

## FIRST DIVISION

[ G.R. No. 213390, March 15, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE GABRIEL Y GAJARDO, ACCUSED-APPELLANT.**

### R E S O L U T I O N

**DEL CASTILLO, J.:**

This is an appeal from the March 25, 2014 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05147 which affirmed with modification the July 19, 2011 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Dagupan City, Branch 43, in Criminal Case No. 2010-0118-D finding appellant Jessie Gabriel y Gajardo guilty of the crime of rape and imposing upon him the penalty of *reclusion perpetua*.

The facts of the case are as follows:

Appellant was indicted for rape in an Information which alleged:

That on or about the 17<sup>th</sup> day of February 2010, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JESSIE GABRIEL y GAJARDO, with force and intimidation, did then and there, willfully, unlawfully and criminally, have carnal knowledge upon one ["AAA"],<sup>[3]</sup> a 17-year old minor, against her will and consent, to the damage and prejudice of the latter.

Contrary to Article 266-A par. 1-a, in relation to the 2<sup>nd</sup> par. of Article 266-B of the Revised Penal Code as amended by RA 8353.<sup>[4]</sup>

Arraigned thereon, appellant entered a negative plea.

"AAA" at the time material to this case is a 17-year old first-year nursing student at the Colegio de Dagupan and temporarily resides at the boarding house of appellant in Dagupan City. "AAA" testified that at about 6:00 p.m. of February 17, 2010, she, with her cousin and co-boarder "BBB," was inside their room at the second floor of the said boarding house when appellant suddenly entered their room and accused them of having stolen items of merchandise from his store located near the said boarding house. "AAA" and "BBB" vehemently denied this accusation, but appellant did not believe them. Instead, appellant directed them to see him in his room at the first floor of the boarding house to talk about the matter. When "AAA" went inside appellant's room, the latter renewed his insistence that "AAA" own up to having stolen the merchandise in question, otherwise he would bring her to the Police Station and have a theft case against her blottered. He then told her to sit on his lap and began caressing her back. "AAA" demanded that he stop what he was doing because she did not like it, but he paid no heed to her demand. When "AAA" stood

up to leave, appellant pulled her back, compelled her to sit on his lap anew, and then proceeded to unhook her bra. What took place after this, "AAA" herself graphically recounted thus:

PROS. PERALTA:

x x x x

Q We go back to that incident when he removed the hook of your bra, what happened after that?

A He made me lie down, Madam.

Q What happened next?

A [T]hen he forced me, he raped me, Madam.

Q When you said he raped you, what do you mean by that?

A He made me lie down, he made me spread my legs and he undressed me, Madam.

Q What were you wearing at that time?

A I was wearing t-shirt and pajama, madam.

Q And x x x after spreading your legs, what did he do next?

A He x x x inserted his penis [into] my vagina, Madam.

Q What happened when he inserted his penis [into] your vagina?

A I [cried] and I told him that I don't like [what he was doing] but he insisted, Madam.

Q When you refused, what did he do, if any?

A I just cried, Madam.

Q How about the accused?

A He continued what he was doing, Madam.

Q What was he doing?

A He was raping me, Madam.

Q For how long did it happen?

A Minutes, Madam.

Q When you said minutes, you mean one (1) minute?

A Around thirty (30) minutes, madam.

Q What was his position at that time?

A He was on top of me, madam.

Q While he was on top of [you], what did [he] do?

A He raped me, Madam.

Q When you said he raped you, what do you mean by that?

A He inserted his penis [into] my vagina, Madam.

Q What did you feel at that time when he inserted his penis [into] your vagina?

A None, [M]adam.

Q What, if any, did you feel or notice while his penis was inside your vagina?

A None, [M]adam.

Q You said that you were crying while he was raping you, why were you crying?

A I was afraid and I don't like it, Madam.

Q When he started to insert his penis [into] your vagina, did you feel anything?

A Yes, [M]adam.

Q What did you feel?

A It was painful,[M]adam.

COURT:

Q Why did you not push him while he was on top of you?

A He was forceful, [M]adam.

Q What do you mean when you said her was forceful?

