

TWELFTH DIVISION

[CA-G.R. CR-HC No. 05315, June 26, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JUANCHO FILOSOPO[*] Y AMPOON, DEFENDANT-APPELLANT.**

DECISION

PAREDES, J.:

THE CASE

BEFORE US is the appeal of Juancho Filosofo y Ampoon (*accused-appellant, for brevity*) from the Decision^[1] dated November 11, 2011 of the Regional Trial Court (RTC), Branch 106, Quezon City, in Criminal Case No. Q-08-151411, finding him guilty beyond reasonable doubt of statutory rape.

THE ANTECEDENTS

Accused-appellant was charged with the crime of Rape under an Information^[2] which reads:

That on or about the 22nd day of March 2008, in Quezon City, Philippines, the said accused, with force and intimidation, did then and there, wilfully, (sic) unlawfully commit acts of sexual assault upon the person of "AAA",^[3] his own daughter, a minor, 9 years old, by then and there undressing her and inserting his penis (sic) in her vagina against her will and without her consent, to the damage and prejudice of the said offended party.

Contrary to law.

On May 16, 2008, upon arraignment, accused-appellant entered a plea of not guilty.^[4] Thereafter, trial on the merits ensued.

AAA is the third child of BBB and accused-appellant, who, on the date of the incident on March 22, 2008, was a minor, born^[5] on July 8, 1998.

Version of the Prosecution

At about 6 o'clock in the evening of March 22, 2008, AAA was at home with her two brothers and her father, the accused-appellant. AAA's mother, BBB, was not home because she was vending barbeque for a living. While her brothers were outside at the basketball court, accused-appellant told AAA to go inside the room. Once inside, he told her to remove her dress. AAA removed her shorts and thereafter accused-appellant inserted his penis inside her vagina. AAA shouted and pleaded to accused-appellant "*wag na, tama na po*", at which point, accused-appellant threatened her not to tell this to her mother. She felt pain during the ordeal but, according to AAA,

it was not the first time that such incident happened as accused-appellant already molested her when they were still residing in Davao. However, she can no longer recall how many times it happened.

The day after the incident, her parents were fighting and, as he was wont to do, accused-appellant was about to drive BBB out of the house. AAA, afraid that her mother would leave, told BBB what accused-appellant did to her. They called up the police station and when the police arrived, they arrested accused-appellant. AAA gave her statement to the police, which statement was reduced in writing. She was also referred to the PNP Crime Laboratory for medical examination^[6].

Police Senior Inspector Jesselle Baluyot (*P/SI Baluyot*), medico-legal officer of the Camp Crame Crime Laboratory, conducted a genital examination on AAA. She noted that there was redness in the labia minora while the hymen was edematus or swollen. According to P/SI Baluyot, the redness and swelling may have been caused by a blunt trauma due to an object which is not sharp. If a penis is forcibly inserted, it could penetrate the hymen and it would cause a laceration which she did not find in AAA's hymen. However, the injuries found on AAA could still have been caused by a penis which has failed to actually penetrate the vagina^[7]. P/SI Baluyot's findings were reduced in the Medico-Legal Report^[8] which reads:

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT: light

MENTAL STATUS: female child suspect

BREAST: undeveloped with light brown areola & nipples

ABDOMEN: soft/flat

PHYSICAL INJURIES: no injury noted

GENITAL:

PUBIC HAIR: absent

LABIA MAJORA: coaptated

LABIA MINORA: pinkish brown; erythema on both sides

HYMEN: edematous hymenal rim

POSTERIOR FOURCHETTE: no injury

EXTERNAL VAGINAL ORIFICE: not assessed

VAGINAL CANAL: not assessed

CERVIX: not assessed

PERIURETHRAL AND VAGINAL SMEARS: not assessed

ANUS: unremarkable

CONCLUSION: Ano-genital findings are diagnostic of recent and previous blunt force to the labia minora and hymen.^[9]

