, p. 19).

Upon his arrival, appellant asked AAA who brought her to Manila. AAA replied that her mother requested someone to accompany her (TSN dated May 17, [2]005, p. 4). Appellant then chastised her by whipping her back with his shirt (TSN dated May 17, 2005, p. 6 and TSN dated March 13, 2005, p. 5).

After whipping her, appellant dragged her to a grassy portion outside their house. AAA could not do anything because appellant was carrying a bladed instrument (TSN dated May 17, 2005, pp. 14 and 20). At the grassy area, appellant kissed her neck and breast. Thereafter, appellant removed his pants and while AAA was lying down, removed her short pants and underwear (TSN dated Ma[y] 3, 2005, p. 13). Appellant then mounted her and inserted his penis into [her] vagina (TSN dated May 3, 2005, p. 14). After raping her, appellant brought her to Costanera, where they slept at the grassy area (TSN dated May 17, 2005, p. 6).

Meanwhile, around 12:00 oclock in the morning of January 24, 2005, Brgy. Tanod DDD received a report that appellant was being chased by some barangay tanod for chastising AAA and her brother CCC (TSN dated May 10, 2005, pp. 3-4). Around 4:00 oclock in the morning of the same day, Brgy. Kagawad EEE woke him up and informed him that he saw appellant sleeping with AAA at Sitio Costanera. (TSN dated May 10, 2005, p. 4). Together with Brgy. Tanods DDD and FFF, EEE immediately proceeded to Sitio Costanera. There, they saw appellant holding AAA by wrapping his right arm around her body (TSN dated May 10, 2005, p. 6). Brgy. Kagawad EEE also talked to appellant and convinced him to go with them to the office of the Barangay Captain. Appellant heeded the request and went to the Barangay Captain. He was detained at the barangay jail (TSN dated July 5, 2005, p. 5).

On the other hand, the Brgy. Tanods DDD and FFF brought AAA to her co-member in Iglesia ni Cristo who lives in Nasuje. Subsequently, her fellow members in Iglesia ni Cristo, a certain GGG and HHH accompanied her to the police station in Poblacion to report the incident. At the police station, they were instructed to go to a doctor for AAAs physical examination (TSN dated May 17, 2005, p. 11).[6]

Dr. Estrella Payoyo, the Municipal Health Officer of Bulan, Sorsogon, conducted a physical examination on AAA, which yielded the following findings:

Multiple abrasions on the neck, on the right linear of the victim and the right face; lateral, confluent;

Lacerations on both sides of the vagina behind the hymen. The hymen was intact. Menarche was still negative because the victim does not menstruate yet.[7]

Appellants defense consists of denial and alibi. He claimed that it was physically impossible for him to rape AAA on January 23, 2005 because, on that date, AAA was still on her way from Manila to Bulan. AAA arrived in Bulan only on January 24, 2005 at around 5:00 in the morning. His version of the facts is summarized as follows:

On January 24, 2005, at around 5:00 oclock in the morning, AAA arrived in Bulan alone from Manila. [Appellant] asked her why she was permitted by her mother, who was in Manila working at the (sic) time, to travel alone. AAA answered that she was sent off by her mother at Philtranco terminal in Manila.

Appellant] wanted to know from AAA who brought her from Bulan to Manila without his permission. She did not answer, so he whipped her with his shirt three (3) times. She cried out of pain. [Appellant] then tried to pacify AAA by asking her to accompany him to the place of her kuya HHH at Barangay Costanera, Bulan, Sorsogon. [Appellant] wanted to go fishing

with HHH by "palutang" or fishnet at about 7:00 oclock in the morning of January 24, 2005.

Appellant] wanted to keep an eye on AAA, lest she might leave the house again. So, he ask[ed] her to accompany him. They were sitting along the seashore waiting for HHH, when the group of DDD arrived. The latter informed him [appellant] that he was being invited by the barangay captain to his house. AAA was taken away from him by another person. [Appellant] was subsequently detained at the barangay jail, where he was told by III, a sister of his wife that a rape charge was filed against him. (TSN, pp. 2-10, March 13, 2006).[8]

The trial court, however, disbelieved appellants defense and rendered a judgment of conviction, viz.:

WHEREFORE, premises considered, accused ANACITO DIMANAWAS GUILT having been established beyond reasonable doubt for the crime of RAPE (Art. 266-A) of the Revised Penal Code, as amended, in relation to Article III, Section 5 of RA 7610, he is hereby sentenced to suffer the indivisible penalty of RECLUSION PERPETUA. To indemnify the offended party AAA in the amount of Php50,000.00 as civil indemnity and another Php50,000.00 as moral damages. With costs de oficio.

