710 Phil. 466

THIRD DIVISION

[G.R. No. 195523, June 05, 2013]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ERNESTO GANI Y TUPAS, APPELLANT.

D E C I S I O N

PERALTA, J.:

On appeal before the Court is the Decision[1] of the Court of Appeals (CA), dated January 26, 2010, in CA-G.R. CEB-CR-HC No. 00423, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Kabankalan City, Negros Occidental, Branch 61, dated January 11, 2005 in Criminal Case No. 97-1917, finding herein appellant Ernesto Gani *y* Tupas guilty beyond reasonable doubt of the crime of qualified rape and sentencing him to suffer the penalty of death.

In an Information dated May 5, 1997, appellant was indicted before the RTC of Negros Occidental, Kabankalan City for the crime of rape, to wit:

> The undersigned 1st Assistant Provincial Prosecutor, Officer-in- Charge, on the basis of a criminal complaint signed by LETICIA G. ALINGASA, for and in behalf of AAA, her niece, a minor, 5 years old, accuses ERNESTO GANI alias "Botyok" of the crime of Rape, committed as follows:
>
> > That on or about the 21st day of February 1997, in the Municipality of Cauayan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being her uncle, by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of AAA against her will.
> >
> > CONTRARY TO LAW.[3]

On August 25, 1998, appellant, duly assisted by his counsel, entered a plea of "not guilty" to the offense charged.[4]

After pre-trial,[5] trial on the merits ensued.

The facts, as established by the prosecution, are as follows:

In the afternoon of February 21, 1997, the victim, AAA, who was then only five (5) years old, was harvesting vegetables with her elder brother at Sitio Bayogbayog, Barangay Bulata, Cauayan, Negros Occidental.[6] The siblings were practically left as

orphans, because their father was then in prison, and eventually died there, and their mother was living with another man.[7] While they were busy with their work, appellant, who is their uncle, arrived carrying a knife.[8] Appellant is the younger brother of their father.[9] Subsequently, he instructed AAA's brother to go home ahead.[10] After the latter left, appellant approached AAA and, right then and there, removed her underwear, placed himself on top of her and inserted his penis into her vagina.[11] After having sexual intercourse with AAA, appellant drew out his knife and slashed her vagina causing her serious injury.[12] Thereafter, appellant left.[13] AAA then went home and recounted her ordeal to her grandmother.[14] AAA was then brought to the health center for first aid treatment and later to Bacolod City for further medical care.[15] Subsequently, AAA's aunt, Leticia Alingasa filed, in her behalf, a Criminal Complaint[16] against appellant.

Appellant interposed the defense of alibi claiming that he was in Quezon City at the time that AAA was raped.[17] He pointed to his brother-in- law, Ermelo Alingasa, as the one who committed the rape.[18]

In its Decision dated January 11, 2005, the RTC found the version of the prosecution credible and, accordingly, rendered judgment as follows:

> WHEREFORE, the Court finds accused Ernesto Gani y Tupas alias "Botyok," GUILTY beyond reasonable doubt of the crime of rape committed against his niece [AAA], five years of age and being the uncle of said victim, a relationship within the third civil degree of consanguinity hereby sentences him to suffer the supreme penalty of DEATH. He is also ordered to pay the victim the sum of P75,000.00 by way of civil indemnity, P50,000.00 by way of moral damages and P25,000.00 as exemplary damages and the costs.
>
> It is ordered that accused be immediately remitted to the National
>
> Penitentiary.
>
> SO ORDERED.[19]

The RTC held that the victim's categorical, spontaneous and candid narration of how the appellant raped her deserves full faith and credence; the victim's testimony was corroborated by the findings of the medico-legal officer who examined and treated her; the defense failed to prove ill motive on the part of the victim and of appellant's sister, who stood as prosecution witness, when they testified against him; appellant's act of fleeing to Guimaras Island after the crime was reported to the authorities is an indication of guilt; and, appellant's defense of denial and alibi could not overcome the evidence of the prosecution which established his guilt beyond reasonable doubt.

