

THIRD DIVISION

[G.R. No. 209587, September 23, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL
"ANJOY" BUCA, ACCUSED-APPELLANT.**

D E C I S I O N

VILLARAMA, JR., J.:

On appeal is the June 17, 2013 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00888-MIN convicting accused-appellant Joel "Anjoy" Buca of the crime of rape.

We state the antecedents as summarized by the CA^[2]:

On December 24, 2002 at around 1:00 o'clock in the afternoon AAA,^[3] a seven (7) year old girl, together with her younger siblings CCC, DDD and EEE were in their house at Taal 2, Royal Valley, Bangkal, Davao City. Accused-appellant Joel "Anjoy" Buca (Anjoy for brevity), a neighbor of their family, entered the house and ordered AAA's siblings to go to another room to sleep. When Anjoy and AAA were all alone, Anjoy placed AAA on his lap, pulled down her panties and forcibly inserted his penis into her vagina. He began to have sex with AAA. CCC, the younger brother, who was at that time hiding below a bench, saw what was happening. CCC came out and pulled AAA away from Anjoy. Then, Anjoy warned AAA not to tell anyone of what he did or else he will kill her parents.

BBB, the mother of AAA[,] came home after buying food. CCC met her at the door and told her, "Mie, Mie, si Ate (referring to AAA) gani no ky gibastos ni Anjoy". BBB pretended to ignore the information relayed by CCC as Anjoy was still inside their house. BBB was scared that Anjoy might notice her reaction. About ten minutes after, Anjoy left their house. AAA then disclosed that Anjoy did the same thing to her many times already.

On the same day, AAA and her mother BBB reported the incident to the police. They also went to a physician to have her examined. The medical examination revealed thus:

PROVISIONAL MEDICAL CERTIFICATE^[4]

x x x x

ANOGENITAL EXAM

Genitalia	(+) Erythema, perihymenal area (+) Whitish and yellowish discharge
Anus	Normal

CONCLUSION

1. Genital findings are suspicious for sexual abuse

On January 7, 2003, BBB executed an Affidavit-Complaint. Three (3) Informations were filed against accused-appellant Anjoy. The accusatory portions of the three (3) Informations state:

I. In Criminal Case No. 52,260-2003:

"That sometime in the months prior to December 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned [accused], by means of force and intimidation, did then and there willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW";

II. In Criminal Case No. 52,261-2003

"The undersigned accuses the above-named accused of the crime of Rape under Article 266-A of the Revised Penal Code as Amended by R.A. 8353, committed as follows:

That sometime before December 24, 2002, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did there and then willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW"; and

III. In Criminal Case No. 52, 262-2003

"That sometime in the months after December 25, 2002, in the City of Davao, Philippines, and within the

jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did there and then willfully, unlawfully and feloniously, had carnal knowledge of the child AAA, seven (7) years old, by forcibly inserting his penis into her vagina.

CONTRARY TO LAW."

On August 24, 2004, accused-appellant was arraigned and entered his pleas of not guilty. Thereafter, trial ensued.

As regards Criminal Case No. 52,260-2003, the trial court dismissed it during the trial on May 28, 2007 after Prosecutor Dayanghirang manifested that the prosecution will not present evidence because "during his interview with the witness, she could not recall the dates x x x it was between 2001 and 2002 but she could not recall, so [the prosecution] will not anymore present"[5].

During his examination, accused-appellant vehemently denied the accusations against him. He insisted that on December 24, 2002 at about 5:45 in the morning, he passed by AAA's house. AAA called him as Uncle Joel and requested that he look after her younger brother who was crying. When asked where their mother was, AAA answered that she left to buy food. When he was about to leave, AAA called him again because her younger sibling was crying and she requested if he could watch over them. Accused-appellant declined as he was about to go to his work. He further testified that there was no unusual incident that happened on the day of December 24, 2002. Furthermore, he insisted that he has no knowledge whatsoever of the other accusations of AAA and BBB against him.

In a Judgment^[6] dated November 11, 2010, the [Regional Trial Court (RTC)] found accused-appellant guilty of the crime charged in Criminal Case No. 52,261-2003, the dispositive portion of which provides:

WHEREFORE, for failure of the prosecution to present evidence in Criminal Case No. 52,260-2003, the said Criminal Case is hereby ordered DISMISSED.

As to Criminal Case [N]o. 52,262-2003, for failure of the prosecution to prove the guilt of the Accused beyond reasonable doubt, the said case is hereby ordered DISMISSED and the ACCUSED is hereby ACQUITTED of the crime charged in the Information.

As to Criminal Case [N]o. 52,261-2003, the Court finds Accused guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and 266-B of the Revised Penal Code and hereby sentences the said Accused to suffer the penalty of RECLUSION PERPETUA and to pay AAA, the sum of SEVENTY-FIVE THOUSAND (P75,000.00) PESOS, as civil indemnity and FIFTY THOUSAND (P50,000.00) PESOS as moral damages.

Under Article 29 of the Revised Penal Code, the Accused, who is detained, is hereby entitled to full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the rules and regulation[s] imposed upon convicted prisoners. If he did not agree, he shall be entitled to 4/5 of his preventive imprisonment.

SO ORDERED.

Accused-appellant appealed. The CA affirmed the RTC ruling and agreed that the testimony of AAA was sufficient to establish the crime. The *fallo* of the appealed CA Decision reads:

WHEREFORE, the Judgment dated November 11, 2010 of the RTC, Branch 12, Davao City is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Joel "Anjoy" Buca is hereby found GUILTY beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of *reclusion perpetua*, without the benefit of parole.

Accused-appellant is **ORDERED** to pay AAA the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000.00 as exemplary damages and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.

SO ORDERED.^[7]

Hence, this appeal.

The issues for our consideration are:

1. Whether or not accused-appellant is guilty of rape; and
2. Whether accused-appellant may be convicted of rape despite the failure to allege the exact date of the commission of the crime in the Information.

We affirm the conviction of accused-appellant.

Accused-appellant is guilty of rape.

Accused-appellant contends that his guilt was not proved as the credibility of AAA and CCC, whose testimonies were utilized to establish the elements of rape, is in serious doubt due to their lack of candor and forthrightness in testifying. Accused-appellant further points out that there are inconsistencies in the narrations of the prosecution's witnesses that cast doubt on their statements.

We do not agree.

Article 266-A, paragraph (1) of the Revised Penal Code, as amended, defines the

crime of rape:

ART. 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.

In the case at bar, the lower courts found that the element of carnal knowledge was established by the testimony of the victim, AAA, to wit:

PROS. DAYANGHIRANG III:

This time we go to Crim. Case No. 52,261-03

Q: On December 24, 2002, at around one o'clock in the afternoon, where were you at that time, Miss Witness, if you can recall?

[AAA]

A: In our house.

Q: Who were with you in your house, at that time?

A: My siblings and younger brothers.

Q: You are referring to your younger brothers named what?

A: [CCC, DDD and EEE.]

Q: Aside from you, the three other siblings, who else were there and in your house at that time?

A: No more... Anjoy.

Q: You mean, the accused was also in your house at that time?

A: Yes.

COURT:

Q: Do you know why he was in your house?

A: I don't know.

x x x x

Q: According to you, you and your three siblings were there in your house at that time together with the accused, and your mother left to buy viand. Tell us, what happened?

A: He again cuddled me and put me on his lap and pulled down my panty.

Q: Who at that time again cuddled you? Where were your other siblings?

A: He ordered my other siblings to go inside the room and put them to sleep.