

## THIRD DIVISION

[ G.R. No. 223138, July 05, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICKY  
PRIMAVERA Y REMODO, ACCUSED-APPELLANT.**

### DECISION

**TIJAM, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated March 13, 2015 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06306, sustaining the conviction of Ricky Primavera y Remodo (accused-appellant) for the crime of Rape, held by the Regional Trial Court (RTC), in San Jose, Camarines Sur, Branch 58, in its Decision<sup>[2]</sup> dated June 5, 2013 in Criminal Case No. T-2949.

### The Facts

Accused-appellant was charged with rape in an Information, the accusatory portion of which reads as follows:

"That on or about 2:00 o'clock in the morning of November 17, 2005, in barangay Sta. Maria, Lagonoy, Camarines Sur, Philippines and within the jurisdiction of [the] Honorable Court, the said accused, with intent to lie, by means of force, intimidation and influence, did then and there willfully, unlawfully and feloniously lie and succeeded in having carnal knowledge with one AAA,<sup>[3]</sup> a minor, 16 years old, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment, accused-appellant pleaded not guilty to the charge. Pre-trial, and thereafter, trial ensued.

During trial, the prosecution presented the following witnesses, to wit: AAA; BBB, AAA's mother; Lagonoy, Camarines Sur Municipal Health Officer Dr. Ramon Odiamar (Dr. Odiamar); and National Bureau of Investigation (NBI) Regional Office, Naga City Special Investigator Rogelio G. Intia (Intia).

AAA testified that around 2:00a.m. of November 17, 2005, she was sleeping alone in their living room while BBB and her siblings were sleeping in their store adjacent to their living room. She was suddenly awakened by the voice of accused-appellant, who was their neighbor, telling her not to make any noise, otherwise he will kill her with a gun. Accused appellant also told AAA that he has been wanting her and her elder sister but the latter already got married. He also told AAA that he will bring her to hell. He recognized accused-appellant as the latter turned on a flashlight as he wanted to see her face. AAA tried to reach for the xylophone and flat iron beside

her to hit him with the same but the accused-appellant was able to stop her and instead, strangled her with the cord of the flat iron.<sup>[5]</sup>

Accused-appellant then proceeded to kiss her breasts and bite her nipples. He also managed to take off his and AAA's shorts/pants and underwears, open AAA's legs, insert his penis into AAA's vagina, and make push and pull movements. Thereafter, accused-appellant played with AAA's breast and vagina.<sup>[6]</sup> After the sexual abuse, accused-appellant pulled AAA's hair, made her sit on a chair, and threatened to kill her, BBB, and her siblings if she tells anyone about the incident.<sup>[7]</sup>

That morning, AAA went to school and told her cousin about the abuse. When she got home that day, she saw accused-appellant talking to BBB, asking if she found a cap in their house. Upon hearing this, AAA went to their living room where accused-appellant raped her and found the cap that accused-appellant was looking for and kept the same.<sup>[8]</sup>

That evening, AAA's grandmother came to their house and told BBB that AAA was raped. Apparently, her cousin told her grandmother about it. BBB then confronted AAA and the latter confessed that accused-appellant indeed raped her. They immediately proceeded to the municipal police station to report the incident. The family, however, decided to file the case directly with the NBI. AAA was then subjected to a medical examination.<sup>[9]</sup>

AAA's testimony was corroborated by BBB's testimony on material points, to wit: AAA's age at the time of the incident; that accused-appellant asked her about his lost cap that morning; that AAA's grandmother told her about the abuse; and that she brought AAA to the police station and NBI to report the incident and file a complaint.

Dr. Odiamar testified to interpret the report prepared and issued by Dr. Raoul Alcantara of the NBI as regards AAA's medical examination. No injury was found on AAA's genital. AAA's hymen was found to be intact. AAA's hymenal orifice was found to be 3.0 centimeters in diameter, which allows complete penetration of an average-sized adult Filipino male organ in full erection without producing hymenal injury.<sup>[10]</sup>

For its part, the defense presented the testimonies of the accused-appellant, Ronnie Capuz (Capuz) and Virgilio Rebuya (Rebuya).

