

## FIRST DIVISION

[ G.R. No. 175876, February 20, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS TEODORO Y ANGELES, ACCUSED-APPELLANT.**

### D E C I S I O N

**BERSAMIN, J.:**

The recantation of her testimony by the victim of rape is to be disregarded if the records show that it was impelled either by intimidation or by the need for the financial support of the accused.

This rule comes to the forefront once again in our review of the affirmance by the Court of Appeals (CA) of the conviction for two counts of rape of Tomas Teodoro y Angeles,<sup>[1]</sup> in which the victim, AAA,<sup>[2]</sup> was the 8-year old daughter of BBB, his common-law wife. The Regional Trial Court had pronounced Teodoro guilty of two counts of statutory rape on December 10, 2001, and condignly meted him the penalty of *reclusion perpetua* for each count.<sup>[3]</sup>

#### **Antecedents**

Two informations, both dated March 25, 1998, charged Teodoro with statutory rape committed as follows:

#### Criminal Case No. 98-02

That on or about the 18<sup>th</sup> day of December, 1997, at, 10:00 o'clock in the evening, more or less, in Sitio Seringan, Poblacion, Kitcharao, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, an eight (8) year old minor.

CONTRARY TO LAW: (Article 335, *Revised Penal Code*, as amended by R.A. 7659)<sup>[4]</sup>

#### Criminal Case No. 98-03

That on or about the 8<sup>th</sup> day of February, 1998, at 10:00 o'clock in the evening, more or less, in Sitio Seringan, Poblacion, Kitcharao, Agusan del Norte, Philippines, and within the jurisdiction of this Honorable Court, said accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA, an eight (8) year old minor.

CONTRARY TO LAW: (Article 335, *Revised Penal Code*, as amended by R.A. 7659)<sup>[5]</sup>

With respect to the statutory rape charged in Criminal Case No. 98-02, the records show that on December 18, 1997 BBB left home in Kitcharao, Agusan del Norte on an errand in Surigao; that her children, including AAA, were left under the care of Teodoro, her common-law husband; that late that night, he returned home drunk, and his arrival roused the children from their sleep, because they had not yet eaten; that they eagerly ate the food he set down for them; that soon after the dinner, he told the children to go to bed; that the children went to sleep in their respective places on the floor; that AAA became puzzled when he turned off the lights that were supposed to be left on; that AAA eventually fell asleep beside her siblings; that at some point later in the night, he roused AAA, and ordered her to strip naked; that she initially defied him, but he himself then undressed her; that he took off his pants and drawers down to his knees, exposing his penis; that he went on top of her, inserted his penis in her vagina, and made push and pull movements; that she felt a sharp pain inside her vagina; that he stopped his movements when she protested due to her pain becoming unbearable, because he did not want the other children to be roused from sleep; that he returned to his own place, but she got up to relieve herself; that she felt searing pain in her vagina as she was relieving herself; and that she did not tell her mother upon the latter's return from Surigao about what Teodoro had done to her.

Anent the rape committed on February 8, 1998 (Criminal Case No. 98-03), BBB was again away from the house, having gone to Manila. Teodoro committed the rape in a fashion similar to that in the first rape. However, AAA could no longer bear her ordeal, and told of the rapes to CCC, the older brother of BBB: *Tay, guihilabtan ko ni Tomas Teodoro (Tay, I was touched by Tomas Teodoro)*.<sup>[6]</sup> CCC immediately reported the crimes to the Kitcharao Police Station. The police quickly arrested Teodoro. Upon BBB's return in the afternoon, CCC informed her about what Teodoro had done to her daughter. BBB and CCC took AAA to the Kitcharao District Hospital for physical and medical examination.

Dr. Mary Ann D. Abrenillo of the Kitcharao District Hospital examined AAA, and issued a medical certificate on her findings, as follows:

1. Intact Hymen that admits Right Small Finger of examiner and with slight peripheral erythema.
2. Labia Majora and Minora slightly Gaped Exposing Hymenal Opening, with tenderness.<sup>[7]</sup>

Based on the medical certificate, the Office of the Provincial Prosecutor of Agusan del Norte charged Teodoro with two counts of statutory rape through the aforequoted informations.<sup>[8]</sup>

At his arraignment on August 17, 1998, Teodoro pleaded *not guilty* to the informations. Although he subsequently manifested a willingness to change the

pleas to *guilty*, he balked when he was re-arraigned on December 23, 1998 by qualifying that he had only “fingered” AAA. Accordingly, the RTC reinstated his pleas of *not guilty*.

