

## THIRD DIVISION

[ G.R. No. 189579, September 12, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
JOSELITO ORJE Y BORCE, ACCUSED-APPELLANT.**

### DECISION

**VELASCO JR., J.:**

This is an appeal from the August 10, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03234, which affirmed the February 4, 2008 Decision of the Regional Trial Court (RTC), Branch 106 in Quezon City, in Criminal Case No. Q-05-136600. The RTC found accused Joselito Orje guilty beyond reasonable doubt of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

#### The Facts

The information charging the accused with rape reads as follows:

That on or about the 1<sup>[st]</sup> day of September, 2005, in Quezon City, Philippines, the above-named accused, being then the father, did then and there, willfully, unlawfully and feloniously, by means of force and intimidation have sexual intercourse with one [AAA],<sup>[1]</sup> his own daughter, a minor 16 years old, inside their residence located at [XXX], this City, against her will and without consent, thereby degrading or demeaning the intrinsic worth and dignity of the said offended party as a human being.

CONTRARY TO LAW.<sup>[2]</sup>

Accused pleaded not guilty to the above charge. During the pre-trial, the parties stipulated on the following relevant facts:

- (1) AAA is accused's biological daughter;
- (2) AAA was only 16 years old at the time of the alleged rape incident, subject to the presentation of her original certificate of live birth; and
- (3) Accused and AAA were staying in the same house at the time of the alleged incident.

The prosecution later presented AAA's Certificate of Live Birth (Exhibit "E").<sup>[3]</sup>

#### Version of the Prosecution

At the trial, the prosecution presented, as witnesses, AAA and medico-legal officer Police Inspector Edilberto Antonio (P/Insp. Antonio).

AAA testified sleeping in their house and waking up at around six o'clock in the evening of September 1, 2005 with the feeling of something heavy pressing on her body. It turned out to be her father, the accused, on top of her. At that point, accused proceeded to strip her of her shorts, then her underwear and then inserted his penis into her vagina. She attempted to shout and struggled to break free, but her efforts proved futile at the start as he was holding her hands and covering her mouth at the same time. Eventually, however, she succeeded in extricating herself and got hold of a chair which she threw at the accused.<sup>[4]</sup>

AAA further narrated that two days after that harrowing incident, accused slapped her for arriving home late. Thereafter, AAA repaired to her bedroom and took a bath. As she was combing her hair after her bath, accused suddenly came up from behind and started to fondle her breasts. This turn of events prompted AAA to run to her cousin (BBB) for help and, in the latter's house, AAA confided what she had just gone through. BBB informed her parents who, in turn, reported the matter to the police. Accused's arrest followed.<sup>[5]</sup>

AAA also testified that, apart from the above incidents, accused also molested her in December 2003 and again on March 15, 2004. She, however, kept both painful episodes to herself out of fear that her father would make good on his threat to kill her mother. AAA likened the abuse she received in the hands of her father to being treated as a prostitute. On the witness stand, she stated wanting her father to land in jail for what he had done to her. <sup>[6]</sup>

Marked as Exhibit "B" and adduced in evidence was Medico-Legal Report No. M-3314-05 dated September 9, 2005, containing, among others, the following entries: "Findings: hymen, Presence of deep healed laceration at 2, 4, 7 or 8 o'clock position. Conclusion: Genetal [sic] examination [conducted on AAA] shows clear evidence of penetrating trauma."<sup>[7]</sup> This means, according to P/Insp. Antonio, that something entered or was inserted into AAA's vagina causing lacerations. The depth of the hymenal lacerations indicates, so P/Insp. Antonio testified, a forceful insertion or penetration of something into the vagina.<sup>[8]</sup>

### **Version of the Defense**

The defense called to the witness stand AAA who earlier executed a *Sinumpaang Salaysay* (hereinafter referred to also as affidavit of desistance), in which she expressed her desire to desist from pursuing the sham case against her father. As she explained while testifying this time, the rape incidents never happened. AAA pointed to her aunt, CCC, as having compelled her to falsely accuse her father to get back at him for leaving the family when AAA was barely nine years old. AAA also testified being mad at the appellant for the slap she got after arriving home late one rainy night.<sup>[9]</sup>

Dated December 16, 2005, the *Sinumpaang Salaysay* partly reads as follows:

Na aking pong iniurong ang aking habla sa aking ama na si Joselito Orge [sic], sa kasong rape;

Na wala pong katotohanan ang aking habla laban sa kanya. Na ang lumabas na positibong resulta tungkol sa pagkapilas ng aking pagkababae ay gawa naming ng aking kasintahan;

Na mahal ko po ang aking mga magulang, na ang aking habla laban sa aking ama ay dahil lamang sa galit sa kanya matapos na ako'y kanyang pagalitan;

Na ako po ay handing magpatawad sa aking ama sa kanyang nagawa sa akin at ako'y handa naring humingi ng tawad sa kanya sa aking mga kamalian;

Na ang aking sinumpaang salaysay ay buong puso kong lalagdaan ng walang pananakot, pangako o ano mang katumbas na halaga kapalit na pag-urong ko sa habla.<sup>[10]</sup>

### **The Rulings of the RTC and CA**

On February 4, 2008, the RTC rendered judgment finding accused guilty beyond reasonable doubt of the crime charged, disposing as follows:

IN VIEW WHEREOF, accused JOSELITO ORJE y BORCE is hereby found guilty beyond reasonable doubt of the crime of RAPE under Art. 266-A, in relation to R.A. 7610, and he is sentenced to suffer the penalty of RECLUSION PERPETUA without eligibility for parole; 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. No costs.

