THIRD DIVISION

[G.R. No. 232329, April 28, 2021]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZZZ,* ACCUSED-APPELLANT.

D E C I S I O N

HERNANDO, J.:

This is an appeal from the September 9, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 07658 which affirmed the June 18, 2015 Judgment[2] of the Regional Trial Court (RTC), Branch 64 of Labo, Camarines Norte convicting accused-appellant ZZZ of two (2) counts of Rape and sentencing him to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. 08-1636-37.

ZZZ was charged with two (2) counts of Rape under Article 266-A of the Revised Penal Code (RPC) in relation to Republic Act No. 7610[3] (RA 7610) in two Informations which read:

> CRIM. CASE No. 08-1636
>
> That sometime in the afternoon of May 3, 2008 in Brgy. [redacted], Labo, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust and by means of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of his 12-year old granddaughter AAA,[4] without her consent, which acts debase, degrade her intrinsic worth as a child and is prejudicial to her growth and development, to her damage.
>
> CONTRARY TO LAW.[5]
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> CRIM. CASE No. 08-1637
>
> That sometime in the early part of 2008 in Brgy. [redacted], Labo, Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust and by means of force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of his 12-year old granddaughter AAA, without her consent, which acts debase, degrade her intrinsic worth as a child and is prejudicial to her growth and development, to her damage.
>
> CONTRARY TO LAW.[6]

The cases against ZZZ were initially archived by the trial court since the warrant for his arrest was returned unserved.[7] He was eventually arraigned on December 6,

2011 and pleaded not guilty to both charges.[8]

During trial, AAA testified that on two separate occasions in 2008, her grandfather, ZZZ, forcibly took her out of their house, brought her to a secluded place and raped her.[9]

AAA recounted that sometime in January to April 2008, ZZZ forcibly brought her to a big copra kiln where, after undressing them both, he mounted her and inserted his penis into her vagina. To prevent her from screaming, accused-appellant covered her mouth with his hand and inserted his penis into her vagina. After he removed his penis from her vagina, AAA's vagina was swollen with the presence of blood and a white sticky substance. ZZZ gave AAA P50.00 and instructed her not to tell her father about the incident.[10]

AAA further testified that in the afternoon of May 3, 2008, ZZZ fetched her from their house and dragged her towards the river. While crossing the river midway, AAA saw her siblings. However, ZZZ immediately covered her mouth to prevent her from shouting and calling their attention. As soon as they reached the side of the river, ZZZ undressed them both, mounted AAA and inserted his penis into her vagina. After he was done, accused-appellant once again told the victim not to report the incident to her father. This time, he threatened AAA with death should she inform her father. He also gave AAA P20.00.[11]

Since she could no longer bear the pain in her swollen vagina, AAA told her father of what ZZZ had done to her. AAA and her father then went to the barangay to file a complaint.[12] AAA was also examined by Dr. Virginia Barasona who testified at the trial that her medical findings were consistent with AAA's claim of rape and that she had issued a medical certificate thereon.[13]

ZZZ was the sole witness for the defense. He claimed that he could not have raped his granddaughter, AAA, since he was already sixty-seven (67) years old in 2008 and his penis was no longer capable of erection due to a cyst near his inner thigh which caused chronic pain in his legs.[14]

Accused-appellant further testified that on May 3, 2008 he was at his house which is located some distance away from AAA's family home.[15]

On June 18, 2015, the trial court rendered its Judgment convicting ZZZ of the charges of rape, thus:

> **WHEREFORE**, premised from the foregoing, and having found accused **ZZZ**, GUILTY beyond reasonable doubt for two (2) counts of RAPE in relation to RA 7610, he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**. Said accused is ordered to pay victim, AAA, for each count the following:
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> 1. Php50,000.00 as civil indemnity; and
> 2. Php50,000.00 as moral and exemplary damages.
>
> SO ORDERED.[16]

On appeal, ZZZ maintained his innocence and decried the trial court's finding of guilt despite the prosecution's failure to establish with particularity the date of

commission of the rape and the inconsistent testimony of AAA.[17] He argued that the trial court erred in not considering his defense of denial.[18] In the alternative, assuming without admitting that he is guilty of raping his granddaughter, the penalty imposed should be that provided in Section S(b), Article III of RA 7610.[19]

The appellate court sustained ZZZ's conviction for two counts of rape:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Judgment dated 18 June 2015 of Branch 64, Regional Trial Court of Labo, Camarines, Norte in Criminal Case Nos. 08-1636 and 08-1637 is **AFFIRMED** with **MODIFICATION**. Appellant [ZZZ] is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of rape and is accordingly sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count. Appellant is ordered to pay the private offended party as follows: P100,000.00 as civil indemnity, P100,000.00 as moral damages, and P100,000.00 as exemplary damages, also in each count. He is further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment.
>
> **SO ORDERED.**[20]

Hence, this appeal[21] by ZZZ raising the same assignment of errors contained in his Appellant's Brief before the appellate court.[22]

Our Ruling

The appeal is bereft of merit.

