

THIRD DIVISION

[G.R. No. 222387, June 08, 2020]

RICARDO NACARIO Y MENDEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

GAERLAN, J.:

Before this Court is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision^[2] dated April 24, 2015 of the Court of Appeals (CA) Cagayan De Oro City Station in CA-G.R. CR HC No. 01042-MIN, and its Resolution^[3] dated November 9, 2015 denying the motion for reconsideration thereof. The assailed decision dismissed the appeal and affirmed the Decision^[4] dated August 3, 2011 of the Regional Trial Court (RTC) of Cagayan De Oro City, Branch 37 in Criminal Case Nos. 2005-081, 2005-082, and 2005-083, which found the petitioner guilty beyond reasonable doubt of the crime of rape in all three (3) cases.

The Antecedents

Petitioner Ricardo Nacario y Mendez (petitioner) was charged with three (3) counts of rape, allegedly committed as follows:

Criminal Case No. 2005-081

That more or less at 11:00 o'clock in the evening of September 9, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA,^[5] a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

Criminal Case No. 2005-082

That at 1:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.

Criminal Case No. 2005-083

That at 4:00 o'clock dawn of September 10, 2004 at Poblacion, Claveria, Misamis Oriental, Philippines, and within the jurisdiction of this Honorable Court, the [above-named] accused through force and intimidation, did

then and there willfully, unlawfully and feloniously have carnal knowledge with his working student AAA, a minor, 14 years old, against her will and without her consent, to her damage and prejudice.^[6]

Upon arraignment, the petitioner, assisted by counsel, entered a plea of not guilty to each charge. During pre-trial, the parties stipulated on the identities of the parties, that AAA was previously molested by her maternal uncle but no case had been filed in relation thereto, and that from February 2004 to September 2004 AAA was staying in the house of the petitioner.^[7]

During trial, the prosecution presented as witnesses AAA, SPO4 Remos S. Lagonera of the Claveria Police Station, Department of Social Welfare and Development (DSWD) Employee Belen Razalo (Razalo), and Dr. Sittienor M. Gumaos-Casip (Dr. Gumaos-Casip).^[8]

The evidence for the prosecution tends to establish that AAA is a minor having been born on September 30, 1989. Sometime in February 2004, AAA, who was then 15 years old, stayed in the house of the petitioner and his wife Ledelma Nario at Poblacion, Claveria, Misamis Oriental. AAA helped in the household chores, and in return, the petitioner shouldered her school expenses.^[9]

On September 9, 2004, at around 11:00 p.m., AAA was sleeping alone in her room when she was awakened as she felt someone touching her breasts. She then saw the petitioner who told her "that he would be the one to break her vagina, and told her not to tell his wife about it."^[10] At this point, AAA felt helpless and terrified, being reminded of the time when she was previously sexually assaulted by her maternal uncle who threatened to kill her with a dagger. The petitioner proceeded to suck AAA's breast and to kiss her lips. He then removed her pants and underwear, licked her vagina, and then inserted his penis into her vagina. Afterward, the petitioner undressed her, while AAA lay down crying.^[11] Two hours later, the petitioner again approached AAA, undressed her and proceeded to ravish her. When the petitioner was done he told AAA not go out. AAA was left crying and shivering until she fell asleep. The petitioner again had carnal knowledge with AAA at around 4:00 a.m. of September 10, 2004. He began by touching her breast and chest, then he sucked her mouth, removed her undergarments and had sexual intercourse with AAA who no longer showed any reaction throughout the ordeal. Thereafter, petitioner told her that he would again have sexual intercourse with her whenever his wife was not around. Petitioner then instructed AAA to get up and cook rice. AAA then performed her usual household chores. When she was done, she went to school. When AAA returned home, she asked permission from the petitioner to go out.^[12]

