

FIFTH DIVISION

[CA-G.R. CR-H.C. NO. 06014, November 21, 2014
]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME
BELANO Y ASENDIDO, ACCUSED-APPELLANT.**

DECISION

BARZA, J.:

On appeal before this Court is the joint decision^[1] of the Regional Trial Court of Calamba City, Branch 34, in **RTC Criminal Case Nos. 8580-2001-C to 8582-2001-C**, promulgated on December 6, 2012, finding accused-appellant Jaime Belano y Asendido guilty beyond reasonable doubt of three (3) counts of rape, under **Article 266-A paragraph (1)(a)** of the **Revised Penal Code**.

In three (3) separate but similarly worded (except as to the dates of the alleged commission of the crime) informations,^[2] all dated June 18, 2001, appellant Jaime Belano was charged with rape, as follows -

"That sometimes (sic) on January 2001 at Brgy. Sto. Tomas, Municipality of Calauan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design thru force, violence and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with one AAA, a twelve (12) year old girl (minor), his own niece against her will and consent, to her damage and prejudice

CONTRARY TO LAW."

During arraignment appellant pleaded not guilty to all three (3) charges.^[3]

Evidence for the Prosecution

Testimonial evidence of the prosecution consisted primarily of the testimonies of the victim herself, AAA, and Dr. Teresita Samadi-Denani, who conducted a physical examination on the victim.

Dr. Denani, an obstetrician-gynecologist at the Laguna Provincial Hospital, testified that she conducted a physical examination of AAA on April 23, 2001 upon a request (Exhibit "C") made by Police Superintendent Rodolfo C. Babera. During her physical examination of AAA, Dr. Denani found old healed hymen lacerations at 3, 6 and 8 o'clock positions on the latter which may have been caused by a previous contact

with a sharp, hard object or a medical instrument. She also discovered that AAA was in her 14th week and 6th day of pregnancy based on information given by the victim that she had her last menstrual period in January 2001. Because of the positive result of the pregnancy test conducted on AAA, Dr. Denani concluded that there was sexual contact prior to her examination of the victim.^[4]

The second witness for the prosecution is the victim AAA. On May 10, 2002, she testified before the trial court that she was born on May 23, 1988. When asked if she knew accused-appellant, she replied in the affirmative and positively identified the latter in court. According to AAA, accused-appellant is the husband of her aunt (a sister of her father) and that she has been living in a two-storey house owned by her father with accused-appellant in Brgy. Sto. Tomas, Calauan, Laguna, since she was a child.

AAA further testified that the first incident of the alleged rape happened around noon sometime in January 2001 when she was "*ginalaw*" by accused-appellant in the second floor of their house where the pillows were kept. She narrated that accused-appellant ordered her to undress herself and threatened her that if she refused to do it he would kill her and her family. Out of fear for her family she obliged. Accused-appellant started to kiss her on the lips, on her neck and her whole body including her vagina which she tried to resist but to no avail because her legs were on top of his shoulders and his hands were holding her legs so they would not fall down. She also tried twisting her body to evade his kiss. Accused-appellant managed to force AAA to lay flat on an elevated space where the pillows were kept. Then while she was lying on her back with her legs spread apart, the latter inserted his penis in her vagina in a forward backward motion although she did not know for certain if he was able to successfully insert his sex organ. She felt pain and the following day she noticed blood oozing from her vagina. According to AAA, accused-appellant forced himself on her by placing her legs on his shoulders while there was a long bolo beside her which he had carried from the ground floor of the house to the second floor. Her only companion in the house was her grandmother who was washing clothes at the back of the house but she was some 8 to 10 meters from the door of the house. Her mother was already deceased and her aunt, accused-appellant's wife, was in Bulacan at that time. AAA also revealed an incident when she was just eight (8) years old where accused-appellant also inserted his penis between her legs, and after inserting the same she felt something sticky that came out in her legs.^[5]

