

FIRST DIVISION

[G.R. No. 201732, March 26, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS BURCE, ACCUSED-APPELLANT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For Our resolution is the appeal of the Decision^[1] dated June 3, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03906, which affirmed with modification the Decision^[2] dated April 2, 2009 of the Regional Trial Court (RTC) of Naga City, Branch 28, in Criminal Case Nos. RTC'08-0169-RTC'08-0173, finding accused-appellant Jesus Burce (Burce) guilty beyond reasonable doubt of the qualified rape of his own daughter AAA,^[3] as defined under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353.

Upon the sworn complaint of AAA's mother, the Assistant Prosecutor of Naga City filed with the RTC five Informations, all dated May 7, 2007, charging Burce with raping AAA on five separate occasions. The first Information, docketed as RTC'08-0169, reads:

That on or about 10 December 2005, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, father of the herein private complainant, [AAA], 14 years old, 5 mos. and 13 days, having been born on June 27, 1991, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said complaining witness, against her will and consent, to her damage and prejudice.^[4]

The other four Informations filed in RTC'08-0170 to RTC'08-0173 were similarly worded as above, except for the alleged date of the commission of the rape, how the rape was committed, and age of AAA who was still a minor at the time the rape occurred.^[5]

The five cases were consolidated and jointly tried.

When arraigned on June 19, 2008, Burce pleaded not guilty to all five rape charges.^[6]

During pre-trial, the parties admitted that AAA was a minor and Burce's daughter; that AAA has a sister, DDD, who is also Burce's daughter; and that AAA was born on June 27, 1991 per her Birth Certificate, marked as one of the exhibits of the prosecution.^[7]

The prosecution presented the following witnesses during trial: (1) AAA, the victim;

[8] (2) BBB, AAA's mother and Burce's wife; [9] (3) CCC, AAA's sister-in-law; [10] and (4) Dr. Raoul V. Alcantara (Alcantara), physician-medico legal officer of the National Bureau of Investigation (NBI), Daraga, Albay. [11] The prosecution also submitted several documentary evidence including AAA's Birth Certificate [12] and the NBI Preliminary Report [13] dated November 8, 2007 of Dr. Alcantara stating that (1) no extra-genital physical injury was noted at the time of examination, and (2) the medico-genital findings show definitive signs of previous blunt force injury to the hymen.

Evidence for the defense solely consisted of accused-appellant's testimony. [14]

The RTC rendered its Decision on April 2, 2009, convicting Burce of rape only in Criminal Case No. RTC'08-0169 and acquitting him of the four other charges in Criminal Case Nos. RTC'08-0170 to RTC'08-0173. The RTC decreed:

In Criminal Case Nos. RTC'08-0170, RTC'08-0171, RTC'08-0172 and RTC'08-0173, the prosecution, having failed to establish the guilt of the accused beyond reasonable doubt, accused, Jesus Burce, is hereby ordered ACQUITTED of the offense charged.

In Criminal Case No. RTC'08-0169, the prosecution having established the guilt of accused, Jesus Burce, beyond reasonable doubt, he is hereby ordered CONVICTED of the offense charged and is hereby ordered to suffer the penalty of RECLUSION PERPETUA, without eligibility of parole.

Accused Jesus Burce, is likewise ordered to pay the private complainant the following damages:

- a. Seventy-Five Thousand (P75,000.00) Pesos as civil indemnity;
- b. Seventy-Five Thousand (P75,000.00) Pesos as moral damages;
- c. Twenty-Five Thousand (P25,000.00) Pesos as exemplary damages. [15]

Burce appealed his conviction by the RTC in RTC'08-0169 before the Court of Appeals.

The Court of Appeals summarized the prosecution's version of events, thus:

At midnight of December 10, 2005, the victim, [AAA], was sound asleep in a house located somewhere in the vicinity of x x x, Naga City when she was awakened by appellant who removed her shorts and panty, and went on to sexually ravish her. [AAA] easily recognized appellant since the light was turned on.

[AAA] resisted by pushing appellant away, but he immediately held her hands, pinned her legs with his legs and inserted his penis into her vagina. While he was inside her, [AAA] fought and pushed him. Thereafter, she felt pain in her vagina and pitied herself for what her own

father had done to her.

Thereafter, appellant repeated his dastardly acts against [AAA] on several occasions more. The last rape incident was on September 16, 2007 and was witnessed by [CCC], the victim's sister-in-law, through a five (5)-inch hole in a divider made of old plywood. [CCC] clearly witnessed the whole incident as she was only four (4) meters away and the room was well-illuminated by a 7-watt fluorescent.

CCC reported what she had seen to [BBB], mother of the victim. [AAA] was eventually constrained to reveal to them appellant's sexual forays on her body. Forthwith, [BBB] and [CCC], along with the victim, went to the barangay hall to report the rape incidents to Barangay Captain Regmalos.

