

FIRST DIVISION

[G.R. No. 182457, January 30, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO ASPREC, BASALLO Y ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision^[1] dated May 11, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02010, entitled *People of the Philippines v. Antonio Basalla y Asprec*, which affirmed with modification the Decision^[2] dated April 5, 2004 and Order^[3] dated July 5, 2004 of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32 in Criminal Case No. A-3043. The trial court found appellant Antonio Basallo guilty beyond reasonable doubt of the crime of rape under Article 335 of the Revised Penal Code, since the act complained of was committed prior to the amendment of Article 335 by Republic Act No. 8353 (the Anti-Rape Law of 1997) which reclassified rape as a crime against persons penalized under Articles 266-A to 266-D of the Revised Penal Code.

We proceed to the factual antecedents of the case.

In an Information dated October 25, 1995 filed before Branch 32, RTC of Agoo, La Union, accused-appellant was charged with Rape, thus:

That on or about the 8th day of May, 1995, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there, by means of force and intimidation and against the will and consent of the aforementioned offended woman, [ABC],^[4] wil[!]fully, unlawfully and feloniously have carnal knowledge of the latter, to her damage and prejudice.^[5]

Despite the issuance of a warrant of arrest on February 22, 1996, it was returned unserved as appellant could no longer be found at his given address and he appeared to have gone into hiding purportedly in Cavite.^[6] Subsequently, the trial court ordered the archival of the case and issued an Alias Warrant of Arrest dated November 27, 1997 against appellant.^[7] Appellant remained at large until his arrest by the elements of the Philippine National Police (PNP) Criminal Investigation and Detection Group, CAR Criminal Investigation and Detection Office on August 15, 1998, more than two years after the original issuance of a warrant of arrest against him.^[8]

Appellant's arraignment was deferred upon his own motion pending reinvestigation of his case. After the dismissal of appellant's appeal with the Department of Justice, he was finally arraigned on November 15, 1999 and he entered a plea of not guilty. [9]

Upon completion of pre-trial, the trial court issued a Pre-Trial Order dated January 17, 2001, wherein the parties entered into the following stipulations:

1. That during the time of [sic] the alleged act [was] committed, the victim was under the employ of the accused as his housekeeper;
2. The identity of the complainant; [and]
3. The identity of the accused. [10]

Thereafter, the trial court conducted trial on the merits. The testimonies of the prosecution witnesses were summarized in the assailed Court of Appeals Decision dated May 11, 2007, in this wise:

The victim **ABC** testified that she is a helper of the accused Antonio Basallo. Accused took her as his helper for the past three (3) years. They are neighbors and she calls the accused "uncle." As a helper, she cleans the house, washes clothes and takes care of the children. In the afternoon of 08 May 1995, she put said children to sleep. The wife of the accused was in the office. At around 1:00 p.m., while the children were sleeping at the first floor of the house, accused told her to take his shirt at the second floor of the house. She went inside the first room and took the shirt at the back of the door panel. After she entered the room, accused also followed her. Accused entered the room and laid on top of her. Then, accused removed her gartered shortpants and sleeveless blouse. Thereafter, accused removed her panty and bra. While accused was removing her clothes, she could not move because the former was holding a knife with his right hand. Accused then inserted his penis into her private part. As accused was inserting his penis into her private part, he was simultaneously kissing her and holding a knife. Accused inserted his penis to her vagina for thirty minutes. She was told by accused not to report the incident to her mother because the former would kill her. She did not move while accused was on top of her because he had a knife. After the incident, accused left and told her to take care of the children. She stayed at the house of the accused for one more week or until 15 May 1995. It was her mother who discovered that she was pregnant. She told her mother that she was sexually abused by accused, when her mother discovered her pregnancy. Thereafter, her mother brought her to the hospital where she was told that she was four (4) months pregnant. She was issued a medical certificate when she consulted a doctor. They filed a case against the accused. She did not talk to accused or the latter's wife after she stopped working at their residence. Accused went into hiding. She gave birth on 02 March 1996. The child is now six (6) years old. The experience in the hands of the accused caused her too

much pain. Now that she has a child, she is being despised in the community because she begot a child without a husband. She has no feeling about what other people would say about her and she is not even ashamed. She only wants to take care of her child.