Aggrieved by the trial court's decision, appellant appealed his conviction to the CA.[20]

Appellant filed his Brief,[21] while appellee did not.

On January 26, 2010, the CA promulgated its Decision affirming the findings of the RTC, but modified the penalty imposed and the amount of moral damages awarded. The dispositive portion of the CA Decision reads, thus:

> WHEREFORE, premises considered, the Decision dated January 11, 2005 of the Regional Trial Court, Branch 61, Kabankalan City, Negros Occidental, in Criminal Case No. 97-1917 is hereby **AFFIRMED** with **MODIFICATION**.
>
> As modified, accused-appellant is found guilty beyond reasonable doubt of the crime of qualified rape as defined and penalized in Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, and is hereby sentenced to suffer the penalty of ***reclusion perpetua*** pursuant to Republic Act No. 9346. Accused-appellant is ordered to pay the private complainant the amount of **P75,000.00** as civil indemnity, **P75,000.00** as moral damages, and **P25,000.00** as exemplary damages.
>
> **SO ORDERED.**[22]

On February 10, 2010, appellant filed his Notice of Appeal[23] of the CA Decision.

On March 14, 2011, this Court required the parties to file their respective supplemental briefs if they so desired.[24]

Appellee filed its own Manifestation and Motion in Lieu of Supplemental Brief contending that the prosecution was able to establish the presence of all the elements of the crime charged and that the issue raised by appellant in his brief was already passed upon by the CA in its assailed Decision.

Appellant, on the other hand, through counsel, filed a Manifestation in Lieu of Supplemental Brief stating that he is re-pleading and adopting all the arguments raised in the Appellant's Brief filed with the CA, since they squarely and sufficiently refute all the arguments raised by appellee in their own brief.

Thus, the lone assignment of error in appellant's brief, dated March 21, 2007, is now deemed adopted in this present appeal:

> THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED- APPELLANT OF THE CRIMES (sic) CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[25]

In his Brief, appellant basically questions the credibility of the private complainant. He contends that the latter failed to amply explain why she previously accused another person as the culprit and who was even detained by reason of such accusation; and, that if appellant was the actual perpetrator of the crime, why was

he not immediately taken into custody and indicted.

The appeal lacks merit.

The Court finds no cogent reason to disturb the RTC's factual findings, as affirmed by the CA. It is doctrinally settled that factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.[26] More importantly, this Court's assessment of the records of the case indicates no reversible error committed by the lower courts. AAA's testimony that she was raped by her uncle on February 21, 1997, around 1 o'clock in the afternoon is worthy of belief as it was clear, consistent and spontaneously given. There is no compelling reason to disbelieve AAA's declaration given that she was only five (5) years old when she was ravished and eight (8) years old when she testified in court. It has long been established that the testimony of a rape victim, especially a child of tender years, is given full weight and credit.[27]

The Court also upholds the rulings of the RTC and the CA that appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.[28] To merit approbation, the appellant must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. [29] In this case, appellant failed to prove that it was physically impossible for him to be at the crime scene on February 21, 1997. His token defense, during his direct examination, that he was in Quezon City when the victim was raped is hardly credible because he failed to prove the physical impossibility of his presence at the scene of the crime when it was committed. On the contrary, he admitted, when he was cross-examined, that he was, in fact, in the same locality (Sitio Bayogbayog, Barangay Bulata) when AAA was raped.[30]

At any rate, settled is the rule that alibi and denial cannot prevail over the positive and categorical testimony and identification of an accused by the complainant.[31] Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[32] They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[33]

As to appellant's defense of frame-up, this Court quotes with approval the disquisition of the CA on the matter, to wit:

> BBB, private complainant's elder sister testified on direct examination that it was their grandmother, mother of accused-appellant, who reported the incident to the police authorities. The grandmother pointed to one Ermelo Alingasa as the person responsible for the crime so that her son, herein accused, could evade the crime of rape. Witness, BBB, was not able to confront her grandmother regarding the incident because the