

TWENTY-SECOND DIVISION

[CA-G.R. CR. HC. NO. 01036-MIN, February 28, 2014]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ADONIS CABALES, ACCUSED-APPELLANT.**

D E C I S I O N

LOPEZ, J.:

Before the Court is an appeal from the March 27, 2012 Decision^[1] of the Regional Trial Court, Branch 34, Panabo City (court *a quo*) which convicted Adonis Cabaless (appellant) guilty beyond reasonable doubt of the crime of Rape defined under Art. 266-A and punishable under Art. 266-B of the Revised Penal Code, as amended, and sentenced appellant to *reclusion perpetua* and to pay AAA^[2] (offended party) Php75,000.00 by way of civil indemnity, and Php75,000.00 as moral damages.

The Facts:

On March 22, 2005, appellant was charged with Rape, in an Information,^[3] which alleged –

That on or about January 16, 2005, in Panabo City, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, employing force, threats and intimidation, willfully, unlawfully and feloniously had sexual intercourse with AAA, a 13 year old minor, without her consent.

CONTRARY TO LAW.

At the arraignment, appellant pleaded not guilty.^[4] Thereafter, the case was tried on the merits.

The evidence for the prosecution consisting of the testimonies of AAA and her mother BBB is summarized, thus:

On January 16, 2005, at around 3:00 in the afternoon, AAA, who was then thirteen (13) years old was sleeping inside the bedroom of their house at barangay Waterfall, Panabo City. AAA was alone at that time since her father went to Likanan while her mother was in the house of appellant helping his wife who just gave birth. Her siblings was also not around as they were at the house of her grandparents. AAA's house is two houses away from appellant. While she was sleeping, AAA was awakened when appellant, who is her uncle, kissed her on the face. She immediately stood up and tried to push appellant away, but appellant held her, pointed a knife at her neck and told her not to move or shout. Appellant then removed her jogging pants and her panty. She tried to wriggle, appellant managed to remove her jogging pants and panty using his free hand while the other was

holding the knife pointed at her neck. Thereafter, appellant inserted his penis into her vagina and did a push and pull movement for about ten (10) minutes. She felt pain inside her vagina and pleaded for him to have pity on her. She was unable to shout for help because he covered her mouth with short pants. After he was done, appellant dressed himself and told her not to tell anybody.

AAA added that the January 16, 2005 incident was not the first because she had a prior sexual intercourse with the appellant sometime in November 2004. She did not tell anybody at that time because appellant threatened to kill her family if she told them about it.

On January 17, 2005, AAA submitted herself to a medical examination conducted by Dr. Elvie Prieto-Jabines of the Davao Regional Hospital. The findings of the medical examination reveals that there was a healed notching at 7:00 o'clock position in AAA's genitalia.^[5] Dr. Jabines concluded that the medical examination is suggestive of chronic penetrating injury with acute component.

BBB, AAA's mother also testified that on January 16, 2005 from 12:00 noon until 4:00 in the afternoon, she was at the house of appellant helping the wife of the latter to take a bath since she had just given birth. She saw appellant there at around 2:00 in the afternoon and came back at 4:00 p.m. They were looking for him at that time because he was supposed to tend to their store but he was no longer around. The house of appellant was around sixty meters away from their house.

The defense on the other hand presented appellant and Tessie Cañones, thus:

On January 16, 2005, appellant was just at their house attending to his wife who just delivered a baby. With him at that time was Tessie Cañones, the midwife who assisted her wife. The mother of AAA arrived at around 11:30 in the morning and stayed until 2:30 in the afternoon. He denied leaving the house as he was preparing lunch and tending their store from 12 noon until nighttime of that day.

Cañones corroborated that on January 16, 2005, she was at the house of appellant at around 10:00 in the morning to help appellant's wife. At around 11:00, BBB arrived and joined them for lunch. She added that after taking their lunch, she saw appellant went inside their room together with his wife. While they were sleeping, Cañones was just outside the bedroom because she requested Melinda's sister to pluck her white hair. She saw appellant woke up at about 2:30 or 3:00 in the afternoon and went back to their store. She did not see appellant left the house. Cañones left appellant's house at around 5:00 in the afternoon.

