CAGAYAN DE ORO CITY

# TWENTY-SECOND DIVISION

# [ CA-G.R. CR HC NO. 01028-MIN, February 17, 2014 ]

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONEL BARCELO Y DAPAR ACCUSED-APPELLANT.

## DECISION

**INTING, J.:**

Before Us on appeal is the Decision[1] dated April 23, 2012 of the Regional Trial Court of Tagum City, Davao del Norte, Branch 2, rendered in Criminal Case No. 15628, finding accused-appellant guilty beyond reasonable doubt for violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act (RA) No. 8353.[2]

The facts[3] are as follows:

On May 29, 2007, an Information was filed against accused-appellant Ronel Barcelo y Dapar, which reads:

> "That on or about May 27, 2007, in the Municipality of XXX[4], Province of XXX[5], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA,[6] a fourteen (14) year-old minor, against her will."[7]

Upon arraignment, the accused-appellant, with the assistance of his counsel, entered a plea of not guilty before the court a quo.[8]

After the pre-trial conference, trial ensued.[9]

On November 27, 2007, AAA testified before the court a *quo* that on May 27, 2007, at around 7:00 o'clock in the evening, she was at the store of BBB located at XXX, in the municipality of XXX, XXX with her older sister. They were instructed by their parents to wait for them there. Also in the store were Cinco, Efren and his wife Belen, Boyet and his wife Lingling, and accused-appellant. They were having a drinking session. While conversing with her older sister, AAA asked her older sister to accompany her to the comfort room which was located at the back of the store. Her sister was bent on accompanying her to the comfort room but she was told by Inday that there was no need for her older sister to accompany her considering that the comfort room was well-lit. She then proceeded to the comfort room, which was around ten (10) arm's length away. After urinating, she went out and saw a shadow. She then saw accused-appellant who then pulled her and covered her mouth. She felt helpless because he overpowered her. He dragged her at the hut, which is used to dry *palay*, located near the side of the comfort room. There, accused-appellant

pressed his body against hers, covered her mouth using his left hand, and took off her pants and underwear with his right hand. He then took his short pants and brief. Afterwards, he inserted his penis in her vagina and executed a push and pull movement. They were in a standing position and accused-appellant had to duck a little so that that they would be level in height. Discontented, accused-appellant laid down AAA on the cemented pavement. Accused-appellant then placed himself on top of her, inserted his penis into her vagina, and executed the push and pull movement. Thereafter, still not being contented, accused-appellant pulled her up and, in a standing position, inserted his penis into her vagina.

Later, AAA saw her mother, who was looking for her. Accused-appellant hid himself and AAA behind the door panel. She was not able to call out her mother since accused-appellant covered her mouth with his hand. Instead, she started to cry. It took her mother some time to open the door of the hut because accused-appellant was trying to restrain her mother from opening the door by holding the doorknob. When she finally managed to open the door, she asked him if he saw AAA. He denied having seen AAA and left the hut. After a few minutes, she saw AAA who was apparently still in shock. AAA embraced her mother while she was crying and told her that she was raped by accused-appellant. They then went out and her mother sought out accused-appellant. They had the incident recorded in the police blotter.

AAA also presented the medical certificate issued by XXX Hospital on May 29, 2007. The anogenital exam revealed that there was positive notching at 3:00, 5:00 and 6:00 o'clock. The conclusion stated that, "Disclosure of sexual abuse: Genital Finding does not exclude sexual abuse." AAA also testified that she was only fourteen (14) years old at the time of the rape. She presented her birth certificate to prove her age.[10]

During cross-examination, AAA testified that she and her family moved to XXX, XXX when she was around four (4) or five (5) years old. In the evening of May 27, 2007, she was in the store of BBB. She often goes there whenever their house had no electricity. She, along with her parents and older sister, arrived at the store at around 6:30 o'clock in the evening. They had come from her uncle's house. Her parents left her and her older sister there and instructed them to wait there while they went to the Poblacion to meet with their landlord and to get the money to finance the rice plantation. AAA testified that their parents had left them there and not in his uncle's house because his uncle had to go out to buy food. XXX's store was small with two (2) tables placed outside. The other table was occupied by accused-appellant and his friends. AAA's father was invited by their group to the drinking session. He relented and briefly joined in the revelry. After a few minutes, AAA's parents left to go to the Poblacion. Thereafter, AAA asked her older sister to accompany her to the comfort room. A certain Inday, who was part of accused-appellant's group, overheard this and told them that there was no need for AAA's older sister to accompany her since the comfort room was well-lit. AAA also testified that the main source of light was the fluorescent lamp coming from the store. After urinating, AAA got out of the comfort room and she saw a shadow moving towards her. She later discovered that it was accused-appellant. AAA could not shout for help because accused-appellant's hand was covering her mouth the entire time the rape occurred. AAA recalled that accused-appellant was wearing loose-fit denim pants. The latter pulled down her pants up to the middle part of her thigh. Accused-appellant also pushed her down the floor. AAA recalled that the floor was cemented and rough. While she was being raped, she saw her mother, through the window,

pass by the hut and was looking for her. After the accused-appellant had left, her mother found her at the back door of the hut.[11]

For its part, the defense presented accused-appellant to the witness stand where he testified before the court a *quo* that he is 32 (thirty-two) years old, single with a live-in partner, a farmer and a resident of New Corella, Davao del Norte. He and AAA are neighbors. On May 27, 2007, accused-appellant was plowing the rice field using a tractor. After working in the farm at around 4:30 in the afternoon, he and his friends proceeded to the store of the owner of the rice field to buy some snacks. They arrived there at around 5:00 o'clock in the afternoon. There were many people in the store, including AAA, her mother and older sister, Bebing Piad, Boyet Daliba and Jun-Jun Piad. After a while, AAA's mother went to the Poblacion. At around 7:00 o'clock in the evening, accused-appellant urinated at the back of the store, near the lamp post. AAA was at the store at that time. A few moments after, he was surprised to find AAA's mother shouting at him and accusing him of raping her daughter. He told AAA's mother that he did not rape AAA and that he was alone when he went to the back of the store. The next morning, a policeman arrived at his house and apprehended him.[12]

During cross-examination, accused-appellant testified that he is employed by a certain Ernie Piad. AAA lives seven (7) meters away from his house. She has known AAA since she was young. He also testified that he did not have any conflict with AAA's mother prior to the incident. He had a good relationship with AAA's family since her father is his co-laborer. He testified that he opted to urinate near the lamp post since the comfort room was closed and no longer functional.[13]

On December 8, 2011, Bryan Piad (Piad), 26 years of age, married, a farmer and a resident of XXX, New Corella, Davao del Norte, testified before the court a *quo* that he employed accused-appellant as a farmer in his rice field. On May 27, 2007, he saw accused-appellant report for work. He and accused-appellant left at around 5:00 o'clock in the afternoon to go to XXX store to get a snack. When they arrived at the store, they saw some of their neighbors. He did not see AAA at the store at that time. At around 7:00 o'clock in the evening, accused-appellant left the store and went home. The store was well-lit since it had an electric light and there was a lamp post at the basketball court. There was also a warehouse located at the back of the store. He opined that if there ever was a commotion at the back of the store, it would have been heard by the people in front of the store. Piad testified that he did not hear anybody scream for help that night.[14]

During cross-examination, Piad testified that they left the store at around 7:00 o'clock in the evening. They then went their separate ways. Piad testified that he has no knowledge of whether or not accused-appellant went back to the store or not. He also does not know what time AAA's parents returned to the store.[15]

On April 23, 2012, the court a *quo* rendered the assailed decision finding the accused-appellant guilty beyond reasonable doubt for violation of Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act (RA) No. 8353. The dispositive portion of which reads:

> "**WHEREFORE**, premises considered, his guilt having been established by proof beyond reasonable doubt, accused **RONEL BARCELO y DAPAR**

is hereby pronounced **GUILTY** as charged and is hereby sentenced to suffer the penalty of ***reclusion perpetua***.

Barcelo is likewise ordered to pay Ana May Estrera the sum of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P50,000.00 as exemplary damages.

SO ORDERED."[16]

Hence, this appeal.

Accused-appellant assigns the sole error of whether or not the court a *quo* gravely erred when it convicted the accused-appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt.[17]

**Our Ruling**

The appeal is bereft of merit.

Accused-appellant argues, albeit hypothetically, that the sexual intercourse between accused-appellant and AAA was consensual. He based his contention on three main points: 1) He was not armed with any weapon so as to immobilize AAA; 2) Sexual intercourse in different positions indicates consent; 3) AAA's conduct immediately following the alleged sexual congress is totally uncharacteristic of one who has been raped.[18]

These arguments are specious at best.

With regard to the first argument, the Supreme Court, in *People v. Batiancila*, was also confronted with the same issue wherein the accused-appellant alleged that there was no evidence of irresistible force and serious intimidation as he had no weapon to threaten the victim during the alleged rape. The Supreme Court ruled, thus:

"It is of no moment that Batiancila was not armed when he raped XYZ. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. Records show that XYZ was only 12 years old when she was raped by Batiancila who was 21 years old. Understandably, a girl of such young age could only cower in fear and yield into submission to such an adult, more especially so as he is her cousin who has moral ascendancy over her. Rape, after all, is nothing more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. **Thus, it is not even impossible for a victim of rape not to make an outcry against an unarmed assailant.**

It is also well settled that physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. Besides, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any

> resistance at all. Thus, the law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim."[19] (Emphasis Ours)

It is therefore immaterial that accused-appellant, in the case at bar, was unarmed. In *People v. dela Cruz*, the Supreme Court held:

> "Appellant contends that the absence of an outcry, a determined resistance or a firm struggle by AAA against her unarmed half-brother-in-law is strange and unnatural for a teenage maiden who is about to be despoiled of her virtue.
>
> For the state, the Office of the Solicitor General (OSG) points out that the victim although plump, was barely sixteen (16) years old when the incident happened. She was no match against the older appellant, who is more muscular and stronger than her. The victim was intimidated physically and mentally by appellant who, as her older brother-in-law, exercises moral ascendancy over her. Appellant, likewise, has physical superiority over said victim.
>
> More significantly, we are not wont to accept, as insinuated by appellant's counsel, that in the clear light of day while working in an office, it is easy to reflect and reach the conclusion that the threat made on AAA, in the absence of a weapon, would not intimidate anyone into submission to the will of a rapist. In *People v. Oarga*, we held that intimidation was addressed to the mind of the victim and therefore subjective, and its presence could not be tested by any hard-and-fast rule but must be viewed in the light of the victim's perception and judgment at the time of the crime. Furthermore, it is not necessary that the force or intimidation employed to commit rape be so great or of such character as could not be resisted because all that is required is that it be sufficient to consummate the purpose which the accused had in mind. The ambient circumstances must, therefore, be viewed from the victim's perception and judgment at the time of the rape. Under the circumstances of the two cases, we find that the element of force or intimidation was sufficiently proven so as to negate the alleged consent on the part of AAA to the sexual intercourse that transpired on both April 10 and 19, 1999." [20]

The second and third arguments are likewise unsustainable. In *People v. Burgos*, the accused-appellant argued that there were several circumstances which indicated consent to the sexual intercourse on the part of complainant, to wit: (1) failure to use the broom she was holding to defend herself on March 10, 1998; (2) her failure to scream and to use her hands to ward off his advances; and (3) the fact that he was unarmed when he allegedly abused her. The Supreme Court did not pay heed to these contentions and even explained that it is inconsequential that the two incidents of rape happened during the day or in a place that is proximate to other houses material. It ruled, thus:

> "First, we have held that no standard form of behavior may be expected when a person is confronted by a shocking or a harrowing and unexpected incident, for the workings of the human mind when placed