

## SECOND DIVISION

[ CA-G.R. CR-HC NO. 06646, March 20, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARLOS BAUIT Y DELOS SANTOS, ACCUSED-APPELLANT.**

### D E C I S I O N

**SALAZAR-FERNANDO, J.:**

Before this Court is an appeal from the Decision<sup>[1]</sup> dated January 7, 2014 of the Regional Trial Court, National Capital Judicial Region, Branch 140, Makati City in Criminal Case No. 11-1968 entitled: "*People of the Philippines, versus Carlos Baut y delos Santos, Accused.*", the dispositive portion of which reads:

**"WHEREFORE,** judgment is hereby rendered as follows:

1. Finding the accused Carlos Baut y delos Santos GUILTY beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A of paragraph 1 (a) of Republic Act No. 8353. Consequently, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole pursuant to R.A. 9346.
2. Said accused is likewise ordered to pay CMP civil indemnity in the amount of P75,000.00 for moral damages, the sum of P75,000.00 and P30,000.00 as exemplary damages or a total of P180,000.00.

*Costs de oficio.*

**SO ORDERED."**

The facts are:

Accused-appellant Carlos Baut y delos Santos (Baut for brevity) was charged by the City Prosecutor's Office of Makati City with Rape under Article 266-A(1)(a) of the Revised Penal Code, in an Information<sup>[2]</sup> dated July 25, 2011, the accusatory portion of which reads as follows:

"On or about July 20, 2011, in the City of Makati, Philippines, accused, by means of force, threat or intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with (sic) his biological daughter, CMP,<sup>[3]</sup> a minor, 12 years old, against her will and without her consent.

CONTRARY TO LAW."

When arraigned on August 23, 2011,<sup>[4]</sup> accused-appellant Bautit pleaded not guilty to the crime charged.

During the pre-trial conference held on September 21, 2011 the parties did not make any stipulation. The prosecution merely marked in evidence its documentary exhibits (Exhibits "A" to "F"). Thereafter, the pre-trial conference was terminated<sup>[5]</sup>

Trial on the merits ensued.

The prosecution presented CMP, LP,<sup>[6]</sup> the mother of CMP, PO2 April A. Castro whose testimony was stipulated upon by the parties, and Dr. Joseph Palmero, as witnesses.

CMP, a 13-year old first year high school student testified that: she is the daughter of accused-appellant Bautit and LP, but his parents are not married to each other that is why she is not using his surname; in the early morning of July 20, 2011, she was sleeping at home with her cousin and accused-appellant Bautit, while her mother was in Cagayan attending a funeral; her father is a carpenter, while her mother is a former overseas Filipino contract worker; at 4:30 o'clock in the morning of July 20, 2011, she was already awake and was preparing for school because she had to leave at 5:00 o'clock in the morning; her cousin had already left because she was called by her mother; while she was about to go to the bathroom to take a bath, accused-appellant Bautit held her and forced her to lie down in the living room; he pulled down her short pants, but she resisted his advances and fought back; however, her efforts were in vain because he was strong; he was able to overpower her and succeeded in removing her short pants and underwear; he then pulled down his short pants, put himself on top of her and inserted his penis into her vagina; she felt pain and all she could do was cry because she could not do anything; she could not recall how long accused-appellant Bautit was on top of her, but it took him minutes to consummate the act; after which, he ordered her to take a bath, while he cooked her *baon*; after taking a bath, she went to school as if nothing happened; when her mother arrived from Cagayan, she told her what accused-appellant Bautit did to her and her mother confronted accused-appellant Bautit; she also confided the incident to her cousin who, in turn, relayed it to another cousin who told her aunts about it; she and her aunts went to a barangay *kagawad* and reported the incident to the latter; on July 22, 2011, she went to the police station and gave her sworn statement to <sup>[\*]</sup>PO1 April Castro; and, after investigation, she was sent to a doctor in Camp Crame for genital examination.<sup>[7]</sup>