On November 8, 2007, the victim was examined by Dr. Raoul Alcantara. The results of her medico-genital examination revealed definitive signs of previous blunt force injury in her hymen, probably caused by the penetration of an erect male organ.^[16]

The appellate court likewise gave the following gist of Burce's defense:

[Burse] vehemently denied raping his daughter [AAA] on December 10, 2005, claiming that he was always out at night, driving a tricycle as a source of living. He insinuated that [AAA] pursued the rape cases against him as she was interested in getting the P10,000.00 victim's compensation, similar to what was purportedly awarded to her sister [DDD] in connection with another rape case filed against him wherein he pled guilty out of remorse. Considering that he was acquitted in the four (4) other rape charges (Criminal Case Nos. RTC 08-0170, RTC 08-0171, RTC 08-0172 and RTC 08-0173), where the same witnesses, whose credibility was impeached by numerous flaws, testified, he contended that he should likewise be acquitted in the present case on appeal.^[17] (Citations omitted.)

In its Decision dated June 3, 2011, the Court of Appeals affirmed with modification the RTC judgment of conviction against Burce, to wit:

WHEREFORE, with the **MODIFICATION** declaring appellant ineligible for parole, the decision dated April 2, 2009 of the Regional Trial Court of Naga City, Branch 28, in Criminal Case No. RTC 08-0169 is **AFFIRMED** in all other respects.^[18]

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs before us and adopting instead their respective briefs before the Court of Appeals.^[19]

Burse raises a lone assignment of error in his Brief:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ONE COUNT OF QUALIFIED RAPE.^[20]

Burce faults the RTC for finding him guilty beyond reasonable doubt of raping AAA on December 10, 2005. Burce insists that he should be acquitted of said rape charge, just as he was acquitted of the other four rape charges, given the numerous flaws in the testimonies of the prosecution witnesses. Burce, in particular, highlighted the following RTC findings which were the bases for his acquittal of the four rape charges:

[I]n the other incidents of carnal knowledge upon [AAA] by the accused, other than the December 10, 2005 incident, the Court noted the following findings, culled from the testimony of [AAA] herself and of prosecution witness [CCC].

According to [AAA], she did not shout for the people in their place are loquacious. She was afraid that it will be the subject of grapevine in the neighborhood because she was concerned with what they will say than her safety.

The Court further finds that the filing of these cases came about when according to [AAA], a week after September 16, 2007, she was told by [CCC] that her father was raping her whenever she was fast asleep, which information, [CCC] first divulged to [EEE^[21]], and thereafter, it came to the knowledge of [AAA's] mother, [BBB].

Moreover, the Court finds that [AAA] even tried to stop [CCC] from reporting to her mother because the latter might side with her father because a similar thing was done to her sister [EEE] but nothing happened as they agreed to forgive her father.

Further, the Court finds that according to [CCC], during the September 16, 2007 incident, [AAA] was not doing anything, thus, she did not know if [AAA] was asleep. On the following day, [CCC] asked [AAA] if it was painful but the latter responded by asking which one is painful. When asked by [CCC] whether her head is painful, [AAA] answered that her head is not painful.

In view of the testimony of [AAA] that during the September 16, 2007 incident, she was not totally asleep but just kept quiet when her father who was having carnal knowledge of her, this Court cannot but wonder why [AAA], when asked by [CCC] whether it was painful, evaded the question by shifting the question back to her by asking which one is painful. The Court however believes that [AAA] knew to what part of her body was [CCC] referring to when the latter asked her which one is painful.

On the September 16, 2007 incident, the Court further finds that [AAA] was using loose panty and shorts which she just tied because her lower garments had no garter.

Moreover, the Court finds that the family, twelve in all, sleeps side by side in one long mat, thus according to [AAA], her body touches the arms of the one sleeping on her left and right side, which testimony was corroborated by [CCC]. As a matter of fact, according to [CCC], during

the September 16, 2007 incident, the accused lifted and took away [GGG], the youngest child, who was then one year old, thus, creating a space for the accused before he placed himself on top of [AAA].

The Court believes that, during these incidents other than the December 10, 2005 incident, [AAA] had all the opportunity to vindicate her honor but it appears to the Court that she chose to take a passive stance. Strangely enough, instead of, at least, donning herself with something that would have spared her from the swift and easy access of the accused, she opted to wear an ungarterized shorts and panty.^[22]

Burce's appeal has no merit.

We stress, at the outset, that each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge.^[23] Therefore, Burce's acquittal in RTC'08-0170 to RTC'08-0173 does not necessarily result in his acquittal in RTC'08-0169. While the prosecution presented the same witnesses for all the cases, the content, credibility, and weight of their testimonies differ for each charge.

It is also important to note that only Burce's conviction in RTC'08-0169, *i.e.*, for the rape that occurred on December 10, 2005, that is the subject of the appeal before us. We can no longer touch upon the findings of fact and conclusions of law of the RTC in its final and executory decision in RTC'08-0170 to RTC'08-0173 acquitting Burce even though the same markedly demonstrate the gross gender insensitivity of the trial court judge and her deplorable unmindfulness of the plight of the underprivileged or poor minor victim whom the said judge even faulted for the dastardly acts of her own father.

Burce's conviction in RTC'08-0169 is essentially dependent upon AAA's testimony recounting how her father raped her on December 10, 2005. The RTC, as affirmed by the Court of Appeals, gave more weight to AAA's testimony rather than Burce's denial and alibi.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon us. As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.^[24] Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.^[25]

After a careful review, this Court is convinced that AAA's unwavering narration of how she was raped on December 10, 2005, together with her positive identification of her own father as the one who raped her, are worthy of belief. With tears in her