

## THIRD DIVISION

[ G.R. No. 208360, April 06, 2016 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIPE BUGHO Y ROMPAL, A.K.A. "JUN THE MAGICIAN", APPELLANT.**

### DECISION

**PERALTA, J.:**

For review is the Decision<sup>[1]</sup> dated September 10, 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04123 which affirmed the conviction of appellant for statutory rape under Article 266-A of the Revised Penal Code and imposed the penalty of *reclusion perpetua*.

Appellant was charged in the Regional Trial Court (RTC) of Baguio City, Branch 59, with statutory rape in an Amended Information<sup>[2]</sup> dated October 29, 2004, the accusatory portion of which reads:

That on or about the 17<sup>th</sup> day of September 2004, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of cajolery, deceit and other fraudulent machinations, have carnal knowledge of complainant AAA,<sup>[3]</sup> a minor under twelve (12) years of age.

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

When arraigned,<sup>[5]</sup> appellant pleaded not guilty to the crime charged. Trial thereafter ensued.

The prosecution's evidence showed that in 2004, AAA was only 10 years old having been born on May 4, 1994,<sup>[6]</sup> and a grade 4 student.<sup>[7]</sup> She and appellant used to be neighbors.<sup>[8]</sup> On September 17, 2004, after her dismissal from school, AAA and her younger sister, BBB, went to the house of appellant, who was known in their neighborhood as a magician by occupation, to watch his magic tricks.<sup>[9]</sup> While AAA and BBB were inside appellant's house, the latter told BBB to leave the house as he was going to tell a secret to AAA.<sup>[10]</sup> BBB left the house and waited outside the gate.<sup>[11]</sup> Appellant brought AAA to his room and undressed her by removing her pants and panty and laid her on the bed.<sup>[12]</sup> Appellant then kissed her lips several times, licked her vagina and pressed his penis against it while on top of her.<sup>[13]</sup> AAA then felt a sticky liquid coming out from appellant's penis.<sup>[14]</sup> Later, appellant told AAA to put on her dress and gave her thirty pesos (P30.00).<sup>[15]</sup> AAA then left appellant's house and looked for BBB, who after a while came out from the direction of appellant's apartment carrying two school bags, that of AAA's and her sister's.

Both sisters then went home together.<sup>[16]</sup>

CCC, the godfather of AAA's father, DDD, and also appellant's neighbor was approached by BBB on September 17, 2004 asking the whereabouts of her sister AAA.<sup>[17]</sup> CCC later saw that as BBB passed by appellant's house, the latter handed a school bag to BBB<sup>[18]</sup> which he later learned to belong to AAA.<sup>[19]</sup> CCC told DDD about what he saw.<sup>[20]</sup> As DDD got suspicious that appellant was doing something unpleasant to AAA, he had a heart to heart talk with AAA,<sup>[21]</sup> who told him what appellant did to her on that day.<sup>[22]</sup> AAA also divulged that appellant had abused her several times before only that she was afraid to tell her parents because of fear that they would spank her. The same evening, DDD, accompanied by his wife, brought AAA to the Baguio City Police Station and filed a complaint against appellant,<sup>[23]</sup> and later proceeded to the Baguio General Hospital and Medical Center (BGHMC) for AAA's physical examination.<sup>[24]</sup>

Dr. Gwynette Dizon, the Chief Resident of the Pediatric Department of the BGHMC, conducted an ano-genital examination on AAA the following day the incident happened. She issued a medical certificate<sup>[25]</sup> which showed erythema and swelling of the urethra and periurethral area and erythema on the hymen. During trial, she testified that there was erythema or redness over the urethra and periurethral area and such erythema was fresh which implied a recent incident;<sup>[26]</sup> that erythema or redness and swelling may be caused by the pressing of the male sex organ to the victim's organ.<sup>[27]</sup>

Appellant denied the allegation saying that he was doing laundry chores outside his apartment when AAA approached him to collect the amount of P30.00 as payment for taking care of his doves and rabbits, which appellant then paid.<sup>[28]</sup> Appellant later saw AAA sliding down on the stairway railing with her hands and her two feet clipped over the pole.<sup>[29]</sup> By past noon, he was asked by BBB regarding AAA's whereabouts to which he replied that AAA had already gone home.

