

THIRD DIVISION

[G.R. No. 208676, April 13, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLAN
MENALING Y CANEDO ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

Before us for review is the Decision^[1] of the Court of Appeals in CA G.R. CR.-H.C. No. 04819 dated 26 November 2012 which dismissed the appeal of appellant Allan Menaling y Canedo and affirmed with modification the Judgment^[2] of the Regional Trial Court (RTC) of Olongapo City, Branch 73, in Criminal Cases Nos. 353-2006 and 354-2006, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

Appellant was charged with two (2) counts of qualified rape, to wit:

Criminal Case No. 353-2006

That on or about the twenty-first (21st) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/natural father of [AAA^[3]], a 12-year old minor and having moral ascendancy over the latter and with lewd design did then and there wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said [AAA], by then and there inserting his penis to the vagina of said [AAA] against her will and consent to her damage and prejudice.^[4]

Criminal Case No. 354-2006

That on or about the twenty-six[th] (26th) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/natural father of AAA, a 12-year old minor and having moral ascendancy [over] the latter and with lewd design did then and there wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said AAA, by then and there inserting his penis to the vagina of said AAA against her will and consent to her damage and prejudice.^[5]

Appellant pleaded not guilty to the charges. At the pre-trial conference, the parties stipulated that AAA is a twelve-year old minor at the time of the alleged crime and that appellant is her natural/biological father.

Trial on the merits ensued.

The prosecution presented four (4) witnesses: the victim, AAA; Dr. Rolando Marfel Ortis (Dr. Ortis); psychologist Dr. Naila dela Cruz (Dr. dela Cruz); and BBB, AAA's mother. The appellant was the sole witness for the defense.

AAA, who was only twelve (12) years old at the time of the commission of the crimes, recounted that in the evening of 21 January 2006, she was sleeping with her sibling and BBB on a bed in her house when her father, appellant, woke her up by tapping her foot and asked her transfer to the floor where he was sleeping. AAA sat down, refused his request, and cried. But appellant held her hands. Then he directed her to remove her clothing. When AAA refused this, appellant himself removed her clothing, kissed her and inserted his male organ into her. AAA cried in pain. Appellant threatened AAA with harm if she would tell BBB about the incident. BBB woke up shortly and asked AAA to transfer to the bed.^[6]

In the afternoon of 26 January 2006, AAA and her four siblings were sleeping when appellant again woke her up and sexually assaulted her. Her brother woke up and witnessed the incident. He ran away and told his aunt about it until word reached BBB.^[7]

BBB cried when she learned of the incidents from her sister on 28 February 2006. BBB immediately reported the crime to the police resulting in the filing of charges against appellant.^[8]

Dr. Ortiz was able to examine AAA on 1 March 2006. Per his Medico Legal Certificate^[9] dated 3 March 2006, AAA's hymen was not intact and was found to have old healed lacerations at 7 o'clock position and her female anatomy admits of two fingers with ease. On the witness stand, Dr. Ortiz stated that the hymen laceration was thirty (30) days old or more; and that two (2) fingers could be inserted with ease into AAA's female anatomy indicates previous multiple sexual intercourse. AAA also had some infection from a previous sexual intercourse.^[10]

Dr. dela Cruz, the psychologist testified that AAA was referred to her for protective custody. At the time of the interview, AAA appeared disturbed by the abuse committed against her by her father. Further, AAA was observed to harbor intense feelings of hatred, dissatisfaction and resentment against her father.^[11] In the report of her findings, Dr. dela Cruz made the following remarks:

x x x She has transparent and vocal manifestations of resentment and indignation towards her experience. Client is agitated for thinking that she will not regain anymore her loss (sic) relationship with her siblings as well as her mother because of this case filed. She is helpless, unhappy, and insecure and has no emotional security and satisfaction. x x x^[12]

The prosecution filed their Formal Offer of Evidence^[13] on 26 December 2007 with the RTC and rested their case. On 1 February and 18 April 2008, AAA and BBB were respectively called back to the witness stand by the defense counsel and the two recanted their previous testimonies against appellant. AAA declared that the real perpetrator was her grandfather, the uncle of her mother, now deceased.^[14] BBB

stated that she had told lies when she first testified. BBB also admitted that she loves her husband very much and would do anything to have the charges against him dismissed.^[15]

Appellant, for his part, denied raping his daughter AAA. Appellant claimed that AAA was a problem child who had a relationship with a lesbian. Appellant confessed though that he always created trouble every time he went home drunk which may have prompted AAA to charge him of rape.^[16] Appellant also asserted that he could not have possibly raped AAA because his wife, BBB, always stayed home. Appellant first came to know of the charges against him when he came home from work on 4 March 2006 when he was invited by the policemen to their station.^[17]

In an Order^[18] dated 12 January 2009, the RTC rejected AAA and BBB's recantations. The RTC noted that the alleged real culprit had died in 2004, two (2) years before the commission of the rape charges in 2006. The trial court dismissed the recantations as incredulous and unworthy of belief.