During the trial, AAA<sup>[9]</sup> and BBB<sup>[10]</sup> testified for the Prosecution, but two years later recanted and turned hostile towards the Prosecution, now telling the RTC that Teodoro had only touched AAA’s vagina on the nights of December 18, 1997 and February 8, 1998.<sup>[11]</sup>

On his part, Teodoro claimed<sup>[12]</sup> that he had only caressed or touched AAA’s body on the night of February 8, 1998; that before going home from work on that day, he had joined his friends in drinking *Kulafu*; that he had arrived home late that night, and had gone to bed after serving the children food to eat; that he had later awakened to find somebody sleeping beside him; that he had embraced and caressed the different parts of the body of that person, whom he thought was BBB whom he had earlier sent off to Surigao on an errand; that he had realized that he was caressing AAA only after she shouted: *Cle, Cle, ayaw! (Uncle, stop that!)*; that he had then gotten up to go to a different part of the room;<sup>[13]</sup> and that he did not rape AAA on the night of December 18, 1997,<sup>[14]</sup> although he admitted being at home then.<sup>[15]</sup>

### **Ruling of the RTC**

After the trial, on December 10, 2001, the RTC rendered its judgment convicting Teodoro on both counts of statutory rape notwithstanding the recantations by AAA and BBB. The RTC disposed:

WHEREFORE, in the light of all the foregoing, the Court finds the accused TOMAS TEODORO Y ANGELES in Criminal Cases Nos. 98-02 and 98-03 GUILTY beyond reasonable doubt of the crimes of rape committed against AAA, an eight (8)-year old minor. Accordingly, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA in each of the cases, with the accessories provided for by law, to pay the offended party the sum of P100,000.00, P50,000.00 for each case, and to pay the costs.

In the service of his sentence, accused is credited with the full time during which he has undergone preventive imprisonment conformably to Article 29 of the Revised Penal Code, as amended.

IT IS SO ORDERED.<sup>[16]</sup>

The RTC rejected AAA’s recantation of her accusation for being inconsistent with the testimony of Dr. Abrenillo showing that the redness on the edges of the protective structure of her vaginal opening had been caused by friction from the forceful introduction of an erect penis; and that such forceful introduction of an erect penis had led to the gaping of the *labia minora* and *labia majora* of AAA.

### **Ruling of the CA**

On appeal, Teodoro focused on the RTC's rejection of AAA's recantation. He argued in his appellant's brief<sup>[17]</sup> that no rape was committed considering that the Cebuano-Visayan word *guihilabtan* used by AAA in describing what he did to her signified only touching, as contrasted with *lugos*, the proper Cebuano-Visayan term for rape that AAA did not use.

Unimpressed, the CA sustained the RTC, and ignored AAA's recantation for being dictated by her family's financial difficulties. It agreed with the observation of the Office of the Solicitor General to the effect that AAA's recantation should not be considered because it came about after she had returned home from the custody of the Department of Social Welfare and Development (DSWD). In contrast, it found AAA's court testimony given on November 17, 1998 consistent with the physical findings of Dr. Abrenillo.

The CA decreed:

**WHEREFORE**, premises considered, herein appeal is hereby **DISMISSED** for evident lack of merit and the assailed Judgment is hereby **AFFIRMED** with **MODIFICATION** granting in each case moral damages in the amount of P50,000.00 and exemplary damages in the sum of P25,000.00.

**SO ORDERED.**<sup>[18]</sup>

### **Issues**

1. Were the rapes charged against Teodoro established beyond reasonable doubt?
2. Should the recantation by AAA be accepted?

### **Ruling of the Court**

The appeal lacks merit.

Articles 266-A and 266-B of the *Revised Penal Code*, as amended by Republic Act No. 8353,<sup>[19]</sup> define and punish rape 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 circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

- c) By means of fraudulent machinations 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.

Article 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

The crimes charged were two counts of statutory rape. The elements of statutory rape are that: (a) the victim is a female under 12 years or is demented; and (b) the offender has carnal knowledge of the victim. Considering that the essence of statutory rape is carnal knowledge of a female *without her consent*, neither the use of force, threat or intimidation on the female, nor the female's deprivation of reason or being otherwise unconscious, nor the employment on the female of fraudulent machinations or grave abuse of authority is necessary to commit statutory rape.<sup>[20]</sup> Full penile penetration of the female's genitalia is not likewise required, because carnal knowledge is simply the act of a man having sexual bodily connections with a woman.<sup>[21]</sup>

Describing the rape committed against her on December 18, 1997, AAA declared thus:

Q: How about your uncle, Tomas Teodoro, do you know what did he do after you have already eaten and drank water?

A: Yes. My uncle commanded us and he told my elder brother, EEE, to go to sleep and on that night, I was surprised because he put off the light.

Q: Now, AAA, could you describe how your uncle look like when he arrived in your house?

A: Yes, Ma'am.

Q: How did he look like? Did he look normal?

A: Yes, Ma'am, but he was drunk.

x x x

x

Q: What do you mean by he drinks something?

A: It was Kulafu, Ma'am, because it smelt bad.

x x x

x

Q: x x x. After your uncle put off the light, did you immediately fall asleep?

A: Not yet. I first looked at the light because I was surprised why it was put off and I noticed that it was my uncle who put off the light.

x x x

x

Q: So you are telling the Court that you were the last one to sleep that night including your uncle, of course, among you