A He [was strong], [M]adam.<sup>[5]</sup>

Appellant's lecherous assault upon "AAA" ceased only when his child knocked on the door and called for him. When he heard his child's knocking, he released "AAA" from his clutches, told her to get dressed and leave the room. "AAA" then went to

the bathroom to wash and then returned to her room at the second floor where she continued to cry. "BBB" asked her why she was crying but she could not tell her of her forcible violation. Later that evening, "AAA's" aunt, "CCC," and her husband "DDD," together with "BBB's" mother "EEE" (who was earlier texted by "BBB" to come to the boarding house) arrived. They confronted appellant about his accusation that "AAA" and "BBB" had stolen certain items from his store. It was then that "AAA" told "CCC" and "DDD" that she had been raped by appellant. A call was then made to the city police department which deployed SPO1 Esteban Martinez and PO1 Ramon Valencerina, Jr. who, upon reaching the boarding house, were informed that "AAA" had been raped by appellant. These police officers arrested appellant and brought him to the police station. After this, "AAA" submitted herself to physical examination at the Region 1 Medical Center in that city.

The other prosecution witnesses, namely "BBB," "EEE" and "CCC," not having actually witnessed "AAA's" violation, claimed that they came to know of "AAA's" rape from "AAA" herself. However, they were present just outside the boarding house when "CCC", "AAA's" aunt, exploded into hysterical outburst on hearing from "AAA" that she had been raped by appellant. The Medico-Legal Report issued by Pr. Marlene Quiramol moreover showed tell-tale evidence that "AAA" had indeed been sexually abused, as there were erythema and fossa navicularis at the external genitalia, as well as multiple *fresh* lacerations at the 3, 6, 9 and 12 o'clock positions in "AAA's" hymen.

Appellant denied that he raped "AAA". He claimed that on the morning of February 17, 2010, he noticed that some items of merchandise in his store were missing and he suspected that "AAA" and "BBB" were the culprits; hence, he went to their room to confront them. These two however denied his accusation, so he confronted them with the pictures of the missing items which he earlier took in the locker inside the room rented by "AAA" and "BBB."

Appellant nevertheless admitted that on said occasion, he talked with "AAA" inside his room at the first floor of the boarding house for some 15 minutes, but stressed that after their conversation, "AAA" went outside while he proceeded to his store.

The only other witness presented by appellant, one Sandro Montañez, a boarder in the former's boarding house, simply testified that on the day in question (February 17, 2010), he saw "AAA" doing her laundry and that he did not notice anything unusual in her appearance at all.

### ***Ruling of the Regional Trial Court***

Synthesizing the conflicting contentions of the prosecution and the defense, the RTC held:

The instant rape case is one of multifarious cases where there are no identified witnesses, and where the evidence effectively boils down to the complainant's word against the accused's. However, a pronouncement of guilt arising from the sole testimony of the victim is not unheard of so long as her testimony meets the test of credibility. This is especially true in the crime of rape the evidentiary character of which demands so much

on the part of the victim-it entails her to submit to an examination of her private parts, and to subject the sordid details of her story to a public trial and against a given presumption of the accused's innocence.

To establish the crime of Rape under the article cited above, two elements must be shown to exist. And these are 'that the accused had carnal knowledge of the offended party; and that the coitus was done through the use of force or intimidation.'

AAA cried profusely while recounting her awful experience at the hands of her abuser. As has been repeatedly held, 'no young girl would concoct a sordid tale of so serious a crime rare, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.' AAA had revealed the incident to her relatives. If it is not rape, what is it?

Accused's attempt to characterize the testimony of 'AAA' as incredible lacks merit. Accused's defense of denial must crumble in light of AAA's positive and specific testimony. It is an established jurisprudential rule that denial, like alibi, being negative self serving defense, cannot prevail over the affirmative allegations of the victim and her categorical and positive identification of the accused as her assailant. 'Denial must be proved by the accused with clear and convincing evidence otherwise they cannot prevail over the positive testimony of credible witnesses who testify on affirmative matters.'

Moreover, AAA's testimony is corroborated by the findings of the examining physician, Dr. Marlene Quiramol x x x viz[.]; (+)Erythema at the peri hymenal and fossa navicularis; (+) Multiple fresh lacerations at 3, 6, 9 & 12 o'clock positions. Medical examination showed evidence of sexual abuse. "When a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the same is sufficient to support a conviction for rape.' As the Highest Court succinctly stated in *People vs. Borja*, 'a victim who says she has been raped almost always says all there is to be said.'

The defense made it appear x x x that there were other people at the time of the incident. Granting *arguendo* that there were other people in the house when the rape was committed, rapists are not deterred from committing their odious act by the presence of people nearby or the members of the family. Lust, being a very powerful human urge is, to borrow from *People v. Virgilio Bernabe*, 'no respecter of time and place.' For the crime of rape to be committed, it is not necessary for the place to be ideal or the weather to be fine, for rapists bear no respect for locale and time when they carry out their evil deed. Rape can be committed in even the unlikeliest places and circumstances and by the most unlikely persons. The beast in a man bears no respect for time and place, driving him to commit rape anywhere - even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule