

## THIRD DIVISION

[ G.R. No. 183569, April 13, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE PUBLICO Y AMODIA, ACCUSED-APPELLANT.**

### D E C I S I O N

**SERENO, J.:**

This is a review of the Decision of the Court of Appeals (CA), Cebu City, in CA-G.R. CEB-CR.-H.C. No. 00290, <sup>[1]</sup> which affirmed the Judgment of the Regional Trial Court (RTC) of Ormoc City, Branch 35, in Criminal Case Nos. 5521-0 and 5522-0 <sup>[2]</sup> finding accused-appellant Vicente Publico y Amodia guilty beyond reasonable doubt of rape and attempted rape.

The facts of these cases, culled from the records, are as follows:

#### **Criminal Case No. 5521-0**

On the evening of 21 February 1999, AAA, the twelve-year-old daughter of accused-appellant, was in their house. After AAA put her younger sister to sleep, she heard her father call for her saying, “*Day*, come here.” She approached her father and saw that he was holding a bolo. He ordered AAA to take off her panty. She refused to take it off, so accused-appellant removed it himself. He then mounted AAA and attempted to insert his penis into her vagina. The physiological state of AAA made full penetration impossible—she was only a twelve-year-old virgin and her vagina was still too tight; the mere attempt to have sexual intercourse with her caused her immense pain. Frustrated and enraged, accused-appellant started hurling tirades at her. Soon thereafter one of their neighbors, Iking Carmones, knocked on their door. Accused-appellant opened the door and left the house with the former.

The following day AAA, together with her elder brother CCC, reported the matter to the police.

An Information charging accused-appellant with attempted rape was filed. Its accusatory portion reads:

That on or about the 21st day of February, 1999 at around 11:00 o’clock in the evening, at XXX, barangay XXX, XXX City and within the jurisdiction of this Honorable Court, the above-named accused: VICENTE PUBLICO y AMODIA, did then and there willfully, unlawfully, feloniously attempt to have carnal knowledge of his legitimate 12 year old daughter — AAA, by trying to insert his organ into the female organ of AAA but failed, thereby commencing the commission of the crime of rape directly by overt acts, and that, if said accused did not accomplish his unlawful

purpose, it was not because of his own voluntary desistance but because the female organ of AAA was still too tight, she being a virgin.

In violation of Art. 335 in relation to Art. 6, Revised Penal Code.

### **Criminal Case No. 5522-0**

BBB, also a daughter of accused-appellant, is the older sister of AAA.

When BBB reached the age of ten, she started giving her father massages. Accused-appellant would get angry if it was not BBB who would massage him. He would only be in his underwear whenever she massaged him.

At the age of fifteen, BBB started having sexual intercourse with a boyfriend, with whom she lived without the benefit of marriage. In May 1996, she started having sexual intercourse with him in the same room where her parents and sister also slept. Roughly two weeks after BBB and her lover started living together, the two had a quarrel. Accused-appellant took his daughter's side and mauled her lover, who then left their house and never returned.

Sometime in June 1996, at around three o'clock in the afternoon, while her mother and her brothers were out working and her younger sister AAA was in school, BBB was sent by her father to buy kerosene to be used for his massage. When she arrived at their house, accused-appellant suddenly dragged her inside the room. He then poked a sharp weapon at BBB and took her shorts off. After removing her shorts, he removed his briefs and had sexual intercourse with her. BBB claims that after that fateful day in June 1996, accused-appellant raped her several more times for a period of two years or until she reached the age of eighteen. According to BBB whenever she tried to resist her father's attempts to have sexual intercourse with her, he would maul her until she was left with no other choice but to yield to his desires. She never revealed the sexual abuses committed by accused-appellant, because he threatened to kill her and their entire family should she divulge the matter to her mother.

Eventually, accused-appellant got BBB pregnant. She gave birth to their child in June 1997.

In November 1998, BBB left home and moved to Cebu City. Sometime after leaving their house, she received a visit from her older brother, CCC. Her brother informed her that accused-appellant had also tried to rape their younger sister, AAA.

This information prompted BBB to file a Complaint for rape against accused-appellant on 24 February 1999. The Complaint charged appellant with rape allegedly committed as follows:

That on or about the month of June 1996, and for sometime subsequent thereto, at XXX, barangay XXX, XXX City, and within the jurisdiction of this Honorable Court, the above-named accused: VICENTE PUBLICO y Amodia, by means of violence and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of his

legitimate daughter –BBB, a sixteen (16) year old lass, against her will.

In violation of Article 355, Revised Penal Code, as amended by RA 7659.

Criminal Cases Nos. 5521-0 and 5522-0 were consolidated.

Upon arraignment on 25 March 1999, accused-appellant entered a plea of not guilty.

During trial, the prosecution presented 19-year-old BBB and 13-year-old AAA as witnesses. BBB testified as to how her father raped her the first time and several times thereafter for a period of two years, [3] while AAA recounted the events that transpired on the day her father attempted to rape her. [4]

BBB's testimony was supported by the testimony of Dr. Regino Mercado, who identified the Medical Certificate [5] he issued on 23 February 1999 after his physical examination of BBB. Dr. Mercado found: "1. Old hymenal lacerated wound at 3 o'clock, 6 o'clock and 9 o'clock based on the face of the clock."

The physical examination conducted by Dr. Mercado on AAA [6] did not show any hymenal laceration.