The prosecution offered its third witness in the person of BPSO Diosdado Garbin but his testimony was no longer presented, instead, the prosecution and the defense entered into stipulations as to what he would testify on. The defense admitted: (1) the fact of arrest of accused-appellant; and (2) the authenticity of the affidavit of arrest but not the contents thereof. On the other hand, the prosecution admitted that: (1) BPSO Garbin has no personal knowledge of the facts stated in the

Information; and (2) there was no warrant of arrest issued for the accused-appellant as he was merely invited for questioning by the arresting officers.^[10]

Version of the Defense

According to accused-appellant, on March 22, 2008, he was at home with his two sons, CCC and DDD, while AAA was at their neighbor's house with her mother, BBB. Accused-appellant and "BBB" had an on-going argument which began the previous day when they arrived from San Jose del Monte, Bulacan. Their fight escalated to physical violence and he pushed BBB and she stumbled and almost fell against the wall of the house. BBB threw something at him but he was able to evade it. BBB then took a knife and lunged at him, but he was able to evade her too. BBB packed her things and left. Their three children followed BBB up to the house of their neighbor, Reynan. Accused-appellant followed and ordered his children to go back home, but only CCC and DDD went with him. He next saw BBB the following day, on March 23, 2008. He came home at 2 o'clock in the morning from a friend's house, went to sleep and when he woke up, he made breakfast and invited AAA and BBB to eat with him, but they declined. He told BBB not to involve their daughter in their fight, but BBB hit his face with the door. Accused-appellant was no longer able to control himself so he banged the door causing the hinges to break and fall on AAA. After about fifteen minutes, AAA left and BBB followed her. Around noon, barangay officers and policemen arrived. Accused-appellant insisted that the allegations of rape were merely made up by BBB who wanted to take revenge after almost falling from their house^[11].

On November 11, 2011, the RTC rendered a Decision^[12], the dispositive portion of which reads:

IN VIEW WHEREOF, accused Juancho Filosofo y Ampoon is found guilty of the crime of rape qualified by minority and relationship and is hereby sentenced to suffer the penalty of reclusion perpetua, without eligibility for parole.

The accused is further ordered to pay private complainant the amount of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages.

SO ORDERED.^[13]

Hence, this appeal.

THE ISSUE

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

THE COURT'S RULING

We affirm the judgment of conviction.

To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused;

and (3) the sexual intercourse between the accused and the complainant^[14].

In this case, the prosecution had established the minority of the victim, AAA, with the presentation of her birth certificate^[15]; that accused-appellant is her father; and that, at the time of the crime, AAA was a minor, four months shy of 10 years, she being born on July 8, 1998.

Second, AAA positively identified and pointed to her father as the person who sexually molested her^[16]. As found by the RTC, even if she was barely ten (10) years old at the time she testified, AAA's testimony was direct, clear, straightforward and remained unshaken even on cross-examination^[17].

Accused-appellant claims that the prosecution failed to positively establish the elements of rape required under Article 266-A since AAA's testimony on how accused-appellant had carnal knowledge with her was flawed for being inconsistent and contrived^[18]. **We do not agree.**

In determining whether accused-appellant is indeed guilty of rape under Article 266-A^[19] of the Revised Penal Code, as amended, it is essential to establish beyond reasonable doubt that he had carnal knowledge of AAA. There must be proof that his penis touched the labia of AAA or slid into her female organ, and not merely stroked the external surface thereof^[20]. On direct examination, AAA narrated how accused-appellant sexually assaulted her:

Q Could you tell us what is that incident that happened to you?

A My father told me to go inside the room.

Q What did you do when your father told you to go inside the room?

A He told me to remove my dress.

Q Did you undress as told to you by your father?

A I removed my shorts.

Q After you removed your shorts what other things transpired?

A **He inserted his penis inside my vagina**

Q What did you do when your father do (*sic*) that to you?

A I was shouting then.

Q What other things did you do aside from shouting, did you do anything?

A Yes, sir.

Q What was that?

A I said "Wag na, tama na po."

Q What did your father tell you if any?

A He told me not to tell the matter to my mother.