

THIRD DIVISION

[G.R. No. 182791, February 10, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELISTER BASMAYOR Y GRASCILLA,^[1] ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

On appeal is the Decision^[2] of the Court of Appeals in CA-G.R. CR-HC No. 01132 dated 21 December 2007 which affirmed with modifications the Decision^[3] of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Cases Nos. 122127-H and 122128-H, dismissing the first case for statutory rape against appellant Elister Basmayor due to insufficiency of evidence, while finding him guilty of statutory rape on the second charge committed against AAA.^[4] The Court of Appeals found appellant guilty of Qualified Rape and imposed on him the penalty of *Reclusion Perpetua*. It further increased the awards for civil indemnity and moral damages from P50,000.00 to P75,000.00 each and, in addition awarded exemplary damages in the amount of P25,000.00.

On 19 November 2001, two informations were filed before the RTC of Pasig City, docketed as Criminal Cases Nos. 122127-H and 122128-H, charging appellant with two counts of Statutory Rape in relation to Republic Act No. 7610 and Articles 266-A and 266-B of the Revised Penal Code. The accusatory portion of the two informations is similarly worded except for the date. The information in Criminal Case No. 122128-H reads:

On or about November 12, 2001,^[5] in Pasig City, and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, 11 years old, minor, and the child of the live-in partner of the accused, against her will and consent.^[6]

When arraigned on 13 December 2001, appellant, with the assistance of counsel *de oficio*, pleaded "not guilty" to the two counts of rape.^[7]

At the pre-trial conference held on 8 February 2002, no stipulation was made by the parties. The prosecution marked some of its exhibits and reserve the right to present other exhibits during trial. The defense likewise reserved its right to adduce documentary exhibits during the course of the proceedings.^[8]

The prosecution presented four witnesses, namely: AAA,^[9] the victim; BBB, the victim's mother;^[10] Larry dela Cruz,^[11] Security Force Member of Barangay Sto. Tomas, Pasig City; and Dr. Pierre Paul F. Carpio,^[12] Medico-Legal Officer, Philippine

National Police (PNP) Crime Laboratory, Libis, Quezon City.^[13]

AAA testified that at around 9:00 a.m. of 9 November 2001, she was with her mother (BBB) and the latter's live-in partner (appellant) in their house at XXX, XXX, XXX City. While her mother was sleeping, her stepfather (appellant) embraced her and touched her "*pepe*." She removed his hands from her private parts and went to sleep beside her mother. An hour after, or at around 10:00 a.m., she was awakened from her sleep by appellant who was undressing her. Appellant removed his shorts and brief and lay on top of her. Appellant kissed her cheeks, mashed her breasts, licked her vagina and inserted his penis therein causing her much pain. During this time, her mother was out peddling goods.

On 12 November 2001, at around 10:00 a.m., while lying in bed, appellant again placed himself on top of AAA and inserted his penis inside her vagina, causing her pain. Her mother was not in the house when appellant violated her a second time.

AAA clarified that when the first rape happened on 9 November 2001, her mother was with her sleeping. She tried to wake her up, but to no avail. The rape lasted only for a minute. Appellant told her not to tell anyone about the incident. She merely cried and did not tell anyone because she was afraid that appellant might kill her. She said rape is bad. She revealed that her "*Ate Lily*" came to know of her ordeal from a neighbor who witnessed what happened to the victim. Further, she explained that on 12 November 2001, her mother was in the market when the rape occurred.

AAA identified the appellant as the person who raped her. She also identified the sworn affidavit she executed^[14] relative to these cases and confirmed the contents thereof.

BBB testified that AAA was her daughter who was born on 4 February 1990 as evidenced by the latter's Certificate of Live Birth.^[15] BBB said that on 9 and 12 November 2001, she, AAA and appellant (common-law husband) were still living together. She disclosed that she did not witness the rape of AAA on said dates because she was in the market. She identified appellant as her live-in partner.

Larry dela Cruz testified that he was one of the members of the Security Force of Barangay Sto. Tomas, Pasig City, who arrested appellant upon the complaint of one Jerry Tadena. Mr. Tadena reported that appellant raped AAA. Dela Cruz, together with his co-*tanods*, immediately went to the house of appellant, whom they invited to the *barangay* headquarters. Appellant voluntarily went with them and was informed that somebody was complaining against him. At the *barangay* headquarters, AAA pointed to appellant as the one who raped her. Mr. dela Cruz identified the sworn statements^[16] he and Mr. Tadena executed.

The last witness for the prosecution, Dr. Pierre Paul F. Carpio, testified that he interviewed AAA and conducted a genital examination on her. His findings and conclusion are contained in Medico-Legal Report No. M-2980-01,^[17] to wit:

FINDINGS:

x x x x

GENITAL:

x x x x

HYMEN: Elastic, fleshy-type with shallow fresh laceration at 3 & 6 o'clock position.

x x x x

CONCLUSION: Subject is compatible with recent loss of virginity. There are no external signs of application of any form of trauma.

Dr. Carpio disclosed that AAA was coherent when he interviewed her. He explained that the loss of virginity may be caused by the insertion of a blunt object like a penis. He said that AAA divulged to him that she was raped only once. As to the findings of hymenal lacerations, he said that the same were fresh - maybe three days old - and could have possibly resulted from the 12 November 2001 incident.

On 17 October 2003, the prosecution formally offered^[18] its documentary evidence consisting of Exhibits A to F, with sub-markings, on which the defense filed its comment.^[19] The trial court admitted all the exhibits on 6 November 2003.^[20]

For the defense, appellant Elister Basmayor took the stand.