On October 9, 2002, AAA was again called to the witness stand to testify on the second incident of the alleged rape which occurred in the afternoon of February 2001. AAA was at home with her grandmother who, at that time, was washing clothes at the back of the house. AAA narrated that she was in the second floor of their house when accused-appellant ordered her to undress and remove her panties. Accused-appellant threatened to kill her family if she will not follow, thus, she obliged out of fear. Accused-appellant then started kissing her lips after she had removed her clothes and underwear. AAA tried to avoid his kisses but failed. Then accused-appellant made her lie down on a table in such a way that her legs were hanging on the table. Accused-appellant stood in front of AAA, raised her legs and inserted his penis. AAA would turn her body to her side so that his penis could not enter her vagina but she was unsuccessful. Accused-appellant was able to insert his penis inside her vagina and he made an up and down movement on her. AAA could

not recall how long the act lasted because she was already crying at that time. Thereafter, accused-appellant ordered her to dress up. AAA said she felt fluid inside her vagine after accused-appellant finished raping her. She also recalled that while accused-appellant was raping her he had a bolo with him that he placed beside her and threatened her that if she did not follow his order he would kill her. AAA, however, did not tell her grandmother about the incident for fear that both of them might be killed.^[6]

AAA also testified of another rape incident that occurred sometime in the afternoon of March 2001. At that time she was alone in their house because her grandmother was in the hospital and her father was in Bulacan. According to AAA, she was in the kitchen when accused-appellant ordered her to remove or lower her shorts below the knee and to sit at the bench, again threatening her that if she did not follow would kill her and her family. When she had done what accused-appellant had ordered, the latter then kissed her on the lips and neck, forced her to lie down on the bench and placed himself on top of her. Then he placed his penis inside her vagina and made an up and down movement on her. She could not move because his thighs were pinning her feet. Thereafter, something came out from accused-appellant's penis and he wiped it and told her to dress up, and then he left. Before leaving, accused-appellant told her not to disclose what happened to anyone.^[7]

AAA furthered that she reported the rape incident only in April 2001 when her aunt noticed that her stomach was getting bigger and asked if she was pregnant. AAA did not know if she was pregnant, thus, she underwent a pregnancy test that same month. When she was found to be positive, her aunt queried her on who the father was. At first AAA was hesitant to reveal the information to her aunt but later on disclosed the same. She told her aunt that accused-appellant was responsible for her being pregnant.^[8]

During the clarificatory questioning by the trial court, AAA disclosed that she was about to turn thirteen years old at the time of the rape incident. When she found out that she was pregnant she decided to continue with her pregnancy. She gave birth at the age of thirteen. She said that she could not determine how long the rape that happened in March 2001 lasted because of the pain that she felt inside. She also did not shout for fear that her family might be harmed.^[9]

On cross-examination, AAA said that she was raped by accused-appellant in the months of January, February and March 2001 but she could not recall the exact dates of the incident, that she was molested by accused-appellant since she was 8 years old and that she did not tell either her mother or her father about the molestation because she was afraid as accused-appellant would threaten her. She described their house as made of coconut leaves including the walls, and though her grandmother would have heard her if she shouted, she did not do so because accused-appellant told her, "*Pag nagsumbong ka at nalaman ng lola mo, papatayin ko kayo pati ang tiya mo.*" She also said that during the rape incidents her brother was not at home, her aunt attended a meeting and her cousins, the children of accused-appellant, went to school ahead of her.^[10]

On re-direct examination, AAA furthered that after the March 2001 incident, she still saw accused-appellant in their house but she continued to live in their house as if nothing happened because she had no place to go and that it was her aunt Marina

Orosco who told her to file a case against accused-appellant when they found out that she was pregnant.^[11] Upon questioning by the trial court, AAA testified that she was molested by accused-appellant since she was 8 years old by touching his penis against her thigh. She also said that she had already forgiven accused-appellant but she still wanted justice.^[12]

After presentation of its evidence the prosecution filed its formal offer of evidence.^[13] The defense then submitted its comment/objection^[14] to the prosecution's formal offer of evidence, manifesting that accused-appellant had no objection to the prosecution's formal offer of exhibits only as part of the testimony of the witnesses who testified thereto. In view thereof, the trial court admitted the prosecution evidence, Exhibits "A" to "C" and their sub-markings.^[15]

Evidence for the Defense

Testifying for the defense were accused-appellant himself, Jeffred Asendido, Jojo Asendido and Norman Jopia.