On cross-examination, ABC testified that she is not related by blood to the accused. She was employed by the accused and his family since she was twelve (12) years old. She only reached first year high school. During the time of her employment with the Basallos, she did not sleep at the latter's residence at night. She received P20.00 a day for her services. Her house is sixty to seventy meters away from the house of accused. There are three houses near the house of the accused. However, the family of accused and her family are not close. She was able to work with the family of accused when the latter's wife fetched her. During the Basallo's family occasions, her parents are invited. She was never scolded during her stay at the Basallo's residence. Neither her mother and grandmother have any misunderstanding with the wife of the accused. She never had any boyfriend. She did not confide to her mother because she was afraid. When her mother discovered that she was pregnant, she was angry at her. Had she not been pregnant, she would not have reported the same to her mother. She also told her mother that she was raped by accused. She hated the accused for what he had done to her. She is afraid of accused even before the incident because he is a killer. They filed a complaint when she was already pregnant. She returned to the house of the accused to do chores because she was fetched. When her mother discovered that she was pregnant, she was not allowed to go back to the house of the accused. Her mother cried when she learned that it was accused who impregnated her. She never had any sexual experience before the incident on 08 May 1995. The house of accused is made of concrete. If somebody shouts inside the room, nobody would hear. Accused locked the door of the room, when the latter followed him. However, if somebody shouted in the window, neighbors would hear. She did not shout because she was afraid and accused put his hand on her mouth. Accused took off her clothes with both hands and thereafter laid on top of her. She did not kick accused because the latter was armed with a knife. Neither did she run away because she could not jump out of the window. Accused was wearing a denim short pants and a red t-shirt. Further, it was accused who spread her legs. At first[,] she attempted to cross her legs but the accused pulled them and spread them apart. She did not make any plea to the accused that she be spared from the act because she was afraid. Accused kissed her but she did not bite his lips. Moreover, accused fondled and kissed her breasts. She cried. After the incident, she put on her dress. She did not ask help from the neighbors because nobody was around. She still returned to the house of the accused the next day to take care of the children because she is afraid of the accused and pitied the children because nobody would take care of them.

Dr. Alicia Bandonill, the physician who examined ABC, testified that in 1998 she was working at the Doña Gregoria Memorial Hospital where she was a medical specialist in obstetrics and gynecology. She is a graduate of medicine from the University of Santo Tomas in 1962. She worked as a

resident physician in San Fernando, La Union and later on as a resident physician of Lagawe, Ifugao. Further, she had special training in Ob-Gyne at the Fabella Medical Center. During her years as a medical professional, she performed more than three hundred pregnancy tests. She examined ABC on 26 September 1995. Witness presented a two-paged document which was entirely in her handwriting. She issued a *pro forma* medical certificate on the medical examination which she conducted on the person of ABC. The latter came to her twice. During the first visit, ABC did not tell her that she was raped. As per ABC's last menstrual period and the size of the fetus, she found out that ABC is 20-21 weeks pregnant. She also considered the fetal heartbeat in determining whether ABC is pregnant. With the use of a speculum, she also conducted an internal examination on ABC in order to see her cervix, vagina and hymen. By conducting an internal examination, she would be able to determine if there were any old lacerations. She found out that ABC had a "purstring" hymen. Based on the last menstrual period, it could have been that the fertilization of the egg came 11-14 days after the last menstruation.