AAA then went to her friend's house, and recounted to her and the latter's mother what happened. They helped AAA by relating the matter to Razalo, a social worker of DSWD Claveria, Misamis Oriental. AAA was brought to the Claveria Police Station on September 11, 2004, to give her statement. That same day, AAA was medically examined at the Northern Mindanao Medical Center (NMMC) by Dr. Gumaos-Casip.^[13]

Based on the "Living Case Report"^[14] issued by Dr. Gumaos-Casip, AAA's genitalia sustained the following:

Introitus. - Hymen healed lacerations, 3 & 9 o'clock positions
Spec exam Cx - Closed, smooth, with mucoid discharge, minimal.
B P E CX - closed, firm, non tender, U - not enlarged, A- no mass/ non tender.^[15]

The defense for its part presented as witnesses the petitioner's wife, Ledelma Nacario (Ledelma), their minor son, Renz Daren Nacario (Renz), and Maria Belen Racines (Racines), an employee of the Women and Children's protection unit of NMMC.^[16]

Renz was 11 years of age in September 2004. He testified that on September 9, 2004, he was in the living room of their house doing his school project from 9:00 p.m. to around 4:00 a.m. of the following day. He stated that all the while he was with the petitioner who was sleeping in the living room, and that he noticed nothing unusual the entire time.^[17]

Ledelma testified that she first knew AAA when the latter was brought to the Municipal Social Service and Development Office (MSSDO) of Claveria, Misamis, Oriental. Ledelma is an employee of the MSSDO. Ledelma related that AAA ran away from home because of maltreatment and abuse from her uncle. However, agencies refused to admit AAA, and as a result, Ledelma was forced to bring AAA to her own home. She claims that she last saw AAA in the morning of September 9, 2004.^[18]

Finally, defense witness Racines narrated that she was the one who attended to AAA and her companion at around 11:00 a.m. on September 10, 2004, at the women's desk of the NMMC, and also facilitated the medical examination of AAA.^[19]

After trial, the RTC rendered its Decision^[20] on August 3, 2011. The dispositive portion reads:

WHEREFORE, premises considered, this court finds accused Ricardo Nacario guilty beyond reasonable doubt of the crime of rape against the minor offended party in Criminal Case No. 2005-081, and in Criminal Case No. 2005-082, in Criminal Case No. 2005-083, and, accordingly, said accused is hereby sentenced to suffer the penalty of reclusion perpetua in each of the three cases. Moreover, said accused is sentenced to pay the minor offended party the sum of Fifty Thousand Pesos (P50,000.00) for civil indemnity, Fifty Thousand Pesos (P50,000.00), for moral damages, and Twenty Five Thousand Pesos (P25,000.00) for exemplary damages in each of the three cases.

SO ORDERED.^[21]

His Motion for Reconsideration of the Decision having been denied by the RTC in its Order dated November 25, 2011, the petitioner elevated the matter to the CA.^[22]

Acting on the appeal filed by the petitioner, the CA rendered the herein assailed Decision^[23] affirming the RTC's judgment of conviction, viz.:

WHEREFORE, premises considered, the appealed decision dated August 3, 2011, and the Order dated November 25, 2011, are affirmed *in toto*.

SO ORDERED.^[24]

In so ruling, the CA agreed with the RTC in holding that the testimony of AAA is credible in itself to sustain the petitioner's conviction. In addition, the CA refused to give credence to the testimony of Renz stating that "[i]t taxes credulity that a 10 year old child could stay awake the entire time he worked overnight on his school project."^[25]

The petitioner sought reconsideration of the Decision but the CA denied it in its Resolution^[26] dated November 9, 2015.

In the instant petition, the petitioner submits the following issues for the Court's resolution:

I.

WHETHER THE OPEN COURT TESTIMONY OF THE PRIVATE COMPLAINANT/VICTIM EXPRESSLY NARRATING THAT NO FORCE OR INTIMIDATION WAS EMPLOYED BY THE ACCUSED AGAINST HER WHEN THE ALLEGED COPULATION WAS CONSUMMATED IS TANTAMOUNT TO JUDICIAL ADMISSION WHICH DOES NOT REQUIRE ANY PROOF;

II.