On 23 November 2010, appellant was found guilty beyond reasonable doubt of qualified rape. The dispositive portion of the RTC Decision reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered finding accused Allan Menaling guilty beyond reasonable doubt for the crime of qualified rape in Criminal Case No. 353-2006, for which he is sentenced to suffer the maximum penalty of *reclusion perpetua*.

On the other hand, due to reasonable doubt, said accused is acquitted of the same crime in Criminal Case No. 354-2006.^[19]

Appellant filed a Notice of Appeal on 21 December 2010.^[20]

On 26 November 2012, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, *viz.*:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Decision dated November 23, 2010 of the RTC, Branch 73, Olongapo City is **AFFIRMED with MODIFICATION** in that in addition to the maximum penalty of *reclusion perpetua*, accused-appellant Allan Menaling y Canedo is further **ORDERED** to pay private complainant AAA Seventy-Five Thousand Pesos (P75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (P75,000.00) as moral damages, and Thirty Thousand Pesos (P30,000.00) as exemplary damages.^[21]

Appellant filed the instant appeal. In a Resolution^[22] dated 11 November 2013, appellant and the Officer of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. OSG manifested that it was adopting its brief filed before the appellate court^[23] while appellant filed his Supplemental Brief arguing that AAA's initial testimony regarding the rape incident is incredulous. Appellant asserts that AAA's narration that she was raped by her father in the presence of her mother is preposterous because no mother would keep quiet and act nonchalantly after having witnessed the abuse of her daughter. Appellant also points out that AAA's mother testified that she was in Batangas on

the day of the alleged rape. Appellant also questions the actuations of AAA during the rape incident. Appellant asks why AAA did not scream or offer any resistance despite the proximity of her siblings at that time. Appellant stresses that AAA and BBB had the motive to falsely charge him because they feared him.^[24]

It is a well-settled rule that appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.^[25]

We have carefully reviewed the records of the case and we find no reason to depart from this established rule.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,^[26] define and punish rape as follows:

Article 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

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

x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

It is extant in the records that the prosecution has successfully proven beyond reasonable doubt that appellant had carnal knowledge of his twelve (12) year old daughter, AAA, through force and intimidation. AAA described the harrowing details of her experience, to wit:

PROS. PARCO-

Q Do you know the accused in this case?

A Yes, sir.

Q Why do you know the accused in this case?

A Because he was the one who did this thing to me.

Q How is he related to you?

A He is my father.

Q Do you recall madam witness where you were (sic) on January 21, 2006 in the evening?

A I was in the house.

Q What were you then doing in the evening?

A We were then sleeping.

Q When you said "kami" who were these persons?

A My mother and my siblings.

Q When you were sleeping, what happened?

A He woke me up.

Q Who woke you up?

A My father.

Q The accused in this case?

A Yes, sir.

Q After you woke up, what happened?

A He told me to remove my clothing but I refused, that's why he was the one who took off my clothes and he kissed me and inserted his organ to my organ.

Q How did you feel when he inserted his organ to your organ?

A I felt pain.

Q Did you not shout?

A No, sir I just cried.

Q After that, what happened?

A My mother woke up and she told me to transfer to the bed.

Q Also on January 26, 2006 in the afternoon, do you recall any incident that happened to you?

A Yes, sir.

Q What was this incident?

A The same incident as in January 21.

Q What do you mean the same?

A He again told us to sleep. My mother was not there and after that, he again did what he did to me the last time. ^[27]

x x x x

ATTY. GUILARAN-

Q You testified that in the evening of January 26, 2006, you were sleeping then with your father and your mother and your other siblings?

A Yes, Ma'am.

Q What part of the house did you sleep on January 21, 2006 together with your father, your mother and your siblings?

A On the bed.

Q How many siblings do you have?

A We are all 5, Ma'am.

Q Plus your mother and your father, you are all seven (7)?

A Yes, Ma'am.

Q And you were sleeping in one bed, the 7 of you?

A No, Ma'am.

Q Where did you sleep then?