Appellant testified that AAA was his "*anak-anakan*" because her mother, CCC, was his live-in partner. He started living with CCC and AAA at XXX St., XXX, XXX City, in the year 2000. He denied the accusations that he raped AAA twice, on 9 and 12 November 2001. When he was arrested, he was at home sleeping. The *barangay tanods* invited him, and he voluntarily went with them. He was told that there was a complaint of rape against him. He learned that it was AAA who was the complainant. He was detained at the Pasig City Police Station. At the police station, AAA, who was accompanied by a woman, pointed to him and then cried. His live-in partner (CCC) was not there. He told the policemen he did not commit the crime charged.

Appellant insisted that he was innocent of the charges made by AAA. He said AAA complained against him because Raniel, a brother-in-law of CCC who was angry with him, induced AAA to file the cases against him. As to AAA, he did not know of any reason why she would get mad at him.

On 9 November 2001, appellant said that he, AAA and CCC were at home. The three of them went to church at 4:00 p.m. to sell their wares/goods. They stayed there until midnight, but they told AAA to go home. Appellant explained that he was not in their house when AAA was allegedly raped at 10:00 a.m. of 9 November 2001, because he was at Barangay San Nicolas, Pasig City, bringing money to his friend, Ding Sumulong. He stayed there for half an hour then went to the market to play pool. At 2:30 p.m., he watched a movie at Mariposa Theatre. After the movie ended at 3:30 p.m., he went home. On 12 November 2001, he said he was at home with his common-law wife. He does not know of any motive why his common-law wife would implicate him in such a serious crime.

The defense rested its case without marking any documentary exhibit.^[21]

On 8 April 2005, the trial court promulgated its decision. In Criminal Case No. 122128-H, appellant was found guilty of simple rape and was sentenced to *reclusion perpetua*. In Criminal Case No. 122127-H, said case was dismissed for insufficiency of evidence. The dispositive portion of the decision reads:

WHEREFORE, the Prosecution having proved the guilt of the accused, ELISTER BASMAYOR y GRASCILIA IN Criminal Case No. 122128-H, of the crime of Simple Rape, he is hereby sentenced to undergo an imprisonment of *RECLUSION PERPETUA*.

Accused is further ordered to pay the offended party the sum of P50,000.00 as civil indemnity and P50,000.00 for moral damages without need of proof.

Meantime, Criminal Case No. 122127-H is DISMISSED, for insufficiency of evidence.^[22]

The trial court was convinced that appellant, indeed, raped AAA not twice, but only once. Due to AAA's conflicting testimonies as to the number of times she was raped and whether her mother was present when she was allegedly raped on 9 November 2001, the trial court was compelled to dismiss Criminal Case No. 122127-H. However, as to the second rape committed on 12 November 2001, the trial court was persuaded that it happened and that appellant was the culprit. It accorded full credence to AAA's testimony as to what happened on the fateful morning of 12 November 2001. The victim identified appellant as the one who violated her honor. Her testimony was further supported by the findings of the Dr. Carpio who, upon genital examination, found fresh lacerations in her hymen at the 3:00 o'clock and 6:00 o'clock positions. Consistent with his findings, Dr. Carpio concluded that AAA had lost her virginity and that the lacerations, which were about three days old, were possibly caused by the rape committed on 12 November 2001.

The trial court found that appellant's defense of bare denial was self-serving and could not prevail over the positive, spontaneous and straightforward declarations and identification made by the credible victim. It likewise found appellant's claim that AAA was instigated by her relative to be too flimsy a motive for one to file a serious charge of rape against him. It added that there being no showing of improper motive on AAA's part to falsely testify against the appellant, it concluded that no such improper motive existed and that her testimony was worthy of belief.

The trial court convicted appellant only of simple rape, because the prosecution failed to establish that appellant was the common-law spouse of AAA's mother. It said that the prosecution failed to show that BBB and CCC were one and the same person.

On 15 April 2005, appellant filed his Notice of Appeal manifesting his intention to appeal the decision to the Court of Appeals.^[23] In an Order dated 18 April 2005, the trial court forwarded the records of the case to the Court of Appeals.^[24]

On 21 December 2007, the Court of Appeals affirmed appellant's conviction, but modified the decision of the trial court by finding him guilty of Qualified Rape,

increasing the awards of civil indemnity and moral damages to P75,000.00 each, and awarding exemplary damages in the amount of P25,000.00. The decretal portion of the decision reads:

WHEREFORE, the Decision dated 1 April 2005 of the Regional Trial Court, Branch 261, Pasig City, is AFFIRMED with the following MODIFICATIONS:

1. ELISTER BASMAYOR is found guilty beyond reasonable doubt of the crime of Qualified Rape. The death penalty supposed to be meted upon him is reduced to *Reclusion Perpetua*, without eligibility for parole; and
2. The awards of civil indemnity, moral damages and exemplary damages are set at P75,000.00, P75,000.00 and P25,000.00, respectively.^[25]

Finding that the prosecution proved the presence of the special qualifying circumstances of minority and relationship, it adjudged him guilty of Qualified Rape.

On 12 February 2008, with appellant's notice of appeal having been filed on time, the Court of Appeals elevated the records of the case to this Court.^[26] Thereafter, in our resolution dated 16 July 2008, we noted the elevation of the records, accepted the appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.^[27] The parties opted not to file supplemental briefs on the ground they had fully argued their positions in their respective briefs.^[28]

Appellant makes the following assignment of error:

I

THE COURT A-QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT A-QUO GRAVELY ERRED IN GIVING CREDENCE TO THE CONFLICTING TESTIMONY OF THE COMPLAINING WITNESS.^[29]

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.^[30]

Appellant maintains that since the trial court found discrepancies in the testimonies of AAA, it should have entirely rejected the testimony of AAA, because the latter was lying and her testimony unbelievable. He argues that in resolving conflict regarding