Senior Police Officer 1 (SPO1) Nestor Sicsic further strengthened the prosecution's case through his testimony about Entry No. 7698 [7] in the police blotter of Police Precinct No. 2 at XXX, XXX City. The police blotter showed that BBB lodged a Complaint for rape against her own father. SPO1 Sicsic also corroborated AAA's story through his testimony identifying Entry Nos. 7683, 7685, and 7686 [8] in the police blotter of Police Precinct No. 2 at XXX, XXX City. These entries proved that AAA reported to the police her father's attempt to rape her on 22 February 1999.

AAA's older brother, CCC, testified that on 22 February 1999, when he arrived from work at around 7:30 a.m., his younger sister AAA came to his house crying. She then told her brother that their father had attempted to rape her. He then accompanied his sister to the police at Barangay Valencia to report the incident. [9]

The sole witness for the defense was accused-appellant himself. He denied the accusations of his daughters against him and presented alibis as main defenses.

Accused-appellant claimed that on 4 June 1996 he left for Manila to look for a job. He said that he worked as a laborer digging canals for the skyway construction project in Western Bicutan, Taguig. He further said that he returned to XXX City only in October for All Saints' Day. [10]

Accused-appellant also claimed that on 21 February 1999, he was at home drinking Tanduay Rhum with his compadre Dionisio Cadenes. They were allegedly drinking from 3:00 p.m. to 8:00 p.m. When his compadre left, he went to sleep. At around three o'clock in the morning, accused-appellant woke up. He tried to wake AAA up to make her boil some water, so that he could have coffee. She did not comply, so he himself went into the kitchen to boil some water. [11]

On 13 July 2007, the trial court, giving credence to the evidence of the prosecution, convicted accused-appellant and meted out to him the penalty of death, viz:

WHEREFORE, after duly considering all the foregoing, the Court finds the accused Vicente Publico y Amodia GUILTY beyond reasonable doubt of the crime of Rape as charged in Criminal Case No. 5522-0 and of the crime of Attempted Rape as charged in Criminal Case No. 5521-0, and accordingly hereby sentences the said accused under Criminal Case No. 5522-0 to the supreme penalty of Death, whereas under Criminal Case No. 5521-0, the Court penalizes the accused to an indeterminate sentence of 6 years and 1 day prision mayor as minimum to 12 years and 1 day reclusion temporal as maximum, and in both cases to pay the offended party as follows: P50,000.00 as indemnity and P50,000.00 as moral damages, in Criminal Case No. 5522-0; P50,000.00 as moral damages in Criminal Case No. 5521-0.

For Criminal Case No. 5521-0, if the accused is a detainee, the period of his detention shall be credited to him in full if he abides in writing by the terms for convicted prisoners, otherwise, for only 4/5 thereof.

SO ORDERED.

The case was elevated to the Court of Appeals on automatic review. On 9 January 2008, the appellate court promulgated its Decision affirming the Decision of trial court, but with the following modifications:

1. In Criminal Case No. 5522-0, appellant is found guilty of Simple Rape and sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay private complainant BBB P50,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.
2. In criminal Case No. 5521-0, appellant is found guilty of Attempted Rape and is sentenced to an indeterminate prison term of five (5) years, four (4) months and twenty-one (21) days of prision coreccional as minimum , to eleven (11) years, four (4) months and one (1) day of prision mayor as maximum. He is also ordered to pay private complainant AAA P30,000.00 as civil liability, plus P25,000.00 as moral damages and P10,000.00 as exemplary damages

Costs against appellant

SO ORDERED.

Accused-appellant is now before us, seeking the reversal of the judgment of the court below, raising this sole assignment of error:

THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF BBB AND AAA.

The appeal is bereft of merit.

In deciding rape cases, this Court is well aware of its duty to both the victim and the accused. Bearing in mind that the conviction of the accused depends heavily on the credibility of the victim, courts are mandated to thoroughly examine the testimony of the offended party. [12] Although the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are duty-bound to establish that their reliance on the victim's testimony is justified. Courts are mandated to ensure that the testimony is credible, convincing, and otherwise consistent with human nature. [13] If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.

As a general rule, appellate courts will not disturb the findings of the trial court on the credibility of witnesses. As we have held many times, "evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses and their demeanor, conduct, and attitude, especially under cross-examination." [14] Unless trial courts are found to have plainly overlooked certain facts of substance and value, their conclusions on the credibility of witnesses should be respected. [15]

In the case at bar, we see no reason to deviate from this rule or to disturb the findings of the trial court.

After a thorough examination of the testimonies of complainants BBB and AAA, it is clear to this Court that the testimonies are spontaneous, clear, candid, and free from serious contradictions. This Court maintains that testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence. [16]

Furthermore, we have held that a rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, to wit:

Indeed, a young girl would not ordinarily file a complaint against anybody, much less her own father, if it were not true. Thus, the victim's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out details on an assault to her dignity cannot be dismissed as mere concoction. We also take judicial notice, and it can be considered of public knowledge, that the scene of the rape is not always or necessarily isolated or secluded. Lust is no respecter of time or place. It goes against human experience that a girl would fabricate a story which would drag herself as well as her family to a lifetime of dishonor, unless that is the truth, for her natural instinct is to protect her honor. More so, where her charges could mean the death of her own father, as in this case. Undoubtedly, the accused-appellant was correctly found guilty of raping his daughter. [17]