800 Phil. 813

THIRD DIVISION

[G.R. No. 217379, November 23, 2016]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO MARMOL Y BAUSO, JR., 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, Eleventh Division, in CA-G.R. CR-H.C. No. 05657 dated 21 May 2014, which dismissed the appeal of appellant and affirmed with modification the Consolidated Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 124, in Criminal Case Nos. C-70217 and C-70859, which found appellant Eduardo Marmol y Bauso, Jr. guilty beyond reasonable doubt of Rape through Sexual Assault and Qualified Rape.

In line with the ruling of this court in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

Appellant was charged with two (2) counts of rape as follows:

CRIMINAL CASE No. C-70217

> That on or about the 22nd day of February, 2004 in Caloocan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of one [AAA], a minor, 12 years of age, did then and there wilfully, unlawfully and feloniously succeed in sexually abusing said [AAA], by then and there inserting his finger into the genital organ of the latter, against her will and without her consent, which act and condition is prejudicial to the development of the said child.[4]

CRIMINAL CASE No. C-70859

> That on or about the 9th of February, 2004 in Caloocan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the legitimate father of one [AAA], a minor, 12 years of age, with lewd design and by means of force and intimidation employed upon the latter, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with said [AAA], against the latter's will and without her consent, which act and condition is prejudicial to the development of the said minor victim.[5]

Upon arraignment, appellant pleaded not guilty to all the charges. Joint trial on the merits ensued.

The prosecution presented AAA, her mother, BBB, SPO1 Isabel Barasi-Gracilla, Dr. Mamerto Bernabe. Jr. (Dr. Bernabe) and Dr. Deborah Saguin (Dr. Saguin) as witnesses.

The prosecution established that AAA is the daughter of BBB and appellant, born on 21 February 1992; and was twelve years (12) years old at the time of the commission of the crimes, all evidenced by her Birth Certificate.[6] On 9 February 2004, AAA had been alone in their house from school when her father arrived. After taking a bath, appellant dragged AAA to the room, laid her on the bed, removed her undergarments, placed himself on top of her and had carnal knowledge of her. AAA could not scream in protest, cowered into silence by appellant's threat to kill AAA's mother if her ordeal comes to fore.[7]

Then again on 22 February 2004, AAA had been sleeping with her mother and siblings in the living room when woken by the sensation of appellant lying down next to her and inserting his finger into her female part. When BBB herself awoked, appellant immediately withdrew his finger and tried to pull AAA's brother toward her to hide what he had done. BBB removed the blanket covering and saw that appellant's pants had been unzipped and AAA's panties had been lowered exposing her female organ. Thus it was unravelled that appellant had been doing unspeakable acts to AAA for some time. This appellant vehemently denied and with knife on hand, appellant prevented AAA and BB from leaving the house.[8]

Once AAA and BBB have reported the incidents to the police, AAA was subjected to a physical examination by Dr. Bernabe. Said examination revealed that AAA was in a non-virgin state physically and that there were no external signs of application of any form of trauma on the genital area. The *labia majora* or the outer lips of the female genital area or the reproductive external structures were slightly open and were erythematous or reddish due to a possible recent trauma to the area. The *labia minora* was slightly thickened. Attenuated hymen with shallow healed laceration at 6 o'clock position meant there was injury at the lower portion of the hymen. The laceration or injury of the hymen could have been caused by the introduction or penetration of a blunt instrument in the vaginal canal. These findings were embodied in a Medico Legal Report dated 23 February 2004 which Dr. Bernabe identified in court. Dr. Bernabe further testified that the physical and genital examination corroborated the verbal interview of the victim.[9]

AAA claimed she had been impregnated as a result of her father's incestuous act. On 13 October 2004, AAA was safely delivered of a son by Dr. Saguin at the Jose Reyes Memorial Medical Center.