On cross-examination, witness testified that of the three hundred (300) cases of pregnancy that she examined, none of them was a case of rape. However, she has examined more than fifty (50) cases of rape. In her experience, rape victims normally turn up for examination within 24 hours after the incident. ABC told her that her pregnancy was the result of a rape during the second time when she went to her for examination. Upon examination, there was no laceration on the hymen of ABC. Neither were there wounds on her body. It is her opinion and based on the examination she conducted that ABC was a victim of rape. The normal period of pregnancy is up to 40-41 weeks. It is possible but rare that a woman can conceive for more than 9 months. However, it is a very remote possibility that a woman can give birth on the 11th month. It could be that the intercourse which made ABC pregnant occurred sometime in June 1995 considering that she gave birth on 02 March 1996. On re-direct examination, witness testified that the safe period of a woman is from the last menstrual period up to the fifth day. However, there are females who have shorter or longer menstrual cycles. It is possible that a woman could be fertile on the sixth day from the last menstrual period.

ABC's mother testified that ABC is her third child. Her daughter was born on 19 August 1978. She knew accused for a long time. Accused took her daughter in his employ when the latter was fifteen years old. Her daughter stayed with the Basallos for two years. Her daughter is a stay-out helper. Her daughter goes home to their house at night at around 6:00 p.m. However, she does not go home at noontime. She has a grandchild with her daughter. She knew that her daughter was pregnant when she observed that her abdomen was getting bigger and when the latter did not have her monthly period. During the fifth month, she brought her daughter to the doctor. However, the doctor refused to give them a medical certificate because the latter did not want to testify in court. At that time, her daughter did not tell her the truth. She then brought her daughter to the Doña Gregoria Hospital where she was

examined by Dr. Bandonill. Dr. Bandonill found out that her daughter was pregnant. At that time, she inquired who the father is. She was informed that it was accused who fathered the child. Her daughter told her that accused would kill all of them if her daughter revealed the matter to anybody. She cried when she learned that the accused forced her daughter. They then went to the police to file charges. She did not allow her daughter to work with the Basallos anymore. She no longer confronted accused about what happened because they were already able to file charges. Besides, accused disappeared. As a mother, she felt hurt with what happened. The future of her daughter was ruined as the latter was not able to go to school anymore. She wants accused to suffer for life. The name of the accused does not appear in the Certificate of Live Birth of ABC's son because the former would not admit that he is the father. She is also afraid of accused because the latter is a killer. Accused is known in the community to have killed a lot of people. She allowed her daughter to work for accused because she pitied the latter and believed that he would not do anything to her daughter.^[11] (Citations omitted.)

On the other hand, the Court of Appeals condensed the defense evidence as follows:

Accused Antonio Basallo testified that he knows ABC as the latter was employed as caretaker of his children. When ABC filed charges against him, the former ceased working for his family. He was informed by the barangay captain that a rape charge was filed against him. The charge against him is a lie because on 08 May 1995, he was appointed as a poll watcher at Barangay Capas. However, he does not have any identification that he was appointed by Dr. Eriguel to be in charge as such. Before proceeding to Barangay Capas, he first dropped by the house of Dr. Eriguel. Thereafter, he, together with his brother-in-law Tirso Fangonil, casted (sic) their vote in Brgy. San Julian. He reached Barangay Capas, which is 8 to 10 kilometers away, at around 9:10 in the morning. He rode a passenger jeepney in going to Barangay Capas with Rodolfo Balbalani Dularte driving the vehicle. After reaching Barangay Capas, he instructed his companions to man the vicinity of the Capas Elementary School, where the voting took place. At around 12:35 p.m. he, Dularte, Bautista and Tirso Fangonil ate lunch beside the school. After lunch, he smoked some cigarettes and slept under the tree. However, at around 1:40 p.m. he was awakened by a call in the walkie talkie where Kagawad Mariñas asked about the situation in Barangay Capas. He stayed in Barangay Capas the whole night and waited for the canvassing of the ballots. Then, they proceeded to the Municipal Hall where the ballot boxes were brought. During the election period, he asked his wife and three children to stay with his sister-in-law, Carol Fangonil. He, on the other hand, would only come home to take a bath and change his clothes. He often stayed in the house of Dr. Eriguel. He knows ABC but he could not understand why he was accused. As a result of the accusation, he has been detained since 1998 which caused him to be away from his family.

On cross-examination, accused testified that ABC was their helper until September 1995. ABC would pick up his children and bring the children