

THIRD DIVISION

[CA-G.R. CR NO. 34774, March 13, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CRISALDO VILLANUEVA, ACCUSED-APPELLANT.**

DECISION

DE GUIA-SALVADOR, R., J.:

At bench is an appeal from the Amended Decision dated 07 July 2011 of the Regional Trial Court of Marikina City (RTC), Branch 168, in Criminal Case Nos. 2007-9075-MK and 2007-9076-MK, the decretal portion of which reads:

"WHEREFORE, premises considered, judgment is rendered as follows:

1. In Crim. Case no. 2007-9075-MK, the Court finds accused CRISALDO VILLANUEVA guilty beyond reasonable doubt for the crime of Acts of Lasciviousness in relation to Sec. 5 (b) of RA 7610 in further relation to Sec. 5(j) of RA 8369 with the qualifying circumstance under Sec. 5(b) of RA 7610 that the victim is under twelve (12) years old of age and the offender is an uncle and hereby sentences him to the indeterminate penalty of 12 years and 1 day of *reclusion temporal*, as minimum, to 14 years, 8 months and 1 day of *reclusion temporal* medium, as maximum, to indemnify the offended party... civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00;
2. In Crim. Case no. 2007-9076-MK, the Court finds accused CRISALDO VILLANUEVA guilty beyond reasonable doubt for the crime of Rape (under Art. 266-A par. (2) in relation to Art. 266-B of R.A. 8353, and in relation to Sec. 5 (b) of RA 7610 and in further relation to Section 5(j) of RA 8369) with the qualifying circumstance that the victim is twelve (12) years old of age and the offender is an uncle and hereby sentences him to the indeterminate penalty ...of imprisonment of 6 years and 1 day of *prision mayor*, as minimum, to 17 years, 4 months and 1 day of *reclusion temporal*, and to indemnify the offended party... civil indemnity of P30,000.00, moral damages of P30,000.00 and exemplary damages of P15,000.00,

The accused CRISALDO VILLANUEVA being a detention prisoner is entitled to be credited with 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code in the 2 cases.

SO ORDERED."^[1]

THE INDICTMENTS

On 22 January 2007, two (2) separate Informations were filed charging Crisaldo Villanueva y Andales ("**appellant**") with acts of lasciviousness under Section 5(b) of

RA 7610 (RA 7610)^[2] and rape through sexual assault under Article 266-A (2) of the Revised Penal Code, as amended. The accusatory portions of the informations read:

Criminal Case No. 2007-9075-MK

"That on or about the 7th day of April 2005, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the [appellant], being then the uncle of minor [AAA], taking advantage of his moral authority and ascendancy and by means of force and intimidation, with lewd design, did and there willfully, unlawfully, and feloniously commit acts of lasciviousness upon [AAA], a minor, seven (7) years of age, by then and there **licking the latter's vagina** without her consent and against her will, thereby constituting sexual abuse which is prejudicial to her normal growth and development.

CONTRARY TO LAW."^[3]

Criminal Case No. 2007-9076-MK

"That in or about 7th day of April 2006, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the [appellant], being then the uncle of minor [AAA], taking advantage of his moral authority and ascendancy and by means of force and intimidation, did then and there willfully, unlawfully, and feloniously **insert his finger into the genital orifice** of said [AAA], a minor, seven (7) years of age, against her will and without her consent.

CONTRARY TO LAW."^[4]

After the cases were consolidated,^[5] the trial court issued an arrest warrant on 26 January 2007,^[6] which led to appellant's arrest^[7].

Arraigned on May 21, 2007 with the assistance of a counsel *de officio*, appellant entered a plea of "**NOT GUILTY**" to both charges ^[8]

During the pre-trial, appellant admitted that he is the paternal uncle of AAA^[9] At the trial, the prosecution presented as witnesses the minor complainant AAA, her aunt Nida L. Cruz, and the medico-legal officer, Dr. Bonnie Chua.

Appellant and one Zenaida Angelo testified for the defense.

The Facts

Version of the Prosecution

The Solicitor General adopted the trial court's summary of AAA's testimony as the prosecution's version of the facts, *viz.*:

"[AAA] xxx when she was just seven (7) years old, xxx together with her father xxx and brother [BBB] stayed in Marikina together with her Lolo Perdi and [appellant]. During her stay in Marikina, [appellant] would insert his finger inside her vagina and then would lick it. He would do this every time he would go home drunk during the evening while the minor

complainant was sleeping in their room together with her brother, father and Lolo Perdi. Whenever [appellant] would arrive home late and he would positioned himself at the foot ("paanan") of [AAA]. He would wake her up by shaking her knees. He would then pull down her shorts and panty and would lick her vagina. After licking her vagina, he would insert his finger inside her vagina. Whenever he would do it, she would feel pain.

After doing these acts, [appellant] would then put on her shorts and panty and then would go back to his chair where he would sleep. These acts [were] committed on [AAA] for several times but she could not remember the dates. What she could remember was that these incidents happened when she was only seven (7) years old and they were staying in Marikina together with [the appellant]. She did not immediately report these incidents to her father because she did not want to create any problem. Her father came to know about the incidents when her brother...told her father about what [appellant] was doing to her. When her father came to know about it, he asked her if it was true and then he brought her and [her brother] back to Burgos, Montalban. Her father returned to Marikina.

xxx [AAA] reiterated and insisted that [appellant] would lick her vagina and insert his finger inside her vagina. [Appellant] would thereafter talk to her and tell her not to report to her father.