Appellant, for his part, denied the rape charges. He asserted that he had been out of the house on 9 February 2004; and on 22 February 2004, he had just arrived home from visiting his friend. He countered that AAA had been mauled by BBB to coerce her to testify against him.[10]

On 15 May 2012, appellant was found guilty beyond reasonable doubt of two (2) counts of rape. The dispositive portion of the RTC Consolidated Decision reads:

> **WHEREFORE**, premises considered, the Court finds the accused (a) in Crim. Case No. c-70217 GUILTY beyond reasonable doubt of the crime of Rape (thru insertion of the finger under paragraph 2, Article 266-A, of the Revised Penal Code) of a minor below 18 years of age and hereby sentences him to suffer the indeterminate penalty of **EIGHT (8) YEARS of *Prision Mayor***, as minimum, to **EIGHTEEN (18) YEARS of *Reclusion Temporal***, as maximum. Accused is likewise directed to indemnify the private complainant in the amount of **ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00)**; (b) in Crim. Case No. C-70859, GUILTY of the crime of Rape (committed through carnal knowledge under Article 266-A paragraph 1 [d]) of a minor daughter below 12 years of age, and hereby sentences him to suffer the penalty of ***Reclusion Perpetua***. Accused is likewise directed to indemnify the private complainant in the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00)[11]

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, to wit:

> **WHEREFORE,** premises considered, the instant appeal is **DENIED** for lack of merit. The assailed May 15, 2012 Consolidated Decision is **MODIFIED** as follows:
>
> 1) in Crim. Case No. C-70217, for the crime of rape by sexual assault:
>
> a) the maximum term of the indeterminate penalty is reduced to seventeen (17) years and four (4) months;
>
> b) accused-appellant is **ORDERED** to pay AAA:
>
> i. P30.000.00 as civil indemnity;
>
> ii. P30,000.00 as moral damages; and
>
> iii. P30,000.00 as exemplary damages.
>
> 2) in Crim Case No. C-70859, for the crime of rape through carnal knowledge, accused-appellant is **ORDERED** to pay AAA:
>
> a) P75,000.00 as civil indemnity;
>
> b) P75,000.00 as moral damages; and
>
> c) P30,000.00 as exemplary damages.[12]

Appellant filed the instant a peal. In a Resolution[13] dated 22 June 2015, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties no longer filed supplemental briefs.

The appeal lacks merit.

Rape is committed 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 woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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.

x x x x

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

x x x x

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

Rape can be committed either through sexual intercourse or sexual assault. Rape under paragraph 1 of the above-cited article is rape through sexual intercourse; often denominated as "organ rape" or "penile rape," carnal knowledge is its central element and must be proven beyond reasonable doubt. It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[14] Rape is qualified 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.[15] The elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[16]

Rape under paragraph 2 of Article 266-A is commonly known as rape by sexual assault. Under any of the attendant circumstances mentioned in paragraph 1, the perpetrator commits this kind of rape by inserting his penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. It is also called "instrument or object rape," also "gender-free rape."[17]

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[18]

It is also well-settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[19]

The trial court lent full credence to AAA's clear, spontaneous and categorical testimony that appellant had raped her on at least two (2) occasions. It is evident from the extant records that appellant had carnal knowledge of AAA, his twelve (12)-year old daughter, through force, threat or intimidation on 09 February 2004; and sexually assaulted her also through force, threat or intimidation on 22 February 2004.

The Court finds no reason to disbelieve AAA's testimony which both the trial and appellate courts found credible and straightforward. Testimonies of child victims are given full weight land credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.[20]

Moreover, to this Court's mind, there can be no greater source of fear or intimidation than your own father - one who, generally, has exercised authority over your person since birth. This Court has recognized the moral ascendancy and influence the father has over his child. When a father rapes his daughter, violence and intimidation supplant such moral ascendancy and influence. The rapist father can easily subjugate his daughter's will, allowing him to coerce the child to do his every bidding.[21]

AAA's testimony was corroborated by the findings of Dr. Bernabe showing that AAA had lacerations on her female anatomy. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal