

## SIXTEENTH DIVISION

[ CA-G.R. CR.-H.C. No. 04822, March 17, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.  
RICARDO CONSUL Y BAUSTISTA, ACCUSED-APPELLANT.**

### D E C I S I O N

**VILLON, J.:**

Before us is an appeal<sup>[1]</sup> interposed by accused-appellant Ricardo Consul y Bautista (or “appellant”) from the Judgment dated August 25, 2010<sup>[2]</sup> of the Regional Trial Court (RTC) of Quezon City, Branch 102<sup>[3]</sup>, in Criminal Case No. Q-07-147159 for *Rape*, the dispositive portion of which reads as follows:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused Ricardo Consul y Bautista, GUILTY beyond reasonable doubt of the crime of *Rape* penalized under Article 266-A of the Revised Penal Code.

“Accordingly, said accused is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and to indemnify private complainant AAA<sup>[4]</sup> the amounts of P75,000.00 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as exemplary damages.

“The period of detention is credited in the service of sentence.

“SO ORDERED.”<sup>[5]</sup>

The factual and procedural antecedents of the case are as follows:

Appellant stands charged for *Rape* defined and penalized under *Article 266-A* and *Article 266-B* of the Revised Penal Code (RPC), in Relation to Republic Act (R.A.) No. 7610, in an Information which reads as follows:

“The undersigned upon prior sworn complaint of AAA assisted by her mother BBB accuses RICARDO CONSUL Y BAUTISTA of the crime of RAPE, committed as follows:

“That on or about the 12<sup>th</sup> day of May 2007, in XXX, Philippines, the above-named accused, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously commit an act of sexual assault upon said AAA, a minor, 10 years old, by then and there kissing her and thereafter have carnal knowledge with her, all against her will and without her consent, to the damage and prejudice of the said offended party.

“CONTRARY TO LAW.”<sup>[6]</sup>

Upon arraignment, appellant entered a plea of "not guilty"<sup>[7]</sup> to the accusation against him. On November 26, 2007, the pre-trial of this case was ordered closed and terminated,<sup>[8]</sup> thus, trial on the merits ensued.

The testimonies of three (3) witnesses for the prosecution, namely: AAA, BBB and Dr. Jesille Cui Baluyot, established the following relevant facts:

At around 2:00 o'clock in the afternoon of May 12, 2007, AAA, who was then ten (10) years old<sup>[9]</sup> was on her way to buy bread at the bakery, upon the instruction of BBB, her mother, when she heard appellant calling her. AAA approached appellant, who was then under the guava tree near the former's house. Appellant told AAA that he would give her P100.00 and teach her how to use illegal drugs. AAA declined appellant's invitation and informed BBB about the incident when she got home.

BBB then told AAA to go and meet appellant in his house to tell him that she wanted to use drugs in order to entrap him. AAA then went to appellant's house located at YYY.<sup>[10]</sup> When AAA was inside appellant's house, the latter got a lighter and showed her an aluminum foil. Instead of teaching her how to use drugs, appellant undressed AAA, kissed her in the neck and inserted his penis into her private organ despite her resistance. Suddenly, somebody knocked at the door and appellant immediately put his short pants on and kept the aluminum foil. When appellant opened the door, he saw BBB together with the police officers who immediately apprehended and brought him to Police Station 8 where he was detained. AAA was brought to Camp Crame, Quezon City for medical examination.

AAA further revealed that it was not the first time that appellant molested her. Prior to the May 12, 2007 incident, appellant molested her for several times by inserting his finger into her private organ and ordering her to sit on his lap. She did not tell anybody, especially her parents, for fear that her father might get mad at her and for fear of appellant's retaliation.<sup>[11]</sup>

At the Philippine National Police (PNP) Crime Laboratory,<sup>[12]</sup> of Camp Crame, Quezon City, Dr. Baluyot, the Medico Legal Officer examined AAA. At the trial of this case, she testified that as stated in her Medico Legal Report No. R07-960,<sup>[13]</sup> there was no laceration noted in the hymen of AAA but there were fresh abrasions on both sides of the *labia minora*. With such results, she concluded that there was a blunt trauma in the area, possibly caused by a finger or an incidence of sexual abuse.<sup>[14]</sup>

Dr. Baluyot further testified on cross-examination that she did not know exactly what kind of blunt object which caused the abrasions. It may be produced by a continuous rubbing of the finger in the area or even scratching. It may likewise be intentionally caused by AAA herself.<sup>[15]</sup>

For the defense, only appellant testified. Professing innocence, appellant denied the charges and accusations against him. He testified as follows:

He and AAA's family were neighbors for almost three (3) months. He was then renting a house owned by AAA's relative. He had a good relationship with members of AAA's family and he would always lend them money when they needed to buy foods. He only left the place he was renting and transferred his residence to a place about one (1) kilometer away upon learning that AAA's family was involved in selling illegal drugs, for fear that he might be involved if they were caught by the police

officers. Nevertheless, AAA would always visit him at his new residence to ask for money as instructed by her mother.