On June 10, 2009, the RTC rendered its Decision,<sup>[30]</sup> the dispositive portion of which reads:

WHEREFORE, premises all duly considered, the court finds that the prosecution has established the guilt of the accused of the crime of rape under par. 1 (d) of RA 8353 beyond reasonable doubt and hereby imposes upon him the penalty of *Reclusion Perpetua* and to indemnify the offended party the amount of P75,000.00 as civil indemnity, the amount of P25,000.00 as moral damages, and P25,000.00 as exemplary damages and to pay the costs.<sup>[31]</sup>

The RTC found that appellant's denial cannot prevail over AAA's clear and positive testimony. Appellant's admission that AAA went to his place and gave her P30.00 strengthened the prosecution's evidence; and that the findings of Dr. Dizon that the erythema and swelling found in AAA's genitalia supported the charge of statutory rape.

On September 10, 2012, the CA rendered its Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the Judgment dated 10 June 2009 issued by the Regional Trial Court of Baguio City, Branch 59, finding accused-appellant Felipe Bugho GUILTY beyond reasonable doubt of the crime of RAPE is hereby AFFIRMED with MODIFICATION as to the award of damages: Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages and Thirty Thousand Pesos (P30,000.00) as exemplary damages. Costs against the accused-appellant.<sup>[32]</sup>

Dissatisfied, appellant filed a Notice of Appeal. On September 30, 2013, we required the parties to submit Supplemental Briefs if they so desired.<sup>[33]</sup> The parties manifested that they were no longer filing supplemental briefs as they had already exhaustively argued their case in their respective briefs filed before the CA.

Appellant contends that his conviction is patently erroneous as it was merely based on the corroborative testimony of Dr. Dizon that AAA suffered erythema on her urethra and periurethral areas; and that AAA's credibility is questionable considering her unexplained continued visits to appellant's apartment until September 17, 2004 despite her allegation that the latter raped her in the same place and manner for several times; and also her failure to justify her non-immediate and voluntary reporting of any molestations to her parents. Appellant further argues that the prosecution failed to prove his guilt as there was no showing that appellant had a penile penetration to consummate the crime of rape.

We find no merit in the appeal.

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, defines statutory 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 x x x:

x x x x

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

Thus, two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Thus, proof of force, intimidation and consent is unnecessary since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.<sup>[34]</sup>

In this case, AAA was only 10 years old when appellant had carnal knowledge of her

on September 17, 2004 as she was born on May 4, 1994. AAA's age was stipulated and admitted by appellant and his counsel during the pre-trial conference.<sup>[35]</sup>

AAA had narrated in a positive and categorical manner how she was sexually abused by appellant. She testified that appellant brought her to his room, removed her pants and panty and laid her on the bed. He kissed her lips, licked her vagina and pressed his penis against her vagina while he was on top of her. She later felt a warm sticky liquid coming out from appellant's sex organ. Thereafter, appellant asked her to put on her dress and gave her P30.00.

The Medical Certificate issued by Dr. Dizon lends credence to AAA's testimony that appellant had pressed his sex organ on her vagina. The medical certificate showed that there was erythema or redness and swelling of the urethra and periurethral area and also erythema of the hymen. During the trial, Dr. Dizon explained her findings in this wise:

Q. Now I call your attention to an entry under the heading Ano-Genital Examination after the phrase urethra and periurethral area of the entry reads (+)erythema(+) swelling. Now can you tell the court in layman's term what these findings are?

A. The urethra is the area where the urine comes out and periurethral area is the area around the urethra. I saw erythema meaning redness over there and there was also swelling.

Q. And was this erythema fresh at that time?

A. Yes, sir. Difficult to determine the age sir, but usually presence of redness would imply an acute incident.

Q. Meaning?

A. Meaning recent incident.

x x x x

Q. Now can the pressing of a male penis on the sex organ of the victim cause erythema?

A. Yes, possible sir.

Q. And can the pressing of the male penis on the private part of the victim cause also swelling.

A. Possible sir.<sup>[36]</sup>

x x x x

Q. Now, you said you took down the brief history of the patient's complaint?

A. Yes, sir.

Q. And after that, you conducted the ano-genital examination on the said person?

A. Yes, sir.

Q. Were your findings as embodied in "Exhibit C" consistent with the history which you took from the patient?

A. Yes, Sir.<sup>[37]</sup>

To the court's clarificatory questions, Dr. Dizon stated, to wit:

COURT:

Q. In your examination on the patient, you do interview, you do external as well as internal examinations. As an expert witness, is there sufficient evidence to show that that particular patient had been sexually abused?