LP, the common law wife of accused-appellant Bautit, declared that: she is the mother of CMP who was born on September 21, 1998, as shown by her birth certificate; the father of CMP is accused-appellant Bautit, her live-in partner; although they were already in a relationship, they started living together after CMP was born; the name of accused-appellant Bautit as the father of CMP appears in the Birth Certificate of CMP and he acknowledged her in said document as his biological daughter; on July 20, 2011, she was in Cagayan and she came home on July 21, 2011; in March 2011 CMP already told her that she was being sexually molested by accused-appellant Bautit, but she and CMP did not file a case against him; despite CMP's report of sexual molestation, she let accused-appellant Bautit stay in her house because at that time she did not have work yet and she had no means to support her daughter; accused-appellant Bautit was the only one providing support for her and her daughter; and, when she worked abroad in 2008, she left CMP under

the care of her sister, but when she left for the second time, she allowed CMP to live with accused-appellant Bauti, trusting that he would take good care of her.<sup>[8]</sup>

The intended testimony of PO2 April A. Castro was the subject of stipulation<sup>[9]</sup> by the parties, to wit:

- 1) That the witness is tasked as the police investigator who handled and conducted investigation in this case;
- 2) That she took the statements of the minor complainant, the aunt and the persons who made warrantless arrest on the accused;
- 3) That in the course of her investigation, she referred the victim to the PNP Crime Laboratory in Camp Crame for examination, hence a Medico Legal Report was submitted to her which she incorporated in her Final Investigation Report dated July 29, 2011, marked Exhibit "A".

Dr. Joseph Palmero, a Medico Legal Officer assigned at PNP Crime Laboratory in Camp Crame, Quezon City, testified that: in the course of the performance of his official functions as Medico Legal Officer, he examined CMP in response to a Request for Genital Examination dated July 22, 2011 from the Makati Central Police Station; in preparation for the examination, she interviewed CMP; he prepared a Sexual Crime Protocol that CMP and her aunt signed in his presence; he then asked for the consent of CMP and her aunt to the genital examination that he would conduct on CMP; during the examination, he noted that CMP had two (2) deep healed lacerations at 3:00 o'clock and 7:00 o'clock positions of the hymen; since the lacerations were already healed, the same could have been inflicted more than a week before the genital examination of CMP; aside from the deep healed lacerations, there were no other signs of physical injuries noted on the body of CMP; the presence of deep healed hymenal lacerations indicates a blunt penetrating trauma on the genitalia; in other words, CMP was no longer a virgin, having had sexual contact before; he reduced his findings in writing and signed it; and, his immediate superior and chief of staff also signed the Medico Legal Report No. R-11-1065 dated July 23, 2011 which he prepared.<sup>[10]</sup>

For its part, the defense presented accused-appellant Bauti as its sole witness. He testified that: before his detention, he worked as a construction worker in Fort Bonifacio, Taguig, Metro Manila; he lived in a house with four (4) rooms at No. 5052, Malvar Street, Makati City; he, LP and CMP occupied the first room, CMP's aunt, her husband and their two (2) children stay in the second room, the third room is occupied by a brother of LP, his wife and two (2) children, and the fourth room is where the another sister of LP and her family stay; the size of each room is only four (4) square meters and the house consists of only one (1) floor; the partitions between the rooms are made of thin plywood; in the evening of July 19, 2011, he slept alone in their room since his wife was in Cagayan to attend the wake of his deceased uncle, while CMP spent the night with her cousin in the fourth room; CMP is the best friend of her cousin and they have a habit of staying together in the fourth room where the latter lives; he woke up at 5:30 o'clock in the morning of July 20, 2011 to prepare for work because he would leave the house at 6:30 o'clock in the morning; CMP is a problem child because she has a boyfriend at a very young

age and she would always go out with her peers to the point that her studies were being affected; he and his wife would scold and reprimand her whenever she went out with her boyfriend at night; every time he reprimanded and prohibited her from seeing her boyfriend, she would get mad and would become rebellious and sometimes, she would not talk to him; the siblings of his wife do not like him and they do not want him to live in their house; there is no truth to the statement of CMP that she slept beside her cousin in their room because he was alone in their room on July 19, 2011; there is also no truth to the allegation of CMP that when she was about to take a bath, he held her and made her lie down; theirs is a common bathroom located in front of the fourth room and before reaching the bathroom, one has to pass by three (3) rooms; he could not have made CMP lie down in the *sala* or living room because their house has no *sala* or living room; the accusation of CMP that he raped her is impossible to happen because the rooms are separated only by plywood and any resistance by CMP or commotion she caused in their room would surely alarm the occupants of the adjoining rooms; it is not true that he raped CMP because he loves her and the lies she peddles were meant to cover up for all her wrongdoings; her mother's siblings support the accusations leveled against him because they do not like him and he is not acceptable to them; and, on July 21, 2011, he was arrested by police officers on account of a complaint for rape lodged against him by CMP.<sup>[11]</sup>

