THIRD DIVISION

[G.R. No. 236544, October 05, 2020]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN LOMA Y OBSEQUIO ALYAS "PUTOL", ACCUSED-APPELLANT.

DECISION

GAERLAN, J.:

This is an appeal from the Decision[1] of the Court of Appeals (CA) dated July 19, 2017 in CA-G.R. CR HC No. 08351, which affirmed with modification the Decision[2] dated May 3, 2016 of the Regional Trial Court (RTC) of Ligao City in Criminal Case No. 5385, finding herein Efren Loma *y* Obsequio alyas "Putol" (accused-appellant) guilty beyond reasonable doubt of the crime of simple rape defined and penalized under Article 266-A, paragraph 1(a) of the Revised Penal Code (RPC), as amended, in relation to Article 266-B thereof.

The Antecedents

The accused-appellant was charged with statutory rape defined and penalized under Article 266-A paragraph 1(d)[3] in relation to Article 266-B[4] of the RPC, as amended, in an Information filed on January 9, 2007 which reads:

> That on or about 6:00 o'clock in the afternoon of October 21, 2006 at [redacted] province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, taking advantage of the tender age of AAA, wilfully, unlawfully and feloniously[,] have carnal knowledge with her, a ten (10) years [sic] old girl and grade 1 student, against her will and consent, to her damage and prejudice."
>
> ACTS CONTRARY TO LAW.[5]

Upon arraignment, accused-appellant, assisted by counsel, entered a plea of not guilty.[6]

The Facts

During the trial, BBB, the mother of AAA, testified that on October 21, 2006, AAA arrived home and narrated to her that she was sexually abused at the banana plantation by accused-appellant,[7] whom she knew fully well as he was a relative whom they considered as family. Prompted by the revelations made by her daughter, BBB then examined AAA's body and saw that her vagina was swollen[8] and that there was a wound in her inner thigh.[9] Immediately thereafter, she

changed AAA's clothing and, together with her older daughter CCC,[10] brought AAA to a clinic.[11]

Dr. James Margallo Belgira (Dr. Belgira) attended to AAA. He conducted genital examination which revealed that AAA's hymen was then dilated and lacerated at 5 and 7 o'clock positions. He also found that the posterior fourchette was sharp.[12] During his time at the witness stand, Dr. Belgira explained that a dilated hymen means that it has an abnormally large opening.[13] He concluded that the findings showed clear signs of blunt vaginal penetrating trauma.[14]

For the defense, accused-appellant testified that on October 21, 2006, he and his wife, together with Faustino Alcovendas (Alcovendas), were at Tiaong, Quezon. According to him, he was summoned by the parents of Gina Sumali, the would-be bride of his son Wilfred to plan for a wedding.[15] He also stated that from Tiaong, Quezon, he went straight to and stayed at Cavite where his children at that time attended school.[16] According to him, he also had a furniture business there.[17] He averred that he only learned of the charges against him when he was arrested while he was at their house in Albay in December 2011 to attend his father's wake.[18]

The testimony of Loma was corroborated by Alcovendas[19] who narrated that he joined the Lomas to serve as a cook in the *pamamanhikan*. According to him, they left Basicao Coastal, Piudoran, Albay for Tiaong, Quezon on October 20, 2006 at around 9 o'clock in the morning.[20]

The RTC Ruling

After trial, the RTC found him guilty beyond reasonable doubt for simple rape. It ruled that the victim's age was not sufficiently established as the prosecution failed to present AAA's Certificate of Live Birth and prove its unavailability.[21] Corollarily, the RTC enunciated that since the age of the complainant, an element of the crime charged, was not proven, herein accused-appellant cannot be convicted of statutory rape.[22]

The RTC considered the respective testimonies of BBB and Dr. Begira, as well as the medico-legal report.[23] In addition, it took into account the absence of accused-appellant in Basicao Coastal and considered it as a clear indication of guilt. The dispositive portion of the Decision reads:

> **WHEREFORE**, the court finds accused Efren Loma y Obsequio alyas "Putol" **GUILTY** beyond reasonable doubt of the crime of rape under Article 266-A paragraph 1 (a) of the Revised Penal Code and penalized under Article 266-B of the Revised Penal Code, as amended, and he is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is also directed to indemnify AAA the amount of a) Fifty Thousand Pesos (P50,000.00) as civil indemnity; b) Fifty Thousand Pesos (P50,000.00) as moral damages; and c) Thirty Thousand Pesos (P30,000.00) as exemplary damages. Interest at the rate of six percent (6%) per annum is likewise imposed on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.[24]

The CA Ruling

The accused-appellant elevated his case to the CA via a notice of appeal dated May 4, 2016. Briefs were filed by the accused-appellant and the plaintiff-appellee.

Later, the CA affirmed the conviction of the accused-appellant of simple rape. The dispositive portion of the Decision reads:

> **WHEREFORE**, the Appeal is **DENIED**. The Decision dated 03 May 2016 issued by the Regional Trial Court of Ligao City, Branch 12 in Criminal Case No. 5385 is hereby **AFFIRMED WITH MODIFICATION** in that Accused-Appellant Efren O. Loma is ordered to pay Private Complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P75,000.00 as exemplary damages plus interest of 6% per annum from the date of finality of this Decision until fully paid.
>
> **SO ORDERED.**[25]

Issue

The issue to be resolved in this appeal is whether or not the CA erred in affirming the conviction of the accused-appellant.

Accused-appellant invoked the same arguments he raised before the CA in assailing his conviction. He alleged that the appellate court erred in giving weight and credence to the testimony of BBB and considering it as part of *res gestae*, and in sustaining his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt. He argued that the testimony of BBB is hearsay and, thus, inadmissible in evidence.

The Court's Ruling

The appeal lacks merit.

Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.[26] Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.[27]

With respect to the age of a victim, the settled rule is that there must be independent evidence proving the same, other than the testimonies of the prosecution witnesses and the absence of denial by appellant[28] The victim's original or duly certified birth certificate, baptismal certificate or school records would suffice as competent evidence of her age.[29] In this case, the Information alleged that at the time of the commission of the crime, AAA was 10 years old. Aside from the testimony of Dr. Belgica that AAA was 10 years old at the time he examined her, BBB also testified that AAA was 10 years old at the time of the

incident. When BBB was asked by the trial court to bring proof of the age of AAA, she stated that AAA's Certificate of Live Birth was just in their home and that she will bring the same on the next hearing date.[30] She, however, failed to do so. Thereby, aside from the testimonies of the prosecution witnesses, coupled with accused-appellant's absence of denial, no independent substantial evidence was presented to prove the age of AAA. Neither was it shown by the prosecution that the said Certificate of Live Birth had been lost, destroyed, unavailable or were otherwise totally absent.[31] Hence, the trial and appellate courts correctly ruled that the qualifying element of the crime of statutory rape was not established.

Despite the failure of the prosecution to prove the age of the private complainant, accused-appellant who was charged with the crime of statutory rape may still be convicted of simple rape under Article 266-A paragraph 1(a)[32] of the RPC, as amended, provided that the prosecution was able to establish that the accused-appellant had carnal knowledge of the private complainant with the use of force.

In statutory rape, proof of force, intimidation or consent is unnecessary as they are not elements thereof. This is because the law presumes that a person under 12 years of age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[33] While in simple rape through force or intimidation, the prosecution must prove that the accused had carnal knowledge of the victim and that said act was accomplished through the use of force or intimidation.[34]

In the present case, despite the failure to prove the age of the victim to enable the court to presume that AAA is incapable of giving consent, the prosecution was able to prove that the element of force was attendant in the commission of the crime. BBB testified that at the time she examined her daughter's body after the latter declared to her that accused-appellant sexually abused her at the banana plantation, she noticed a wound in her inner thigh and blood stains on her back near her anus and at the front in between her legs.[35] In *People v. Durano*,[36] the Court enunciated that physical evidence of bruises or scratches eloquently speaks of the force employed upon the rape victim.[37] If bruises and scratches were considered as proof of force, the Court will all the more consider wounds and blood stains as evidence of the employment of force upon a victim to accomplish such a bestial act.

In every criminal prosecution, the identity of the offender and the crime itself must be established by proof beyond reasonable doubt.[38]

The prosecution, to prove the crime, as well as the identity of the accused-appellant as the perpetrator thereof, offered the testimony of BBB. She stated that she knew the accused-appellant well as she and her family treat him as a family member, he being a cousin of her husband[39] Further, BBB narrated that when AAA arrived home that fateful day, the latter told her that accused-appellant sexually abused her at the banana plantation.[40]

The accused-appellant, in his effort to negate the allegations of the prosecution and exonerate himself from any liability, averred that AAA's failure to testify is fatal to the prosecution's case as BBB's testimony is hearsay and thus, inadmissible in evidence[41] Thereby leaving no sufficient evidence for his conviction.

Direct evidence, such as the testimony of the victim, is not the only means of proving rape beyond reasonable doubt[42] or is not indispensable to criminal prosecutions as a contrary rule would render convictions virtually impossible given that most crimes, by their nature, are purposely committed in seclusion and away from eyewitness.[43] If for some reason the complainant fails or refuses to testify, as in this case, then the court must consider the adequacy of the circumstantial evidence established by the prosecution[44] provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt.[45] It is absolutely necessary, however, that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.[46]

Truly, a witness can testify only on the facts that he or she knows of his own personal knowledge,[47] *i.e.*, those which are derived from his or her own perception.[48] A witness may not testify on what he or she merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he or she has learned, read or heard.[49] Hence, as a general rule, hearsay evidence is inadmissible in courts of law. However, the hearsay rule has several exceptions which includes Section 42 of Rule 130 of the Rules of Court which states:

> **Sec. 42.** *Part of the res gestae*. - Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the *res gestae*.

Clearly, a declaration is deemed part of the *res gestae* and is admissible as an exception to the hearsay rule when the following requisites are present: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) statements must concern the occurrence in question and its immediately attending circumstances.[50]

Our jurisprudence is replete of cases where the victim never testified in court but her declaration to a prosecution witness was considered part of the *res gestae* and ultimately resulted to the conviction of the accused based thereon.

In *People v. Villarama*,[51] the accused, uncle of the non-testifying 4-year-old rape victim, was convicted on the basis of what she told her mother. The Court ruled:

> In the case at bar, there is no doubt that the victim was subjected to a startling occurrence when she pointed to appellant as her assailant. It is evident from the records that the statement was spontaneous because the time gap from the sexual assault to the time the victim recounted her harrowing experience in the hands of appellant was very short. Obviously, there was neither capability nor opportunity for the 4-year-old victim to fabricate her statement.[52]