SO ORDERED.<sup>[11]</sup>

The trial court appreciated in its Decision the twin qualifying aggravating circumstances of minority and relationship.

On appeal, the CA affirmed<sup>[12]</sup> the RTC's Decision, noting AAA's unequivocal testimony in court while responding to questions from the prosecuting fiscal on the rape incidents. For reasons articulated in its Decision dated August 10, 2009, the CA, just like the RTC, gave short shrift to AAA's recantation.<sup>[13]</sup>

On August 24, 2009, accused filed a Notice of Appeal, which the CA gave due course to and directed the elevation of the records to this Court. In response to a Resolution for the submission of supplemental briefs, if they so desired, the parties, by separate manifestations, informed the Court that they are no longer submitting supplemental briefs, but are each maintaining their positions and arguments in their respective briefs filed with the CA.

### **The Issue**

The sole issue, as raised and argued before the CA, boils down to the question of whether or not the prosecution has established accused-appellant's guilt beyond the reasonable doubt.

### **This Court's Ruling**

It should be stressed at the outset that while it is not a trier of facts and is not wont to winnow and re-asses anew the evidence adduced below, it still behooves the Court, in criminal cases falling under its review jurisdiction pursuant to Article VIII, Section 5(2) of the Constitution,<sup>[14]</sup> to take a careful and hard look at the testimony given in rape cases. The Court is constantly mindful of the pernicious consequences that a rape charge bears on both the accused and the private complainant.<sup>[15]</sup> It exposes both to humiliation, hatred and anxieties, more so if the element of kinship comes into the picture. And to stress familiar dicta, an accusation for rape can be made with facility, albeit difficult to prove, but more difficult for the accused, though innocent, to disprove, and that conviction in rape cases usually rests solely on the basis of the testimony of the offended party.<sup>[16]</sup> This attitude of caution and circumspection becomes all the more compelling in this case in light of the recantation of a key witness, the victim herself.

We deny the appeal.

The following are the elements of rape as provided under Art. 266-A of the Revised Penal Code (RPC), as amended: (1) that the accused had carnal knowledge of a woman; and (2) the accused accomplished such act (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.<sup>[17]</sup>

In determining whether the elements of rape have been established by the prosecution, courts recognize that conviction or acquittal depends almost always entirely on the credibility of the victim's testimony, the crime being ordinarily perpetrated in seclusion<sup>[18]</sup> and only the participants can testify as to its occurrence.<sup>[19]</sup>

Hence, the matter of AAA's credibility is front and foremost before the Court.

That credibility, accused-appellant urges, has been shattered to pieces by her recantation of her previous testimony. The Court is not persuaded.

When called by the prosecution to testify on January 20, 2006, AAA pointed at accused-appellant as the person who raped her. There can be no mistake about the identification as she and accused-appellant were family, living under the same roof. Her testimony, as uniformly found by the trial and appellate courts, was clear, categorical and straightforward and withstood an intense cross-examination. It was observed, too, that consistency on material points marked her recollection of the details of the sexual molestation, including how she struggled, at that precise time, to free herself from her father's hold. Her claim of being a rape victim found corroboration by the medical findings of the examining medico-legal officer. We reproduce a portion of AAA's direct testimony on January 20, 2006:

Fiscal Mangente

Q On September 1, 2005, about 6:00 o'clock in the evening do you recall if there was any unusual incident that happened?

A There was.

Q Where were you then at that particular date and time?

A I was at home.

Q Could you tell us what was that unusual incident [that] happened while you were inside your residence?

A I was then sleeping and my siblings [were] outside the house. My father was inside the house and it was me and my father who were inside the house.

Q Could you tell this court where you were living then?

A x x x x

Q What happened while you were sleeping in your house with your father?

A I felt that he suddenly approached me and put himself on top of me.

Q When you realized that your father [was] putting himself on top of you what did you do if any?

A I was struggling and while I was struggling he held my two hands and I was not able to move anymore.

Q What other things did your father do aside from putting his hands in your mouth?

ATTY ALMONTE

There was no mention that the hands of the accused [were] put in the mouth, what was stated by the witness was he held her hands and [she] was not able to move.

FISCAL MANGENTE

Q After holding your hands what other things did accused do if any?

A He closed my mouth [with] his hands and I felt that his private part was put inside my private part.

Q [Did] you have any clothing at the time that you said your father was putting his private part [in] your private part?

A Yes, sir.

Q Could you tell us what was your clothing at that time?

A T-shirt.

Q And how about underwear?

A Short[s].

Q So, while your father was doing that to you what did you do?

A I was crying.

Q Did you shout for help?

A I could not shout because one of his hands covered my mouth.

Q So, after that incident what did you do, if any?

A I [ran] away from him. [20]

We fully agree with the findings of the RTC, as affirmed by the CA, that accused-appellant sexually abused AAA in the early hours of the evening of September 1, 2005. Both courts were correct in giving credence to AAA's positive testimony the first time around notwithstanding her retraction of her previous testimonies and the