The period of detention already served by the accused during his preventive imprisonment shall be credited in the service of his sentence, pursuant to the provision of Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[9]

Appellant filed an appeal before the CA, assigning in his brief the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE PROSECUTIONS FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE FINDINGS AS CONTAINED IN THE MEDICO-LEGAL REPORT DOES (sic) NOT SHOW AND/OR IS (sic) NOT CONSISTENT WITH THE OFFENSE OF RAPE, CONTRARY TO THE FINDINGS OF THE TRIAL COURT.[10]

The Office of the Solicitor General (OSG), on behalf of the People, also filed its brief,[11] with a recommendation for the modification of the civil indemnity awarded to AAA. It argued that appellants guilt for rape was proven beyond reasonable doubt; and thus, the trial court correctly convicted him of the crime charged. The OSG further argued that the civil indemnity awarded was not in accordance with prevailing jurisprudence and recommended the increase of the amount of civil indemnity from ₱50,000.00 to ₱75,000.00.

On April 30, 2008, the CA rendered the assailed Decision, affirming, but with modifications, the RTC decision, viz.:

WHEREFORE, the trial courts Decision dated January 12, 2007 finding accused-appellant Anacito Dimanawa guilty beyond reasonable doubt of rape is affirmed, subject to the modification that the awards of civil indemnity and moral damages are increased to ₱75,000.00 each, and accused-appellant is further ordered to pay AAA exemplary damages in the amount of ₱25,000.00.

SO ORDERED.[12]

Appellant is now before this Court offering the same arguments he submitted before the CA. Through his Manifestation and Motion in Lieu of Supplemental Brief,[13] appellant states that he will not file a Supplemental Brief and, in lieu thereof, he will adopt the Appellants Brief he filed before the appellate court. On the other hand, the OSG, to this date, has not yet filed its supplemental brief. Thus, for failure to comply with the November 19, 2008 Resolution, the Court dispensed with the filing of the OSGs supplemental brief, and considered the case submitted for resolution.

Appellant insists that both the trial court and the CA erred in convicting him of the crime charged. He contends that the testimony of the victim was highly incredible and contrary to ordinary human experience. Appellant capitalizes on AAA's failure to offer resolute resistance and to shout or make an outcry during the carnal act.

Indeed, AAA did not shout or offer resistance to the horrendous experience she went through in the fiendish hands of her father. However, her failure to shout or tenaciously resist appellant does not mean that AAA voluntarily submitted to the criminal act of appellant. In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point. [14]

Appellant next contends that no proof of force or intimidation was offered by the prosecution. He, therefore, insists that the trial court erred in convicting him of rape.

Contrary to appellants claim, the prosecution sufficiently established that appellant employed force and intimidation in satisfying his bestial desire. AAA categorically stated that appellant dragged her to a grassy portion outside their house, and she could not do anything because appellant was carrying a bladed instrument.[15]

In People of the Philippines v. Henry Guerrero y Agripa,[16] we explained -

As an element of rape, force or intimidation need not be irresistible; it may be just enough to bring about the desired result.

What is necessary is that the force or intimidation be sufficient to consummate the purpose that the accused had in mind. In People v. Mateo, we held:

It is a settled rule that the force contemplated by law in the commission of rape is relative, depending on the age, size, or strength of the parties. It is not necessary that the force and intimidation employed in accomplishing it be so great and of such character as could not be resisted; it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind.

Intimidation, more subjective than not, is peculiarly addressed to the mind of the person against whom it may be employed, and its presence is basically incapable of being tested by any hard and fast rule. Intimidation is normally best viewed in the light of the perception and judgment of the victim at the time and occasion of the crime.

Moreover, in rape committed by a close kin, such as one committed by the victim's father stepfather, uncle, or by the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[17]

AAA was firm in her assertion that appellant raped her. She narrated that appellant kissed her neck and breasts, and, thereafter, removed her short pants and underwear.[18] Appellant then mounted her and inserted his penis into her vagina.[19]

It is a well-settled doctrine that the testimony of a child-victim is given full weight and credence, considering that when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are badges of truth and sincerity.[20]

We also held in several cases that no young woman, especially one of tender age, would concoct a story of defloration in the hands of her own father, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. It is highly improbable that a girl of tender years, not yet exposed to the ways of the world, would impute to her own father a crime so serious as rape if what she claims is not true. This is all the more true in our society since reverence and respect for the elders is deeply rooted in Filipino children and is even recognized by law.[21] Thus, it is against human nature for a 12-year-old girl to fabricate a story that would expose herself, as well as her family, to a lifetime of shame, especially when her charge could mean the death or lifetime imprisonment of her own father.

In fine, our own reading of the records yields no reason to disturb the trial courts finding, upholding the credibility of AAA, which by well-established precedents is given great weight and accorded high respect by the appellate court. The latter, by simply reading the transcripts, cannot be in a better position than the trial court to decide the question of the witnesses credibility.

In his last-ditch effort to be exculpated, appellant calls this Court's attention to the medical finding that the hymen was still intact. He intimates that no rape occurred because of the absence of a broken hymen.

The argument is specious.

