

THIRTEENTH DIVISION

[CA-G.R. CR-HC NO. 05650, November 12, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH BALBIN A.K.A. "PARKING," ACCUSED-APPELLANT.**

D E C I S I O N

SADANG, J.:

This is an appeal from the Decision^[1] dated June 13, 2012 of the Regional Trial Court of Tagudin, Ilocos Sur, Branch 25 in Criminal Case No. 1081-T finding accused-appellant Joseph Balbin alias "Parking" (hereafter, accused) guilty beyond reasonable doubt of the crime of rape as defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

The Information^[2] indicting accused reads:

"That on or about the 8th day of January, 2009, in the municipality of Suyo, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously rape one AAA,^[3] 13 years old, by means of force and intimidation and against the latter's will and consent.

CONTRARY TO LAW."

At the arraignment on January 22, 2010, accused pleaded not guilty to the crime charged;^[4] thereafter, pre-trial and trial ensued.

AAA testified that she was born on August 19, 1995^[5] and is thirteen (13) years old.^[6] Since she was in Grade 5, she has been residing in the house of Mila Lapastura (Mila), a blind woman.^[7] Mila and her son Victor also lived in the house. The house was not fenced and had front and back doors but the back door had no lock.^[8] She knows accused because he came to the house every afternoon. At around 8 PM on January 8, 2009, while AAA was preparing her bed on the second floor, accused suddenly entered her room. The light had been turned off^[9] but AAA was able to identify accused's face by the light from downstairs that passed through the spaces on the bamboo floor. Accused covered AAA's mouth, threatened to kill her family, and boxed her on the stomach and she lost consciousness. When she came to at 6 AM the following day, AAA felt pain in her stomach and vagina and she noticed that her shorts and panty were a bit lowered. She took a bath and noted that her panty had blood stains. Because of accused's threats, AAA went about her usual tasks and did not tell Mila about what happened but all the while she felt

dizzy. In February 2009, AAA did not menstruate. She had a menstruation in March 2009 which did not stop for one month. Mila's cousin, Rhoda Lapastura, brought AAA to the doctor for a check-up and the results of an ultrasound showed that AAA was pregnant. Due to her condition, AAA was transferred to the San Fernando Regional Hospital and a curettage ("*raspa*") was performed on her. It was then that AAA reported the incident to Noly Lapastura and to her family.^[10] They went to the police station where she executed a sworn statement^[11] (Exh. A) regarding the incident.

The testimony of the physician who examined AAA was dispensed with after the defense stipulated on the Medico-Legal Certificate^[12] (Exh. C) and the ultrasound images^[13] (Exh. D).^[14] In its comment to the prosecution's offer of evidence, the defense stated that it has no objections to said exhibits as to their existence, genuineness and due execution but averred that the documents do not prove rape and who committed it.

The defense filed a Motion for Leave of Court to File Demurrer to Evidence.^[15] The trial court granted the motion and accused filed a Demurrer to Evidence.^[16] However, the demurrer was denied in an Order^[17] dated August 1, 2011 and the defense presented its witnesses.

Accused testified that he knows Mila because she is a neighbor and he used to go to her house once a week^[18] because Victor would invite him to have a drink after they finished planting rice. He is aware that AAA stays in the house of Mila but did not know her personally. In the evening of January 8, 2009, he was in the house of his grandmother, Rosita Fabro (Rosita), attending the birthday party of her son, Moises Fabro. Rosita's house was about 800 meters^[19] from the house of Mila. At 8:00 PM he was still in the house because Rosita would not allow him to go home as it was already late.

Accused denied that he went to Mila's house that night or that he entered AAA's room and boxed her. He came to know of the rape accusation against him only when the barangay captain, the policemen, and Victor came to his house to take him to the police station where he was investigated and thereafter released. After January 8, 2009 and before he was invited by the police, he was still able to see AAA in Mila's house when he went there to drink with Victor. He does not know why AAA was accusing him of rape.^[20]

Anita Balbin, accused's wife, corroborated his story. Anita testified that on the night of January 8, 2009, she, accused, and their son Mark Jansen were in the house of Rosita for the birthday party of Moises Fabro. They arrived at 7:00 PM and the celebration ended at around 10:30 PM. After the party, they slept in the house because Rosita would not allow them to leave as it was already late and it was raining hard. The other guests left because their houses were nearby. They went home at 7:00 AM the next day.^[21] Anita admitted that she was invited to the celebration to help in serving the food but she insisted that her husband was always beside her.^[22]

Maricar Saydoquien (Maricar) testified that she and AAA are former best friends.

Sometime in 2009, she learned that AAA was allegedly raped and underwent curettage. At that time, she and AAA were no longer on speaking terms but AAA asked one of her relatives to call for Maricar. She went to Mila's house and asked AAA to tell the truth. AAA narrated that one night, while she was sleeping, she heard footsteps coming to her room and the person who entered boxed her and she lost consciousness. However, AAA did not say who attacked her. Mila then talked to Maricar and told her that if a policeman asks her about what happened to AAA, she should state that it was the accused who did it. Maricar felt bothered by her conscience so she refused to become a witness. She admitted that Anita is her aunt but denied that she is testifying for accused because they are relatives.^[23]

On June 13 2012, the court *a quo* promulgated the assailed Decision, the *fallo*^[24] of which reads:

WHEREFORE, in view of all the foregoing, this Court finds the accused JOSEPH BALBIN alias "PARKING" GUILTY BEYOND REASONABLE DOUBT of the crime of Rape defined and penalized under Paragraph 1, Subparagraph 13, in relation to Article 226-B of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of P75,000.00 as civil indemnity and P50,000.00 as moral [*sic*] damages.

SO ORDERED.

Hence, this appeal^[25] wherein accused alleges that:^[26]

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

RULING

The appeal is not meritorious.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1) by using force or intimidation; 2) when the woman is deprived of reason or otherwise unconscious; and 3) when the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present. The gravamen of rape is carnal knowledge of a woman against her will or without her consent.^[27]

The elements of rape under paragraph 1 of Article 266-A of the Revised Penal Code, as amended, are: (1) the offender is a man who had carnal knowledge of a woman; and (2) he accomplished such act through force or intimidation upon her; or she is deprived of reason or otherwise unconscious; or she is under 12 years of age or is demented.^[28]

Because of its intimate nature, rape is usually a crime bereft of witnesses and, more

often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. When the victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.^[29]

AAA testified on the assault on her womanhood thus:

Q: And what happened at about 8:00 p.m. on January 8, 2009?

A: While I was preparing my bed for me to sleep Parking suddenly entered my room, ma'am.

x x x x x x x x x

Q: How were you able to identify that it was Parking who entered your room?

A: I saw his face because there was light downstairs, ma'am.

x x x x x x x x x

Q: And when Parking arrived in your room, what did he do?

A: He covered my mouth, ma'am.

x x x x x x x x x

Q: And what did Parking say when he covered your mouth?

A: When I talked about it, he will kill my family, ma'am.

x x x x x x x x x

Q: And then after he covered your mouth what did Parking do next?

A: He boxed me ma'am (witness is pointing to her stomach).

Q: And was it painful when he boxed you?

A: Yes ma'am I lost my consciousness.

Q: And then what happened next?

A: I do not know ma'am because I lost my consciousness that night.

Q: And when did you regain your consciousness?

A: Six a. m. ma'am

Q: On the following morning?

A: Yes, ma'am

Q: And what did you observe in your clothes?

A: My shorts were lowered a bit ma'am

Q: How about your panty?

A: Also lowered a bit, ma'am

Q: And what did you feel?

A: Painful, ma'am.

Q: What is painful?

A: My stomach which he boxed and my vagina (mabagbagi)

x x x x x x x x x

Q: And what happened afterwards when your shorts and panty have been lowered a bit?
A: I took a bath and I saw that my panty has bloodstain ma'am.

x x x x x x x x x

Q: Did you have your menstruation on January 8, 2009?
A: No, ma'am.

x x x x x x x x x

Q: How about in March 2009 do you have your menstruation?
A: Yes ma'am.
Q: And what happened to your menstruation?
A: The blood coming out did not stop ma'am.
Q: How long was your menstruation then?
A: One (1) month, ma'am.

x x x x x x x x x

Q: Did you go to the doctor then?
A: Yes ma'am

x x x x x x x x x

Q: What happened when you had your check-up?
A: They conducted an Ultra-sound and they told me that I am pregnant
Q: Aside from Parking did you have intercourse with any other man?
A: None ma'am. [30]

We agree with the trial court that AAA's testimony is credible, straightforward, and categorical. It is also consistent with and corroborated by the Medico-Legal Certificate, dated April 30, 2009, issued by Dr. Lovelyn D. Manongdo which states these findings:

Speculum Exam: (+) old, healed hymenal lacerations at 6 & 9 o'clock position

Internal Exam: Cervix admits tip, uterus small, unremarkable adnexae

Transvaginal UTZ: Anteverted normal sized, uterus, thickened bleeding endometrium with mixed echoes, cannot totally rule out retained products of conception, normal ovaries [31]

It bears emphasis that when the offended parties in rape are young and immature girls from the ages of twelve to sixteen, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability but also the shame and embarrassment to which they would be exposed by the trial if the matter about which they testified is not true. [32] Furthermore, when the victim's