

## FIRST DIVISION

[ G.R. No. 202842, October 09, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FLORENTINO GALAGAR, JR., ACCUSED-APPELLANT,**

### R E S O L U T I O N

**REYES, J.:**

Before the Court is an appeal from the Decision<sup>[1]</sup> dated December 20, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00620-MIN, affirming with modification the Judgment<sup>[2]</sup> dated May 26, 2008 of the Regional Trial Court (RTC) of Gingoog, Branch 43, which found Florentino Galagar, Jr. (accused-appellant) guilty of rape under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

The Information charging the accused-appellant reads as follows:

That on April 13, 2003, at more or less 8:00 o'clock in the evening, in [S]itio Taon-Taon, Bal-ason, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, did then and there wilfully, unlawfully and feloniously force and intimidate [AAA]<sup>[3]</sup>, by threatening to kill her and then forcibly committed sexual intercourse with the said [AAA], against her will.

Contrary to and in violation of Article 266-A of the Revised Penal Code in relation to Republic Act No. 8353.<sup>[4]</sup>

AAA testified that on April 13, 2003 at around 8:00 p.m., while she was inside her house with her children, the accused-appellant called her from outside, informing her that he brought a letter from her husband, BBB, who was then working in a sugar plantation in Bukidnon. When AAA opened the door, the accused-appellant pulled a kitchen knife and pointed it to her. He grabbed her hand and bumped her head against the wall, making her dizzy. The accused-appellant then forced AAA to lie on the floor, forcibly pulled down her jogging pants and panty, pinned her down while he was on top of her, inserted his penis in her vagina, and subsequently ejaculated therein. He did all these while pointing the knife at her.<sup>[5]</sup>

After having carnal knowledge with her, the accused-appellant threatened to kill AAA and her whole family, including her special child, if she would report to the authorities. AAA's special child could not talk but she witnessed the incident from the upper portion of the house. AAA claimed she decided to keep her silence to protect her family from harm's way.<sup>[6]</sup>

However, when BBB returned home from Bukidnon on April 30, 2003, he noticed a sudden change in AAA who was always crying and was withdrawn. BBB asked AAA what was troubling her. The latter revealed what transpired – how the accused-appellant violated her person and threatened to kill her and her loved ones. Thereafter, AAA and her husband confronted the accused-appellant. The accused-appellant's wife begged for forgiveness but AAA and BBB refused. They reported the incident to the *barangay*. *Barangay* Captain Regino Tecson called the parties to a meeting in order to convince them to settle the matter by signing an agreement called "*Malinawon Nga Kasabutan*" dated May 24, 2003, but AAA refused to sign the same.<sup>[7]</sup>

On May 14, 2003, AAA went to a doctor at Gingoog District Hospital for a medical examination. The doctor, however, refused to conduct the examination, explaining that it would only be useless since she already had her menstruation and thus semen could no longer be found in her organ.<sup>[8]</sup>

For his defense, the accused-appellant presented three (3) witnesses: Bonifacio Palma (Palma) who was the Chief of the *Barangay Tanod* of *Barangay* Bal-ason from 1996 to 2004; Regino Tecson (Tecson) who was the *Barangay* Captain of *Barangay* Bal-ason, Gingoog City from 1994 until 2007; and the accused-appellant himself.

The accused-appellant denied the charge against him. He claimed that on April 13, 2003 at about 6:00 p.m., he was at the Civilian Volunteer Organization (CVO) outpost to conduct a roving operation. He alleged that he was with *Lupon* member Rosendo Labadan (Labadan), *Barangay Kagawad* Raymund Capito (Capito), and three other members of the CVO, namely, Mariano Badana, Rolando Bonbon and Palma. They divided themselves into two (2) groups and the accused-appellant was grouped with Capito and Palma. He claimed staying with his companions, Capito and Palma at the outpost up to 10:00 p.m., after which, they started their roving operation in the six (6) *puroks* of their *barangay*. The accused-appellant and his companions roved around Purok Lipunan, Sugma and Sun Flower-A. They finished roving before midnight and returned to their outpost and stayed there until 2:00 a.m. Thereafter, they exchanged areas with the other group and thus inspected the *Centro* of the *barangay* and ended at *Purok* Lapak. At 3:30 a.m. of April 14, 2003, the group of the accused-appellant ended their roving operation and stayed at the outpost until 5:00 a.m. Subsequently, they went to their respective homes.<sup>[9]</sup>

The accused-appellant stated that aside from being the *Lupon* member of *Barangay* Balason, Gingoog City, he was also the *Purok* Chairman of *Sitio* Taon-taon. He claimed that during the confrontation meeting at the *barangay*, BBB's complaint was not about the rape of AAA. The document named "*Malinawon Nga Kasabutan*" contained a promise that he would not pass by or go to the house of AAA and BBB, nor buy cigarettes from the couple's store. However, the said document was signed only by the accused-appellant, while AAA and BBB did not sign it. He admitted that his house was only fifty (50) meters away from the house of AAA and BBB and that they have been neighbors for nine (9) years. He also admitted knowing that BBB went to work in a farm in Bukidnon. He testified that in the afternoon of March 18, 2003, he bought cigarettes from the store of AAA and asked for a light, which AAA who was in the kitchen supplied. AAA actually complained about being embraced by him on this occasion. He further testified that on March 25, 2003, he went to the house of the couple to negate their claim of his alleged molestation of AAA, and

countered that when he was lighting his cigarette from the lamp given by AAA, the light was put out, and AAA even jokingly knocked his head, saying that his nostrils are so big.<sup>[10]</sup>