[AAA] admitted that there were times that her father and [appellant] would quarrel about the latter's drunkenness.

[AAA] again stated that it was her brother... who reported the incident to her father because [her brother] witnessed the incidents. She did not immediately report the incidents because she was afraid of [appellant]. She already witnessed how [appellant] would get angry. He would hit her when she committed a mistake. During the incident, [appellant] told her not to shout.

xxx (W)hen her father learned about the incidents, he and [appellant] quarelled.

x x x

x x x

x x x"^[10]

Version of the Defense

Appellant denied the charges against him.^[11] Raising the defense of *alibi*, he related that from 8:00 a.m. to 5:00 p.m. of 07 April 2005, the date of the alleged sexual abuse of AAA, he was working as a pipe fitter ("*tubero*") at a construction site in Del Monte Avenue, Quezon City. After work, he and his co-workers were fetched by a company truck at about 7:00 p.m., and proceeded to the workers' barracks in G. Tuazon, Quezon City, where he spent the entire night.^[12]

On cross-examination, appellant admitted that (1) AAA is his niece, being the daughter of his elder brother;^[13] (2) in the month of April 2005, AAA and his father were staying with him in the same house in Malanday, Marikina City;^[14] and (3) in April 2005, after work he went home to Malanday, Marikina and spent the nights

there.^[15] On re-direct examination, appellant asserted that during the entire month of April 2005, he was a stay-in worker, and always slept at the workers' barracks of his employer.^[16] On re-cross examination, he clarified that during the whole month of April 2005, he went home at Malanday, Marikina only on weekends and every pay day.^[17]

Zenaida Angelo testified that she is a resident of No. 206 Malaya St., Malanday, Marikina City. Her house is near the crime scene which is at 204 Malaya St., Malanday, Marikina City. She averred that during the entire day of 07 April 2005, she did not see appellant in the vicinity of the neighborhood, and she knows that he works and stays in Quezon City.

THE TRIAL COURT'S JUDGMENT

Finding AAA's testimony on direct examination "*consistent, spontaneous, and straightforward*"^[18] and her answers on cross-examination "*unwavering, candid, and straightforward*"^[19], the trial court was convinced with moral certainty that appellant sexually abused AAA. Thus, it convicted appellant of the crimes of acts of lasciviousness and rape through sexual assault.

The Issues

Appellant urges the reversal of the appealed decision upon the following errors imputed against the trial court, to wit:

"I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO [AAA's] TESTIMONY

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE [APPELLANT] GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED"^[20]

The Court's Ruling

We find no merit in the appeal, but a modification of the penalties imposed is in order.

Appellant asserts that there is no evidence to show that he sexually abused AAA, and that the trial court had to rely on its own unfounded conclusion to prove all the elements of the crimes charged.^[21] In seeking his acquittal based on reasonable doubt, he claims that AAA's testimony is self-serving, implausible and incredible. Appellant points out the inconsistencies in the crucial details of her testimony, thus: "On direct examination, [AAA] was quite emphatic when she declared that [appellant] inserted his finger in her genitals once; that her brother Totong was on her left side, while her father was on her right; and that Totong was the one who told her father about the alleged incidents."^[22] In contrast, "on cross examination, when confronted as to how many times she was sexually abused by [appellant], she made a turn around when she averred that she cannot count on her hands how

many times; that it was she who told her father about the sexual abuses and not her brother.”^[23]

Appellant also contends that physical evidence belied AAA's testimony that she was sexually assaulted many times through the insertion of a finger in her vagina. He cites the testimony of Dr. Bonnie Chua, the medico-legal officer who examined AAA, who observed the absence of scarring, bleeding, and healed lacerations in her vagina.^[24]

Further, appellant points out that the credibility of AAA's story of sexual abuses is dubious given her testimony that they occurred while her father, brother and grandfather were sleeping just beside her in one room. Under such circumstances, he stresses that AAA could have easily called for help, but no one seemed to have noticed that she was sexually abused.^[25]

Appellant's assignment of errors boil down to AAA's credibility which the trial court relied upon in convicting him of the crime of rape through sexual assault and of acts of lasciviousness. The rule is, however, long and well-settled that the findings of the trial court pertaining to the credibility of witnesses are entitled to great weight and respect since it has the unique opportunity to examine their demeanor on the witness stand.^[26] Such findings are, in fact, accorded finality,^[27] unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood, or misappreciated and which, if properly considered, would alter the results of the case.^[28] Far from yielding reasons of such strength or cogency as would warrant a departure from the foregoing principles, however, our circumspect perusal of the records confirmed the trial court's observation that AAA testified in a "consistent, spontaneous and straightforward" manner in recounting the sexual abuses to which she was forcibly subjected. Excerpts of her testimony about the last time that appellant sexually abused her read:

“Q- **Doon na lang tayo sa huling nangyari ha?**

A- Opo.

Q- Saan siya nanggaling noon?

A- Sa labas po.

Q- Tapos tulog na iyong mga kasama mo?

A- Opo.

Q- Sino nga ulit mga kasama mo?

A- Si [BBB] po, saka si papa, saka si Lolo...po.

Q- Saan sila natutulog?

A- Doon po sa... tabi-tabi po kami.

Q- Magkakahilera ba kayong apat?

A- Opo.

X x x

x x x

x x x

Q- Noong dumating si Crisaldo [referring to appellant], noong gabing iyon, saan siya lumapit sayo?