

FIRST DIVISION

[G.R. No. 202060, December 11, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND BANZUELA, ACCUSED-APPELLANT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

The accused-appellant Ferdinand Banzuela (Banzuela) challenges in this appeal the August 31, 2011 **Decision**^[1] promulgated by the Court of Appeals in **CA-G.R. CR.-H.C. No. 03868**, wherein he was convicted for Rape and Acts of Lasciviousness.

On July 25, 2003, Banzuela was charged with Rape and Attempted Rape under Article 335 of the Revised Penal Code in relation to Republic Act No. 7610^[2] before Branch 209, Regional Trial Court (RTC) of Mandaluyong City. The Informations read as follows:

I. For Rape (Criminal Case No. MC03-919-FC-H)

That sometime [i]n February 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA^[3]], minor (6 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.^[4]

II. For Attempted Rape (Criminal Case No. MC03-918-FC-H)

That sometime in February 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously attempt to have carnal knowledge of [BBB], a girl seven (7) years of age, by then and there bringing her to a grassy portion of Mandaluyong Cemetery, made to lie down, undressed her, thus directly by overt acts but failed to perform all acts of execution when a third party helped the victim to get away from the accused.^[5]

Banzuela pleaded not guilty to both charges during his arraignment on November 20, 2003.^[6] After the completion of the pre-trial conference on January 22, 2004,^[7] trial on the merits ensued.

The following narration of facts was made by the RTC and the Court of Appeals:

Version of the Prosecution

Sometime in February 2003, while six-year old AAA and seven-year old BBB were watching TV in AAA's house, Banzuela approached them and asked them to go with him to the nearby cemetery. AAA and BBB refused, but Banzuela carried AAA away prompting BBB to follow suit. Upon reaching the cemetery, Banzuela blindfolded BBB, who thereafter removed the blindfold and looked for AAA and Banzuela. Meanwhile, Banzuela laid AAA on a dirty tomb, pulled up her dress, and removed her underwear. He thereafter removed his shorts and briefs, mounted AAA, kissed her, inserted his penis in her vagina, and moved his body up and down against the crying AAA. He threatened to kill her entire family if she ever spoke of the incident. When BBB finally found them, Banzuela hurriedly pulled up his briefs and shorts and then ran away. BBB approached AAA and saw that there was blood on the tomb from AAA's vagina. They wiped the blood with a banana leaf, then proceeded to BBB's house, where AAA washed her bloodied dress and underwear before going back to AAA's house.^[8]

After the incident with AAA, Banzuela used the same method on BBB, the daughter of his mother's half-brother. One morning in February 2003, Banzuela asked BBB to go with him to the cemetery. When BBB refused, Banzuela carried her out of the house and brought her to the cemetery. BBB cried, but Banzuela proceeded to lay her down on the ground, pulled her dress up, removed her underwear, and kissed her. However, before Banzuela could do anything more, a man passed by causing Banzuela to flee the scene. The man thereafter instructed BBB to go home. Upon reaching her house, Banzuela, who was already there, threatened her against telling anyone of the incident, otherwise, he would kill everyone in their house.^[9]

AAA, with her mother, submitted herself for examination but both the Initial Medico-Legal Report^[10] and the Medico-Legal Report No. M-0914-03^[11] stated that AAA was physically in a virgin state, and her hymen "intact."

Version of the Defense

Banzuela denied the accusations against him, claiming that he was working for at least twelve (12) hours a day at Bestflow Purified Drinking Water Refilling Station the whole month of February 2003. To prove this, he submitted photocopies of his Daily Time Record (DTR) from November 2002 to February 2003.^[12] Banzuela added that he did not go to the cemetery the entire February of 2003.^[13]

Ruling of the RTC

On February 27, 2009, the RTC convicted Banzuela of the crimes of rape of AAA and attempted rape of BBB. The dispositive portion of the Decision^[14] reads as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. MC03-919-FC-H, finding accused FERDINAND BANZUELA guilty beyond reasonable doubt of the crime of RAPE under Article 335 of the Revised Penal Code, as amended by R.A. 7659 and is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** and to indemnify the victim, [AAA], of the sum of FIFTY THOUSAND

(P50,000.00) PESOS as civil indemnity; [and]

2. In Criminal Case No. MC03-918-FC-H, finding accused FERDINAND BANZUELA guilty beyond reasonable doubt of the crime of ATTEMPTED RAPE, and there being no mitigating or aggravating circumstances and pursuant to Article 51, in relation to Article 335 of the Revised Penal Code, as amended, is hereby sentenced to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prisión correccional* as minimum to ten years and one (1) day of *prisión mayor* as maximum and to indemnify the victim, [BBB] of the sum of FIFTEEN THOUSAND (P15,000.00) PESOS.^[15] (Emphases supplied.)