In the context in which it is used in the Revised Penal Code (RPC), carnal knowledge, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. The crime of rape is deemed consummated even when the mans penis merely enters the labia or lips of the female organ or, as we had declared in a case, by the *mere touching* of the external genitalia by a penis capable of consummating the sexual act.[22] Where the victim is a child, the fact that there was no deep penetration of her vagina and that her hymen was still intact does not negate the commission of rape. Furthermore, the absence of fresh lacerations in the hymen cannot be a firm indication that she was not raped. Hymenal lacerations are not an element of rape.[23]

In People v. Opong,[24] this Court, in rejecting a similar contention, held:

An intact hymen does not negate a finding that the victim was raped, and a freshly broken hymen is not an essential element of rape.

In *People v. Gabayron,* we sustained the conviction of accused for rape even though the victims hymen remained intact after the incidents because medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated coitus. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.

In *People v. Capt. Llanto,* citing *People v. Aguinaldo*, we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victims hymen since medical findings suggest that it is possible for the victims hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.

In *People v. Palicte* and in *People v. Castro,* the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.[25]

In this case, therefore, the medical finding that the hymen was still intact cannot affect the fact that sexual molestation took place, taking into account the prosecution's evidence that sufficiently established the commission of sexual abuse.

In sum, we agree with the findings and conclusion of the trial court, as affirmed by the CA, that rape was committed by appellant against AAA.

We also agree with the RTC and the CA in appreciating the qualifying circumstances of minority and relationship. These aggravating, nay, qualifying, circumstances have been duly alleged and proven beyond reasonable doubt. AAAs birth certificate[26] shows that she was born on August 30, 1992, which means that she was 12 years and 5 months old when

she was sexually assaulted. Her birth certificate also proves that AAA is the daughter of appellant.

The concurrence of the minority of the rape victim and her relationship to the offender is a special qualifying circumstance that upgrades the penalty.[27] AAAs minority and her relationship to appellant having been duly established, the imposition of the death penalty upon appellant would have been the appropriate penalty were if not for the passage of Republic Act (R.A.) No. 9346, or An Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of R.A. 9346 imposes the penalty of reclusion perpetua in lieu of death, when the law violated makes use of the nomenclature of the penalties of the RPC, as in this case. The penalty of reclusion perpetua imposed by the trial court and affirmed by the CA is, therefore, correct. Furthermore, pursuant to R.A. No. 9346, appellant shall not be eligible for parole.[28]

As regards the civil liability of appellant, we affirm the appellate court's award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, without need of proof. Similarly, we sustain the CAs award of exemplary damages to AAA, but we increase the award to ₱30,000.00.

WHEREFORE, the appeal is DISMISSED. The assailed Decision of the Court of Appeals in CA-G.R. CR-HC No. 02722 is AFFIRMED with MODIFICATION. Appellant Anacito Dimanawa is found GUILTY beyond reasonable doubt of RAPE and is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility for parole, and to pay the victim, AAA, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

ANTONIO EDUARDO B. NACHURA
Associate Justice

WE CONCUR:

RENATO C. CORONA
Associate Justice
Chairperson

CONCHITA CARPIO MORALES*
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

RENATO C. CORONA
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Courts Division.

REYNATO S. PUNO
Chief Justice

Endnotes:

* Vice Associate Justice Diosdado M. Peralta per Raffle dated April 20, 2009. Justice Peralta inhibited himself from taking part in the deliberation of the case, as his spouse, CA Justice Fernanda Lampas Peralta, is the ponente of the assailed Decision.

1 People v. Bawang, 396 Phil. 311, 314 (2000).

2 Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 2-14.

3 CA rollo, pp. 58-68.

4 The real name of the victim is withheld per R.A. No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

5 Records, p. 1.

6 CA rollo, pp. 134-136.

7 Exhibit B; records, p. 8.

[8] CA rollo, pp. 44-45.

[9] Records, p. 107.

[10] CA rollo, p. 39.

[11] Id. at 78-106.

[12] Rollo, p. 13.

[13] Id. at 21-22.

[14] People v. Baldo, G.R. No. 175238, February 24, 2009, 580 SCRA 225, 233.

[15] TSN, May 17, 2005, pp. 14, 20.

[16] G.R. No. 170360, March 12, 2009.

[17] People v. Corpuz, G.R. No. 175836, January 30, 2009, 577 SCRA 465, 473.

[18] TSN, May 3, 2005, p. 13.

[19] Id. at 14.

[20] People v. Bejic, G.R. No. 174060, June 25, 2007, 525 SCRA 488, 502-503.

[21] Id. at 503.

[22] People v. Quiñanola, 366 Phil. 390, 410 (1999).

[23] People of the Philippines v. Benjie Resurreccion, G.R. No. 185389, July 7, 2009.

[24] G.R. No. 177822, June 17, 2008, 554 SCRA 706.

[25] Id. at 725-726. (Citations omitted.)

[26] Exhibit "A," records, p. 67.

[27] People of the Philippines v. Ernesto Malibiran, G.R. No. 173471, March 17, 2009.

[28] SEC. 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of the law, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (R.A. No. 9346)

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