On March 10, 2004, the defense presented accused-appellant as witness who testified that during January to March 2001, he was in Liliw, Laguna to plant vegetables with his companions Jeffren Asendido, Jojo Asendido and Norman Jopia. He had been working in Liliw, Laguna, since April of 2000. He stayed in the house of one Fermin Magno and the latter's wife and three children while he was in Liliw, Laguna. He managed to return to their house in Sto. Tomas, Calauan, Laguna, three times in 2001: once in January, once in February and once in March. According to accused-appellant, he would stay in their house only for a day to remit his salary to his wife. When he returned to their house during those times nobody was in the house. As for AAA, although she was staying in the same house with accused-appellant, she was not there when he got home because she was either in the store or in a candy factory.

Accused-appellant further testified that he was in a candy factory in Calauan when the police arrested him for charges he never knew about. He also knew of no motive why he was accused of these charges. He likewise did not know that AAA had given birth. He said that when the police arrested him, they invited him to go with them at the police station. When they got to the police station he was not informed of the charges against him. At the prosecutor's office, it was only AAA who was investigated and he was not instructed to submit a counter-affidavit either. He was shocked to learn that AAA filed the charges against him.^[16]

On cross-examination, accused-appellant said that he had been staying and living in Liliw-Laguna since April 2000 until 2001. However, he could not give the exact address of where he was staying in Liliw, Laguna, because he did not know. When asked if during the one-year period of his stay in Liliw he stayed with Fermin Magno, accused-appellant said he did not stay with the latter. After reaching Magno's house, accused-appellant and his companions would immediately proceed to the mountain to work there. They also slept in the mountain. Although he had been in the house of Magno several times, he could not recall how long he stayed there. He also did not know the names of Magno's wife and children as well as their ages. He said Magno had many neighbors but he never knew a single neighbor because he did not

talk to them. When asked about the mountain where he was working, accused-appellant said he did not know the actual name of that mountain. Neither did he know the owner of the farm on which he planted the vegetables. He said that he did not know the farm owner's name because he was a hired worker of Magno. He also never got to know the owners of the land adjoining the farm where he was working, and while he saw other people working in the adjacent lot, he did not know them.
[17]

Accused-appellant furthered that he had no misunderstanding or quarrel whatsoever with AAA, thus, he did not know of any reason why the latter would impute a serious crime on him. He said he did not file a counter-affidavit because he did not receive any order to do so. As for his witnesses, accused-appellant stated that Jeffred Asendido is his son, Jojo Asendido is his brother and Norman Jopia is his nephew. Jeffred, Jojo and Norman knew he was arrested but did not volunteer any information to refute AAA's claim when the charges were first filed in the Municipal Court of Calauan, Laguna.
[18]

During the clarificatory questions by the trial court, accused-appellant testified that Liliw is about 20 kilometers from Calauan and will take about one and a half hours ride by jeepney or bus. It is also not difficult to get a ride from Calauan to Liliw. He said that he chose the months of January, February and March 2001 to go to Liliw because those were the months best to plant and that even after March 2001, he continued to work in Liliw.
[19]

Jeffred Asendido, the second witness for the defense, testified that from January to March of 2001, he was in Liliw, Laguna, with Norman Jopia and Jojo Asendido to work as grasscutter and to plant tomatoes. During that time they stayed at the house of Fermin Magno. He went back to his home in Brgy. Sto. Tomas, Calauan, Laguna, after March 2001. During his three-month stay in Liliw, he did not know of any neighbors in the said place because they were staying in the mountain. When asked if he knew AAA, Jeffred affirmed that he knew her because she was his cousin. When he went to Liliw in January 2001, AAA was still residing in their house in Brgy. Sto. Tomas, Calauan, Laguna, but when he returned after March 2001, she was no longer there because she was taken by his aunt.
[20]

On cross-examination, Jeffred said that he did not know the name of the place they were staying at in Liliw, Laguna. Neither did he or his companions bother to ask for the exact address. He also did not know the names of Magno's wife and children. Jeffred furthered that Magno had two houses in Liliw, one in the mountain and another one in the "*bayan*," thus he never stayed in the same house with Magno's family. However, he did not know the name of the mountain. He did not also bother to ask for its name and neither did Magno tell them of the name of the mountain.
[21]

Upon further cross-examination, Jeffred said that Magno is his cousin, and despite their relations and having encountered the latter's wife because she had been with them in the mountain, he still could not recall the name of Magno's wife. He also could not recall when they harvested the tomatoes that they planted. When he came to know that his father, accused-appellant, was arrested for the charge of raping AAA, he did not bother to go to the authorities to give a statement of his father's whereabouts from January to March 2001. Jeffred said that he did not know of any