WHETHER THE CRIME OF RAPE WILL PROSPER EVEN IF THE ELEMENT OF FORCE OR INTIMIDATION IS WANTING; AND

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING IN TOTO THE GUILTY VERDICT OF THREE (3) COUNTS OF RAPE AGAINST HEREIN PETITIONER/ACCUSED WHEN THE PROSECUTION FAILED MISERABLY TO PROVE BEYOND REASONABLE DOUBT THE SECOND ELEMENT OF THE CRIME.^[27]

Simply, the issue presented in this appeal is whether or not the elements of the crime of rape have been established beyond reasonable doubt.

Ruling of the Court

The petition is **not** meritorious. The Court affirms the petitioner's conviction for three (3) counts of rape.

Preliminarily, the Court notes that the mode of appeal taken by the petitioner is erroneous. Pursuant to Rule 124, Section 3(c) of the Revised Rule on Criminal Procedure, an appeal from the ruling of the CA which imposes the penalty of "*reclusion perpetua*, life imprisonment, or a lesser penalty," shall be made through the filing of a notice of appeal before the CA. In this case, the petitioner clearly availed of the wrong mode of appeal when it filed the instant petition for review on *certiorari*. The Court could treat the instant appeal as an ordinary appeal and require the parties to file their respective briefs as demanded by the rules on procedure, nonetheless, records reveal that as early as August 17, 2016, the respondent has been required by the Court to file a comment.^[28] Subsequently, in a Resolution^[29] dated June 7, 2017, the petitioner was required to file a reply. With the submission of these pleadings,^[30] and the requirements of due process accordingly met, the

Court, in the greater interest of substantial justice, proceeds to resolve the substantive issue at hand. [31]

Notably, whether "or not" viewed as an ordinary appeal, the conclusion remains the same, that is, the petitioner is guilty beyond reasonable doubt of three (3) counts of rape.

Viewed as a petition for review for *certiorari*, it is clear that the issues raised are factual in nature and is beyond the ambit of this mode of appeal. As well, the errors assigned herein pertain to uniform factual findings of the RTC and the CA. These, as a rule, are "accorded the highest respect and are generally not disturbed on appellate court, unless they are found to be clearly arbitrary or unfounded, or some substantial fact or circumstance that could materially affect the disposition of the case was overlooked, misunderstood, or misinterpreted." [32] None of these exceptions obtains in the case at bar.

Treated as notice of appeal, which opens the entire case wide open for review, the Court, evaluating the factual issues raised and examining the records of the case, [33] finds that the evidence presented by the prosecution supports the conviction of the petitioner.

Article 266-A (1) in relation to Article 266-B of the RPC provides the elements of the crime of rape, viz.: "(1) the offender is a man; (2) the offender had carnal knowledge of a woman; (3) such act was accomplished by using force, threat or intimidation."

Here, the Court is convinced that the petitioner, on three (3) occasions, had sexual intercourse with AAA, which he had accomplished through intimidation, that is against the latter's will.

The fact of sexual intercourse is established by the testimony of AAA and corroborated by the medico-legal report that she sustained lacerations in her vagina. [34]

The testimony of a minor who is a victim of rape is given full weight and credit, particularly in the absence of evidence showing that in making such statement, such minor is actuated by ill motive to falsely testify against the accused. [35] It is an oft-repeated doctrine that when a female minor alleges rape, she says in effect all that is necessary to mean that she has been raped." [36] As the Court enunciated in *People v. Menaling*: [37]

x x x No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped. [38]

Further, the testimony of a single eyewitness, when credible, convincing, and consistent with human nature and the normal course of things, is sufficient to support a conviction, [39] as rape is essentially an offense of secrecy. [40] Nonetheless, the Court must still scrutinize with great caution the testimony of the complainant, in line with the principle that the evidence for the prosecution must rise or fall on its own merits without regard to the weakness of the defense. [41]