After a careful review of the evidence and testimony proffered by the prosecution, we rule that the trial court and the appellate court were correct in their assessment of the testimonies of AAA and ZZZ. The accused-appellant failed to show that the lower courts overlooked a material fact that otherwise would change the outcome of the case or misunderstood a circumstance of consequence in their evaluation of the credibility of the witnesses. Thus, we will not disturb the trial court's findings of fact as affirmed by the appellate court.

Accused-appellant insists that the prosecution failed to sufficiently establish the date of the commission of the rape. In particular, accused-appellant points to the Information in Criminal Case No. 08-1637 which specified the date of the rape charged as "sometime in the early part of 2008". Accused-appellant counters that this "irregular designation" violates Section 11,[23] Rule 110 of the Rules of Court.

This contention does not persuade. As correctly ruled by the appellate court, the date of commission of the crime is not an essential element thereof. In fact, the specific Rule cited by accused-appellant states that "it is not necessary to state in the Information the precise date the offense was committed **except when it is a material ingredient of the offense**." The date of commission is not even an element of the crime of rape which elements are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [18] years of age at the time of the rape; (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[24]

We fully agree with the appellate court's ruling that -

> [A]n Information is valid as long as it distinctly states the elements of the offense and the acts or omission constitutive thereof. The exact date of the commission of a crime is not an essential element of the crime charged. In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The precise time of the crime has no substantial bearing on its commission. Therefore, it is not essential that it be alleged in the information with ultimate precision.
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> Further, it cannot be considered that appellant was deprived of his constitutional right to be informed of the nature and cause of the accusation against him. As cited in *People v. Ibañez*, the Supreme Court previously upheld complaints and informations in prosecutions for rape which merely alleged that a rape has been committed "sometime in the month of April 1993," for a rape which was committed in 1993; "on or about May 1998," for a rape committed sometime in the first week of May 1998; and "sometime in the month of September 1998" for a rape committed on an evening in September 1998. Here, the allegation in the Information that appellant committed rape "sometime in the early part of 2008" was sufficient to inform appellant that he was being charged of rape committed against his granddaughter.
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> It bears emphasis that objections as to the form of the complaint or information cannot be made for the first time on appeal. If appellant found the Information insufficient, he should have moved before arraignment either for a bill of particulars, for him to be properly informed of the exact date of the alleged rape; or for the quashal of the Information, on the ground that it did not conform with the prescribed form. As appellant failed to pursue either remedy, he is deemed to have waived objection to any formal defect in the Information.[25]

Moreover, the alleged inconsistencies in AAA's testimony are understandable considering that she was still only a minor, 16 years old, at the time she testified before the trial court. In *People v. Lagbo*[26] we explained that:

> x x x Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.[27]

The testimony of AAA is consistent on material points. Slightly conflicting statements will not undermine her credibility or the veracity of her testimony. They in fact tend to buttress rather than impair their credibility as they erase any suspicion of rehearsed testimony.[28] The defense was not able to elicit significant contradictions in the testimony of the victim to render such as a fabrication prodded by her father who accused-appellant points to as the perpetrator of the rape of AAA. Even under rigid cross-examination, AAA remained consistent in her testimony that accused-appellant, her grandfather, raped her in two separate instances: one, where

she was forcibly brought to the copra kiln, and two, by the river where she had just previously seen her siblings but was unable to cry out to them for help.

Carnal knowledge had also been proven in two instances. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.[29] The testimony of AAA sufficiently describes her harrowing experience in the hands of ZZZ. It bears emphasis that accused-appellant resorted to force, threat and intimidation to consummate his lust. We have consistently ruled that rape is committed when intimidation is used on the victim, which includes moral intimidation or coercion.[30]

We find to be unacceptable accused-appellant's contention that he could not have sexually abused AAA since he could no longer have an erection due to his old age, 67 years old at the time of the rape, and considering the cyst near his inner thigh. Suffice it to state that neither of the lower courts gave credence to accused-appellant's unsubstantiated claim. Accused-appellant did not present documentary evidence such as a medical certificate attesting to the physical impossibility of his having an erection and incapacity of raping AAA.

In the same vein, his defense of denial fails to persuade Us. Denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law, as in this case.[31] Ultimately, accused-appellant's conviction was not primarily based on the weakness of his defense of denial and his attempt to shift the accusation to AAA's father as the alleged actual perpetrator of the rape. Rather, accused-appellant was found guilty on the basis of AAA's consistent and steadfast testimony, even under rigid cross-examination, pointing to him as the one who despoiled her honor.

ZZZ next insists that he should be penalized under Section 5, Article III of RA 7160 and for the mitigating circumstance of old age to be applied in his favor.

We disagree.

Notably, the trial court found accused-appellant guilty beyond reasonable doubt of two (2) counts of "Rape in relation to RA 7610". The appellate court affirmed this ruling of the trial court.

At this point, it must be pointed out there is a need to fix the error in the nomenclature of ZZZ's crime. As corrected, accused-appellant should be held criminally liable for two (2) counts of Rape under Article 266-A, Paragraph 1(a) penalized under Article 266-B (1) of the RPC.[32] The correlation to RA 7610 is deleted.

People v. Tulagan[33] explains the ratio for this, *viz.*:

> Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph !(a) of the RPC are mistakenly alleged in the same Information- e.g., carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation