

## THIRD DIVISION

[ G.R. No. 207772, November 08, 2017 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
GAVINO PAGAMUCAN Y MATIGA @ "SABINO/ABE," ACCUSED-  
APPELLANT.**

### RESOLUTION

**MARTIRES, J.:**

"Yes, he give (sic) me five (P5.00) pesos."<sup>[1]</sup> So testified the minor victim in this case after her rape, bringing to a total of thirty pesos the money she had received from her assailant.

On appeal is the Decision of the Court of Appeals (CA) in CA-G.R. CR. HC No. 00793,<sup>[2]</sup> dated 31 January 2012, which affirmed with modification the Decision of the Regional Trial Court of [REDACTED], Eastern Samar (RTC),<sup>[3]</sup> in Criminal Case No. 0007,<sup>[4]</sup> dated 19 September 2007. The RTC found appellant Gavino Pagamucan y Matiga (*accused-appellant*) alias "Sabino" or "Abe," guilty beyond reasonable doubt of statutory rape.

### THE FACTS

On 13 January 2006, appellant was charged with statutory rape, as defined and penalized under Article 335 of the Revised Penal Code. The Information<sup>[5]</sup> reads:

That on or about 10:00 o'clock in the morning of September 10, 2005 at [REDACTED], Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, with force and intimidation did then and there wilfully, unlawfully and feloniously have carnal knowledge with AAA,<sup>[6]</sup> a minor being only 10 years old against her will and consent, to the damage and prejudice of the herein victim.

Appellant entered a plea of "not guilty."<sup>[7]</sup> Trial ensued.

#### ***The Version of the Prosecution***

The prosecution presented as witnesses the victim AAA, her father BBB, the Chief of the [REDACTED] Municipal Hospital, and the Civil Registrar of [REDACTED], Eastern Samar.

AAA testified that on 10 September 2005, at around 10:00 A.M., she was defecating under coconut trees located at about a hundred meters away from her house in [REDACTED], [REDACTED], Eastern Samar, when accused-appellant, her next-door

neighbor,<sup>[8]</sup> approached her and got her up, and carried her to a grassy place. He undressed her, mounted her, held her breasts, and inserted his penis into her vagina. She felt pain and cried but could not shout because accused-appellant had covered her mouth, pointed a knife at her, and threatened to kill her. After the rape, accused-appellant gave her P5.00 and left. Thereafter, she went home.

BBB, AAA's father, testified that on 9 September 2005, he noticed that AAA had money. Bothered, because he never gave her money, he asked her where she got it. AAA revealed that appellant had given her P5.00 every time he raped her. The next day, on 10 September 2005, he reported the incident to the Punong Barangay to whom AAA narrated how appellant had raped her several times.

The Chief of the General [REDACTED] Municipal Hospital, Dr. Manuel Japzon, testified that he physically examined AAA on 26 September 2005, and found that her vaginal area bore healed laceration wounds at the 2 o'clock and 10 o'clock positions, which wounds could have been inflicted by a blunt instrument such as an erect penis.<sup>[10]</sup>

The Municipal Civil Registrar, Mr. Pionio Campo, testified that he had issued the Certificate of Live Birth of AAA that indicated she was born on 25 January 1994.<sup>[11]</sup>

### ***The Version of the Defense***

The defense presented the testimonies of the appellant, of one Eyong Jadocan (*Eyong*), and of Dr. Gener Camposano (*Dr. Camposano*), the Rural Health Physician of [REDACTED].

The appellant, a sixty-year old farmer, widower, and resident of [REDACTED], [REDACTED], Eastern Samar, presented alibi as a defense. He testified that he could not have raped AAA on 10 September 2005 because he was home that day, in bed with a fever. His pregnant daughter-in-law was with him. At around 7:00 A.M., Eyong came to ask why the bamboos he had ordered had not been delivered, and stayed at appellant's house from 7:00 A.M. to 9:00 A.M.<sup>[12]</sup>

Eyong attested that he went to appellant's house in the morning of 10 September 2005, where he was with appellant from 8:00 A.M. to 11:00 A.M.<sup>[13]</sup>

Dr. Camposano testified that he physically examined AAA on 19 September 2005. He found that she did not have a vaginal discharge and did not bear any recent injury; however, her hymen was no longer intact.<sup>[14]</sup>

The daughter-in-law did not testify.

### **The Rulings of the RTC and the CA**

The RTC gave credence to the prosecution's version of events. It made the factual findings that AAA was raped on 10 September 2005; and that on said date, she was 11 years old, following her birth certificate, notwithstanding the allegation in the information that she was 10 years old on the day of the rape. Parenthetically, the trial court observed that despite his alleged illness, appellant still managed to carry

on a conversation with a guest (Eyong) for three straight hours in his home.<sup>[15]</sup> The RTC declared appellant to be guilty beyond reasonable doubt of statutory rape and sentenced him to suffer the penalty of *reclusion perpetua*. It ordered him to pay civil indemnity in the amount of P50,000.00,<sup>[16]</sup> but did not impose the award for moral and exemplary damages.