On rebuttal, the prosecution was supposed to present Gladys Pascua and Irene Sese as its witnesses. However, their oral testimonies were dispensed with after the parties agreed to stipulate on their intended testimonies, to wit:

- 1) The daughter of Ms. Gladys Pascua, Aina Pascua and the private complainant slept at the latter's room on July 19, 2011.
- 2) Ms. Irene Sese will deny the claim of the accused that this case was filed only because the Sese sisters are angry at him.
- 3) Ms. Sese will also deny the claim of the accused that the private complainant had a boyfriend and that she was having problems in school.<sup>[12]</sup>

After trial, the lower court rendered the assailed judgment. Hence, this appeal, assigning this lone error:

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

Accused-appellant Baut argues that: the common bathroom where CMP intended to take a bath is located near the fourth room where she and her cousin slept, thus her testimony that she was preparing for school and was about to take a bath when she was held and made to lie down in the sala by accused-appellant Baut has no basis; since she slept in the fourth room, she could have directly gone to the bathroom nearby without the knowledge of accused-appellant Baut; the testimony of CMP that she resisted accused-appellant Baut's sexual advances and fought back is incredible, for if it was true, the occupants of the adjoining rooms would have been alarmed, considering that the four (4) small rooms only had thin plywood as partition; the testimony of Dr. Joseph C. Palmero who was presented as an expert

witness appears to contradict the allegation of CMP that she was raped, since said doctor declared that the two (2) deep healed lacerations he noted on the genital of CMP were sustained more than one (1) week before he conducted the examination on July 22, 2011; if CMP was indeed raped, there should have been traces of sperm cells and/or acid phosphatase inside the vagina of CMP, but the doctor found none; the absence of any injury on the genital and the anus of CMP is another badge that contradicts the allegation of rape, especially if she claims that she resisted and fought back during the sexual assault; there is reasonable doubt that CMP was telling the truth and her version of the story does not seem to fit simple logic and common sense; and, the evidence for the prosecution, therefore, is not enough to sustain a finding of accused-appellant Baut's guilt beyond reasonable doubt.

The Office of the Solicitor General counters that: the lower court found the testimony of CMP straightforward, candid and categorical and was given full weight and credit, as against the accused-appellant Baut's weak defense of denial; the lower court correctly ruled that CMP's testimony could not be discredited by the denial of accused-appellant Baut; contrary to accused-appellant Baut's submission, it is neither improbable nor impossible for a rapist to employ such criminal design in the presence of his own family or nearby neighbors, especially when overcome by lust; it is a common judicial experience that rapists are not deterred from committing their odious act by the presence of people nearby; rape may even be committed in a room adjacent to where the victim's family was sleeping or even in a room which the victim shared with other women; with regard to the allegation of accused-appellant Baut that CMP was no longer a virgin before the alleged rape happened, the fact that she had prior sexual encounter does not, in any manner, negate or weaken her allegation that she was raped by accused-appellant Baut; the state of virginity (or lack thereof) does not render the act of rape impossible or any less atrocious; there can be rape even if the medical examination shows no vaginal laceration; while the result of a medical examination may be considered strong evidence to prove that the victim was raped, such evidence is not indispensable in establishing the guilt or innocence of the accused; it is a settled rule that a medical report is not even necessary in a prosecution for rape, as long as the evidence on hand convinces the court that conviction is proper; also, the absence of spermatozoa is not a negation of rape since it is penetration, not ejaculation, which constitutes the crime of rape; the lower court correctly gave weight and full credence to the testimony of CMP; it is a well-settled rule that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observation and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood, or erroneously appreciated, and which if properly considered, would alter the result of the case; besides, when it comes to evaluating the credibility of the testimonies of the witnesses, great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth; it is against ordinary human logic that a child of tender age would concoct a story, allow her private parts to be examined just so she can get even with her father, unless it was solely because of her desire to tell the truth and to have the offender, her very own flesh and blood punished; and, the uncorroborated denial of accused-appellant Baut cannot prevail over the positive and substantiated testimony of CMP.

The appeal has no merit.