In AAA's charge of rape, the RTC deemed as insignificant the results of the medical examination that AAA's hymen was still intact. The RTC, invoking established jurisprudence, said that the mere touching of the labia consummates rape, and that a broken hymen is not an essential element of rape. The RTC added that a medical examination, in any event, was not essential in the prosecution of a rape case, being merely corroborative in character.^[16]

The RTC also found the prosecution to have proved its charge of attempted rape against BBB as it was clear that Banzuela intended to have sexual congress with BBB had he not been unexpectedly disturbed.^[17]

Anent Banzuela's defense of alibi, the RTC did not give it merit for being weak. The RTC shot down the DTRs Banzuela presented for not having been authenticated and verified, and for having been weakened by his own testimony.^[18]

In essence, the RTC decided in favor of the prosecution due to AAA's and BBB's testimonies, to wit:

The testimonies of AAA and BBB are worthy of credence as they were straightforward, spontaneous and "bore the hallmarks of truth." More notable is that they were able to withstand the rigors of cross-examination without wavering or being caught in inconsistencies. Indeed, it defies belief that these victims, who were below 12 years old, would fabricate a sordid tale of sexual abuse and indict their very own cousin. Their testimonies of the separate incidents of sexual abuse that happened to them recounted vivid details that could not have been concocted by girls of tender age. The testimony of the complainants are consistent, clear and free of serious contradictions.^[19]

Ruling of the Court of Appeals

Having lost in the RTC, Banzuela appealed to the Court of Appeals,^[20] which, on August 31, 2011, rendered a verdict no better than the RTC's, viz:

FOR THE STATED REASONS, the assailed Decision of the Regional Trial Court (Branch 209) of Mandaluyong City is **AFFIRMED** with the following **MODIFICATION**:

1. In Criminal Case No. MC03-919-FC-H, Ferdinand Banzuela is sentenced to suffer the penalty of reclusion perpetua without parole and

to indemnify AAA the amounts of P75,000.00 as civil indemnity ex delicto, P75,000.00 as moral damages, and P25,000.00 as exemplary damages.

2. In Criminal Case No. MC03-918-FC-H, Ferdinand Banzuela is found guilty beyond reasonable doubt of acts of lasciviousness and sentenced to an indeterminate penalty of 12 years, and 1 day of reclusion temporal, as minimum, to 16 years, reclusion temporal, as maximum and to indemnify BBB the amounts of P25,000.00 as moral damages and P10,000.00 as exemplary damages.^[21] (Citation omitted.)

In agreeing with the RTC's finding of guilt, the Court of Appeals said that Banzuela failed to destroy the victims' credibility or taint their straightforward and categorical testimonies.^[22]

However, the Court of Appeals did not agree with the RTC's finding that Banzuela attempted to rape BBB. The Court of Appeals, alluding to jurisprudence, said that "[a]ttempted rape is committed when the 'touching' of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness." Thus, the Court of Appeals declared, that because Banzuela's intent to rape BBB was not clearly established, he could only be convicted of acts of lasciviousness.^[23]

Issues

Undaunted, Banzuela elevated his case to this Court,^[24] assigning the same errors he did before the appellate court, to wit:

ASSIGNMENT OF ERRORS

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT TO THE MATERIALLY INCONSISTENT AND INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[25]

Banzuela is attacking the credibility of the witnesses for being "highly inconsistent, unusual, doubtful and thus insufficient to sustain a conviction." Banzuela claimed that AAA's testimony was full of inconsistencies and contradictions, such as how she managed to remove his hand from her mouth and yet she did not shout for help, how Banzuela managed to blindfold BBB while still carrying her, and more importantly, how confused she was as to whether his penis actually penetrated her or simply touched her groin area. Banzuela argued that the fact that AAA was still a virgin was confirmed by the medico-legal examination, and as the medico legal officer said during his testimony, although the consensus was that it is possible for a woman to remain a virgin physically despite penetration, he himself has had no

personal encounter of such a case.^[26]

Moreover, Banzuela said, even BBB's actions were highly unusual, considering the circumstances of her situation. First, Banzuela said, BBB continued to follow him and AAA despite being blindfolded, instead of turning back and calling for help. Second, in view of what BBB witnessed happened to AAA earlier that month, it was contrary to human nature, Banzuela averred, that she did not resist or try to attract the attention of her neighbors when he brought her to the cemetery.^[27]

Finally, Banzuela reasoned, the prosecution cannot profit from the weakness of his defense in light of their failure to establish his guilt beyond reasonable doubt. Thus, he said, he should be acquitted of the charges against him.^[28]

Ruling of this Court

We find no reason to reverse the conviction of Banzuela.

In essence, Banzuela's appeal is hinged on the proposition that the victims were not credible witnesses for having made several inconsistent statements when they testified in court.

We do not agree.

Credibility of the witnesses

The guidelines to follow, when this Court is confronted with the issue of credibility of witnesses on appeal, are established in jurisprudence. In *People v. Sanchez*,^[29] we enumerated them as follows:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC. (Citations omitted.)

It is well-settled in this jurisdiction that the determination of the credibility of the witnesses is correctly assigned to the trial court, which is in the best position to observe the demeanor and bodily movements of all the witnesses.^[30] Elucidating on the rationale for this rule, this Court, in *People v. Sapigao, Jr.*,^[31] said:

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because