

## EN BANC

[ G.R. No. 175592, June 14, 2016 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDISON C. MAGBITANG, ACCUSED-APPELLANT.**

### DECISION

**BERSAMIN, J.:**

Every child of sound mind with the capacity to perceive and make known his perception can be believed in the absence of any showing of an improper motive to testify.

#### The Case

We resolve the appeal of accused Edison C. Magbitang of the July 21, 2006 decision, [1] whereby the Court of Appeals (CA) affirmed his conviction for the composite crime of rape with homicide.

#### Antecedents

Magbitang was charged with rape with homicide under the information filed by the Provincial Prosecutor of Nueva Ecija on February 22, 1999 in the Regional Trial Court (RTC) in Guimba, Nueva Ecija, alleging as follows:

That on or about the 25<sup>th</sup> day of December 1998, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and taking advantage of the tender age of one [AAA], a seven year old girl, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the latter against her will and without her consent and after having satisfied his bestial lust, the accused, with intent to kill, did then and there willfully, unlawfully and feloniously strangle the neck and choke the child victim to death, to the damage and prejudice of her family and heirs, in such amount as may be awarded to them under the Civil Code of the Philippines.

CONTRARY TO LAW.[2]

Evidence for the State shows that at around 5 p.m. of December 25, 1998, 7-year old AAA[3] asked permission from her mother, BBB, to go to a nearby store. BBB allowed her daughter to leave the house, but the child did not return home. Later that evening, the child's lifeless body was found by the riverbank. The post-mortem

examination of her cadaver revealed that she had succumbed to asphyxiation, and that there were "incidental findings compatible to rape."<sup>[4]</sup> The lone witness to what had befallen AAA was 6-year old CCC, who recalled in court that he and AAA had been playing when Magbitang approached AAA; and that Magbitang brought AAA to his house. CCC testified on re-direct examination that he had witnessed Magbitang raping AAA (*inasawa*), as well as burning her face with a cigarette (*sininit-sinit*).<sup>[5]</sup>

Magbitang, denying the accusation, claimed that he had attended a baptismal party on December 25, 1998, and had been in the party from 4:00 p.m. to 5:00 p.m.; that from the party he had gone looking for his nephew to have the latter tend to his watermelon farm; that he had returned home by around 6 p.m.; that at around 7:30 p.m., he had gone to his farm to check on his nephew; and that he and his wife had remained in the farm until 4 a.m. of the following day.<sup>[6]</sup>

### **Ruling of the RTC**

In its decision rendered on April 22, 2003,<sup>[7]</sup> the RTC found Magbitang guilty beyond reasonable doubt of rape with homicide, disposing as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged, this court hereby sentences him to death and to pay the heirs of [AAA], the following

1. P100,000.00 in actual damages for the death of Rachelle Mendoza, and
2. P50,000.00 in moral damages.

SO ORDERED.<sup>[8]</sup>

The RTC held that CCC had the capacity to observe, recollect and communicate what he had witnessed; hence, he was entitled to credence. It ruled that sufficient circumstantial evidence pointing to Magbitang as the author of the rape with homicide existed in the records considering his being the last person seen with AAA; that he had admitted leaving the drinking session at the party around 4:00 p.m. or 5:00 p.m., thereby substantiating CCC's testimony; and that AAA's lifeless body had been found at the back of his house.

### **Ruling of the CA**

On appeal, the CA affirmed the conviction. It agreed with the RTC that CCC was a competent witness despite his tender age because he showed his capacity to observe, recollect and communicate whatever he had witnessed; that CCC, being only a child, was not expected to give the exact details of the incident he had witnessed; that CCC was able to positively identify Magbitang during the trial as the culprit;<sup>[9]</sup> and that the evidence adduced by the Defense consisted only of the uncorroborated and self-serving testimony by Magbitang.

### **Issues**

In this appeal, Magbitang contends that the CA committed the following reversible errors, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE MATERIALLY INCONSISTENT TESTIMONY OF THE 6-YEAR OLD WITNESS [CCC].

II

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DEPSITE THE FACT THAT THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE BASED ON CIRCUMSTANTIAL EVIDENCE.<sup>[10]</sup>

### **Ruling of the Court**

We sustain the conviction but modify the penalty.

To start with, the Court generally defers to the factual findings of the trial court by virtue of the latter's better position to observe and determine matters of credibility of the witnesses, having heard the witnesses and observed their deportment during trial.<sup>[11]</sup> This deference becomes firmer when the factual findings of the trial court were affirmed by the intermediate reviewing court. The Court does not disturb such factual findings unless the consideration of certain facts of substance and value that were plainly overlooked or misappreciated by the lower courts could affect the outcome of the case.<sup>[12]</sup>

A review of the records persuades the Court to declare that the RTC and the CA correctly appreciated the evidence adduced herein. Hence, their factual findings are upheld.

Secondly, Magbitang's contention that CCC, being a child of tender age, was not a competent witness because his testimony was filled with inconsistencies and suffered from improbabilities was unfounded.

Under the *Rules of Court*, a child may be a competent witness, unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully.<sup>[13]</sup> The testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing of an improper motive to testify.<sup>[14]</sup> Once it is established