After due proceedings, the court *a quo* rendered the assailed Decision on March 27, 2012, thus:

IN VIEW OF THE FOREGOING, judgment is hereby rendered finding accused Adonis Cabales guilty beyond reasonable doubt of rape defined under Art. 266-A and penalized under 266-B of the Revised Penal Code, as amended.

Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* together with the accessory penalties attached thereto. In addition, he is ordered to pay complainant, AAA, civil indemnity in the amount of Php75,000.00 and moral damages in the amount of Php75,000.00 without subsidiary imprisonment in case of insolvency.

In the service of his sentence, accused is entitled to the full time he has undergone preventive imprisonment, if any pursuant to Article 29 of the Revised Penal Code.

Accused shall serve his sentence at the Davao Farm and Penal Colony, B.E. Dujali, Davao del Norte.

SO ORDERED.^[6]

In ruling for the conviction of the appellant, the court *a quo* held:

After so evaluating the parties' respective accounts, the Court finds the story given by the private complainant as the one bearing the hallmark of truth and hence, entitled to full faith and credence.

There is nothing in her account that would engender serious doubt or suspicion that she was relating something other than the truth. Her story is by itself credible and easy to believe. After all, the rape of a 13-year old minor alone in her house by one who is residing just 60 meters away is not a tale difficult to believe. To be sure, many rape happened in far unlikely circumstances.

Neither is her story undermined by sinister motive that could impel one to fabricate. The desire of her mother to ease out the accused from where they were living, aside from not being clearly and sufficiently established, can hardly be considered as such. Indeed, who is the mother willing to subject her daughter to the ordeal of a rape trial for such a reason?

Given the obtaining circumstances, the story of the complainant that she was sexually abused by the accused in the afternoon of 22 March 2005 will therefore have to be taken at its face value. In this particular instance, force and intimidation attended the sexual congress because accused committed the act by first pointing a fan knife at the complainant. This sufficiently constitute (sic) force and intimidation under the rule that it is not necessary that it be so great and of such character as could not be resisted as what is required is that it be sufficient to consummate the purpose which the accused had in mind.

And this tale of rape holds true notwithstanding the denial and alibi put up by the accused. Being inherently weak, accused labors under the burden of proving theses defenses by clear and convincing evidences. Unfortunately for him, he has not done so in this case.

His claim that he was just at his house when the alleged rape happened is effectively debunked by Mercy Semine, mother of the victim and whom he acknowledge (sic) to be present at his house, who stated that he went out of the house between 2-4 p.m. of that day. Although he presented the midwife to corroborate his story, the testimony of the latter is however peppered with inconsistencies - flip flopping on whether accused was at the store or bedroom at that time and if she was able to actually see him - rendering it totally unreliable.

All things considered, accused is therefore guilty of the charge.^[7]

Hence, the instant appeal.

Assignment of Errors:

In his Appellant's Brief, appellant ascribes the sole assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[8]

The Court's Ruling:

The appeal is without merit.

Elements of Rape established beyond reasonable doubt

The essential issue is whether or not all the elements of the crime of Rape have been proved beyond reasonable doubt.

Paragraph 1, Article 266-A of the Revised Penal Code provides:

ART. 266-A. *Rape, When and How Committed.*- Rape is committed-

(1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a. Through force, threat, or intimidation;
- b. When the offended party is deprived of reason or otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

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For the successful prosecution of Rape under Article 266-A of the Revised Penal Code, the following elements must be established: (1) That the offender had carnal knowledge of a woman; (2) That such act was accomplished through force, threat or intimidation.^[9]

In ruling for the prosecution, the court a *quo* took note of the demeanor of AAA and found her testimony to be credible. AAA's testimony proved the elements of carnal knowledge accomplished through force, threat or intimidation. Her testimony likewise established the fact that she was abused by appellant, who is her uncle, in a clear, detailed and categorical manner when she recounted that –

Q: Miss Witness are you AAA, the private complainant who filed this case?

A: Yes, ma'am.

Q: Do you know the person by the name Adonis Cabales?

A: Yes, ma'am.

Q: If Adonis Cabales is in Court, will you please point at