Appellant denied molesting AAA on May 12, 2007, claiming that he was inside his residence when AAA arrived to borrow money from him. He did not lend money anymore due to a prior misunderstanding with BBB regarding her previous debt that remained unpaid. He then told AAA to go home but the latter just stayed at his house while he was counting his money which he earned from selling *balut*. Thereafter, somebody knocked at the door and when he opened it, he saw BBB together with five (5) police officers. He was instantly arrested without any reason and was brought to Police Station 8 where he was detained. The police officers took his money amounting to P1,500.00. At around 5:00 o'clock in the afternoon, he was brought out of the police station by the policemen and accompanied him while collecting his receivables from selling *balut*. He was able to collect P3,000.00 which the policemen took, after which he was detained again. The police officers told him to raise P30,000.00 as a settlement for the crime of rape charged against him, which he refused.

Appellant further testified on cross-examination that days before the alleged rape incident, he had a misunderstanding with BBB regarding the latter's failure to pay her indebtedness to him. He did not mingle with AAA's family anymore. Appellant believed that it was BBB who fabricated the rape incident because she was mad at him<sup>[16]</sup>

After trial on the merits, the court *a quo* rendered the assailed judgment in the terms earlier set forth.

Hence, this appeal, appellant contending that:

#### **I**

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

#### **II**

**THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION.**

#### **III**

**THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE.**

***The appeal is bereft of merit.***

In reviewing rape cases, the Court had always been 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 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.<sup>[17]</sup>

Appellant raises doubt on the credibility of AAA's testimony, contending that her version of the incident is highly incredible to be worthy of belief.<sup>18</sup> He claims that the alleged rape incident on May 12, 2007 was concocted, while the other four (4) alleged molestations committed by him prior to the said date were identical and incredibly uniform such that it is very likely that AAA's testimony was rehearsed and should not have been accorded full faith and credit by the court *a quo*.

***We are not persuaded.***

A careful review of the records show that AAA testified in a candid, straightforward and categorical manner. The following testimony supports this conclusion:

“Q: At around 2:00 o'clock in the afternoon of **May 12, 2007**, do you remember where were you AAA?

A: Yes sir.

Q: Where were you then?

A: I was at home sir.

Q: What were you doing?

A: My mother instructed me to buy something.

Q: To buy what?

A: To buy bread sir.

Q: Did you go to the bakery to buy bread?

A: Yes sir.

Q: Were you able to buy bread?

A: Yes sir.

Q: After you bought the bread, what did you do next?

A: I heard that somebody was calling me sir.

Q: What did you do when you heard somebody was calling you?

A: I approached the person sir.

Q: And, would you know who was the person who called your name?

A: Yes sir.

Q: And who was this person?

A: Kuya Carding sir.

Q: And, who is this Kuya Carding?

A: (witness is pointing to the accused)

Q: Is Kuya Carding the same as Ricardo Consul?

A: Yes sir.

Q: When you approached Kuya Carding, where was Kuya Carding then?

A: He was under the guava tree.

Q: And how far was this guava tree from your house?

A: Just near our house sir.

Q: Where is your house again?

A: XXX.

Q: And, what did Kuya Carding tell you when you approached him when he was under the guava tree?

A: He told me that if I would go with him, he would give me P100.00.

Q: What did you do when you heard him said that?

A: I told him I do not like.

Q: So, what did you do next, if any?

A: I was about to go home when he called me again.

Q: Okay, and what did Kuya Carding tell you, if any?

A: He told me that he would teach me to use drugs.

Q: So, what did you do when you heard that?

A: I told him I do not like.

Q: Then, what did you do next if any?

A: I told him that I would be going home.

Q: So, were you able to go home?

A: Yes sir.

Q: What happened after you went home?

A: I told the incident to my mother sir.

Q: And, what exactly did you tell your mother?

A: That he would give me P100.00 when I would go with him.

Q: What else did you tell your mother?

A: And, he told me to go with him for a while and he would teach me to use drugs.

Q: What else did you tell your mother?

A: That I did not want to go with him sir.

Q: What was the reaction of your mother?

A: She told me to go with him.

Q: And, what else did your mother tell you?

A: That she would call a police.

Q: So, after the advice of your mother to go with the accused, Ricardo Consul, what happened next?

A: I went with him sir.

Q: Where was he then?