The CA affirmed the conviction but modified the penalty by ordering appellant to pay AAA an additional P50,000.00 as moral damages.<sup>[17]</sup>

### **THE APPEAL**

The appeal at bar reiterates the points raised in the Brief for the Appellee, dated 26 October 2009, which appellant had filed with the CA.<sup>[18]</sup>

The appeal is anchored on two arguments: (a) that the prosecution failed to prove the date of commission of the offense; and (b) that the prosecution failed to prove appellant's guilt beyond reasonable doubt.

Accused-appellant emphasizes the discrepancy in the testimony of BBB with respect to the date of the rape. To recall, BBB testified that on 9 September 2005, AAA had already told him that she had been raped. Appellant points out that this is contrary to the date of the rape alleged in the information, which is 10 September 2005. He argues that the discrepancy is material to the question of his guilt as, following the information, he had been apprised that he committed his alleged offense on 10 September 2005. Correspondingly, he prepared his defense with the date alleged in the information in mind. BBB's testimony thus prejudiced his right to adequately prepare for his defense.

Appellant also pleads that while alibi has consistently been weighed as a weak defense, it is still a valid defense. He maintains that in the morning of 10 September 2005, he was home, down with the flu, where he spent time talking to his guest Eyong, making it physically impossible for him to have raped AAA on 10 September 2005.

Appellant does not contest the finding made by the RTC as to the age of AAA at the time of the rape, that she was a minor at the time.

### **OUR RULING**

We find no reason to deviate from the findings of the courts *a quo* and to reverse the conviction of the appellant. The arguments raised in the appeal cannot upset the moral certainty, engendered by the prosecution evidence, that appellant had violated AAA as charged. However, a modification of the monetary awards imposed by the courts *a quo* is warranted, in line with the recent rulings on statutory rape.<sup>[19]</sup> Thus, the amounts of civil indemnity and moral damages are increased to P75,000.00 each, and exemplary damages are additionally awarded in the amount of P75,000.00.

As pointed out in the rulings of the RTC and the CA, in rape cases,<sup>[20]</sup> the failure to specify the exact dates or times of the rape does not *ipso facto* make the corresponding information defective on its face. The reason for this is that the date

or time of the commission of rape is not a material ingredient of said crime.<sup>[21]</sup> At any rate, because AAA positively testified that she was raped on 10 September 2005, her testimony confirms the date of the rape stated in the information. It is AAA, not her father, who has personal knowledge of when she was raped. It is her testimony, therefore, not her father's, that must be given greater weight.

Secondly, this Court has time and again declared that the defense of alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.<sup>[22]</sup> Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill motive to testify against the appellants.<sup>[23]</sup> In this case, appellant failed to plead as well as prove that AAA had been motivated by malice in accusing him of rape.

All told, we find that the elements of statutory rape are sufficiently proven in this case. The age of AAA established before the RTC is eleven (11) years old. The acts of appellant thus fall squarely under Art. 335 of the Revised Penal Code. As held in *People v. Lopez*:

It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age. xxx<sup>[24]</sup>

Consistent with prevailing jurisprudence on the monetary penalties for statutory rape,<sup>[25]</sup> we increase the awards of civil indemnity and moral damages to P75,000.00 each, and award exemplary damages in the amount of P75,000.00. Moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. Exemplary damages are called for, by way of public example, and to protect the young from sexual abuse.<sup>[26]</sup>

### **Finally, a personal observation.**

The information charged accused-appellant with only one count of rape, for the one that occurred on 10 September 2005. In the course of our review of the records, however, it came to our attention that the subject rape was probably not the first and only time that AAA had been raped. AAA's testimony bears this out:

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Court

The court observed that the witness is slow in comprehension. She has difficulty in answering questions. Anyway ask her another question.

Q. Was there an instance that the penis of the accused was inserted inside your vagina?

A. Yes, sir.

Q. When was that?

A. Long time ago already.

Q. On September 10, 2005 in the morning, was there an instance that the sex organ of the accused was inserted to your vagina?

A. Yes. [27]

xxxx

Q. After the sexual intercourse, what did the accused do next?

A. He went home.

Q. Before he went home did he give you something?

A. Yes, he give me five (P5.00) pesos.

Q. After receiving the five (P5.00) pesos from the hand of the accused, what did you do next?

A. I went home to our house.

Q. Where did you place the five (P5.00) pesos which the accused give you?

A. I kept it.

Q. When you reach home, was your father there?

A. He was not there. [28]

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We relate the above testimony to that of AAA's father, BBB, who testified: *first*, that he had been wondering how AAA "always" had money; *second*, that on 9 September 2005 AAA had an aggregate amount of thirty pesos in her possession; and, *third*, that AAA had told him that accused-appellant had been giving her money. The pertinent direct testimony reads:

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Fiscal Campo

Q. What time was that in the morning when you came to know that your daughter, AAA, has plenty of money?

Witness

A. About 11:30 in the morning.

Fiscal Campo

Q. How did you come to know that your daughter has plenty of money?

Witness

A. Because I was wondering why she had plenty of money.

Fiscal Campo

Q. At that time on September 9, 2005 at about 11:30 in the morning, how did you come to know that your daughter has