The accused-appellant denied the accusation against him. He testified that he has known AAA for a long time as he and AAA's parents were close to each other. He further testified that AAA had once requested him to teach her how to drive a motorcycle to which he acceded. She also asked him one time to fetch her from an outing. BBB also used to borrow money from him but the last time she did, she asked for PhP 10,000 and he was not able to lend her because he also needed money at that time. Because of this, BBB got mad and threatened him that he will "find what he is looking for." According to the accused-appellant, this is the reason why he was charged with rape. He also interposed an *alibi*, saying that at the time of the alleged incident, he was at home sleeping with his children.<sup>[11]</sup>

Capuz testified that on the night of November 16, 2005 until about 5:00 a.m. of the

following day, he was at the billiard hall in front of AAA's house. He averred that he saw accused-appellant pass by at around 7:30 p.m. to collect *jueteng* bets. He never saw accused-appellant thereafter.<sup>[12]</sup>

Rebuya testified that he frequently saw accused-appellant and AAA riding the former's motorcycle. He also saw AAA and BBB frequent accused-appellant's house and when he asked the accused-appellant about it, the latter responded that BBB borrows money from him. Rebuya further testified as to the proximity of accused-appellant's house to that of AAA's.<sup>[13]</sup>

### **The RTC Ruling**

On June 5, 2013, the RTC, giving more weight to AAA's positive testimony than accused-appellant's *alibi* and denial, found the latter guilty beyond reasonable doubt of the crime of rape, thus:

WHEREFORE, all the foregoing considered, accused Ricky Primavera is hereby found GUILTY BEYOND REASONABLE DOUBT of the felony of RAPE defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of Reclusion Perpetua. He is likewise ordered to pay the private complainant (AAA) the amount of Php 50,000.00 as moral damages and Php 50,000.00 as civil indemnity.

SO ORDERED.<sup>[14]</sup>

### **The CA Ruling**

The CA upheld the conviction but modified the monetary awards as follows:

**WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby **DENIED**. The Decision dated June 5, 2013 of the Regional Trial Court of San Jose, Camarines Sur, Branch 58 is hereby **AFFIRMED with MODIFICATION**, that is, accused-appellant Ricky Primavera y Remodo is found **GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Article[s] 266-A and 266-B of the Revised Penal Code as amended by RA 8353 and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is **ORDERED** to pay the victim AAA the following sums: a) Php 75,000.00 as and for civil indemnity; b) Php 75,000.00 as and for moral damages; c) Php 30,000.00 as and for exemplary damages as provided by the Civil Code in line with recent jurisprudence plus legal interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

**SO ORDERED.**<sup>[15]</sup>

Hence, this appeal.

Both parties manifested that they will no longer file supplemental briefs since the same will just be a rehash of arguments already reflected in their respective briefs

filed before the CA.

### **The Issue**

Basically, the pivotal issue to be resolved by this Court is whether the prosecution was able to prove beyond reasonable doubt that accused appellant is guilty of the crime of rape.

### **This Court's Ruling**

The Court affirms the conviction of accused-appellant with modifications only as regards the monetary awards.

Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended, provide:

ART. 266-A. *Rape; When and How Committed.* - Rape is Committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
  - a) Through force, threat, or intimidation;
  - b) When the offended party is deprived of reason or otherwise unconscious;
  - c) By means of fraudulent machination or grave abuse of authority; and
  - d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

ART. 266-B. *Penalties.* - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

Thus, for a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>[16]</sup>

The RTC and the CA found that the prosecution successfully proved beyond reasonable doubt all the elements of the crime of rape and accused appellant's guilt.

The accused-appellant, however, faults the trial court for relying upon AAA's testimony in ruling for his conviction. Accused-appellant points out the impossibility of consummating rape considering the proximity between the room of AAA's mother and siblings and the living room, where AAA was allegedly raped. Accused-appellant also insists on his *alibi* that he was home, sleeping with his children, at the time that the rape allegedly occurred. The accused-appellant further points out the fact that no extragenital physical injury nor hymenal laceration was found on AAA, arguing thus that such fact *albeit* not an element of the crime, negates rape and casts