To corroborate the testimony of the accused-appellant, Palma testified that on April 13, 2003, his companions, including the accused-appellant, started their duty at 6:00 p.m. until 4:00 a.m. of the following day. He testified that the accused-appellant was at the outpost with them from 6:00 p.m. to 10:00 p.m.; and at 10:00 p.m., he was in one group while the accused-appellant was with another group (Capito and Labadan). They then returned to the outpost at 11:00 p.m. for coffee break and then went back to roving. After which, they returned to the outpost at 3:00 a.m. and thereafter they went home. When asked about the logbook of the CVO outpost where the presence and duty hours of the members were recorded, he alleged that it could not longer be found.<sup>[11]</sup>

Witness Tecson also testified for the accused-appellant. He claimed that on May 24, 2003 a confrontation meeting between the spouses AAA and BBB and the accused-appellant transpired. He alleged that the complaint of the couple concerned trespass to dwelling, and not rape. He also confirmed the existence of "*Malinawon Nga Kasabutan*"; that the accused-appellant in the confrontation meeting asked for the couple's forgiveness because of the charge of trespass to dwelling and not for rape; that when he executed the certification marked as Exhibit "D" for the prosecution, certifying that Palma was on duty on April 13, 2003, the same was not based on the records of the CVO because these were lost; that he was only told by Capito of the accused-appellant's presence and duty schedule on April 13, 2003; that the records of the *Barangay* concerning night-guard duty on April 13, 2003 had been lost; that the houses of the complaining couple and of the accused-appellant, who were neighbors in *Sitio* Taon-taon, were about one (1) kilometer away from the CVO outpost, and could be reached by walking for ten (10) to fifteen (15) minutes.<sup>[12]</sup>

On May 26, 2008, the RTC of Gingoog City, Branch 43, rendered Judgment<sup>[13]</sup> finding the accused-appellant guilty of violating Article 266-A of the RPC, as amended by R.A. No. 8353.

The RTC gave credence to the testimony of the victim AAA who narrated her ordeal in a straightforward, convincing, and consistent manner. She was unshaken even under rigid cross-examination. The accused-appellant's *alibi* that he was with his companions from the CVO at the time of rape did not convince the trial court despite the testimonies of Palma and Tecson. *First*, the trial court found contradictions in the testimonies of the accused-appellant and Palma. The accused-appellant claimed to belong to the group of Palma, while Palma testified that he belonged to another group. *Second*, the trial court took note of the fact that neither Capito nor Labadan, the alleged companions of the accused-appellant in the team, testified on his presence in the roving activity. *Third*, the testimony of Tecson as to the presence of the accused-appellant was hearsay since the same information was relayed to him only by Capito and the accused-appellant himself. In fact, he admitted that he did not base his certification about Palma's duty schedule on any record or logbook of attendance or duty schedule of the CVO because such record was lost. *Last*, the distance between the outpost and the house of AAA was mere 10 to 15-minute walk and that there was no testimony to the effect that the accused-appellant never left

his station. Thus, there was no physical impossibility for the accused-appellant to be present at the scene of the crime. Indeed, the trial court held that for *alibi* to prosper it must be so convincing so as to preclude any doubt of the accused-appellant's physical presence at the crime scene at the time of the incident.<sup>[14]</sup>

The trial court sentenced the accused-appellant to suffer the penalty of *reclusion perpetua* and to pay the offended party the amount of P75,000.00 as indemnity *ex delicto* and another P75,000.00 for moral damages. The *fallo* of the decision reads as follows:

**WHEREFORE**, finding that Prosecution evidence has established the guilt of the accused beyond reasonable doubt, the accused **FLORENTINO GALAGAR, JR.** is adjudged **GUILTY** of the crime charged and he is sentenced to suffer the penalty of **RECLUSION PERPETUA**. The accused is likewise ordered to pay the private offended party the amount of [P]75,000.00 as indemnity *ex delicto*, and another [P]75,000.00 for moral damages in light of prevailing jurisprudence that the victim is assumed to have suffered such damages.

**SO ORDERED.**<sup>[15]</sup>

The accused-appellant appealed to the CA. He questioned the credibility of AAA who failed to immediately report the incident to authorities and to present a medical certificate supporting her claim of rape. Addressing these issues, the CA gave weight to the findings of the trial court, explaining "that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court."<sup>[16]</sup> The CA found that the trial court did not overlook or disregard material facts and circumstances which when considered would change the result of the decision. In fact, it agreed with the trial court that AAA "was able to, in simple yet positive language, give details of her sexual abuse."<sup>[17]</sup> The CA also ruled that AAA's failure to immediately report her ordeal did not diminish her credibility, considering the fear that the accused-appellant instilled in her. Likewise, the absence of a medical examination did not affect AAA's credibility since the medical examination of the victim is not indispensable in the prosecution for rape. It is not essential to prove rape; it is in fact merely corroborative evidence.<sup>[18]</sup> Finally, the CA found the accused-appellant's defense of alibi weak in the light of AAA's positive identification pointing to the accused-appellant as the perpetrator of the crime.<sup>[19]</sup>

The CA affirmed the trial court's ruling but modified it by awarding exemplary damages in the amount of P30,000.00.<sup>[20]</sup>

Hence, the instant appeal.

After a careful review of the records of this case, we see no reason to reverse or modify the findings of the RTC, as affirmed by the CA, albeit with modification as to the award of exemplary damages.

Both the RTC and the CA gave credence to the testimony of the victim who narrated her ordeal in a straightforward, convincing, and consistent manner. The Court also