

SPECIAL ELEVENTH DIVISION

[CA-G.R. CR No. 32999, November 12, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RYAN T. MASCARDO, ACCUSED-APPELLANT.

DECISION

PAREDES, J.:[*]

THE CASE

THIS APPEAL^[1], filed by accused-appellant Ryan T. Mascardo (appellant), seeks to reverse and set aside the Decision^[2] dated October 27, 2009, issued by the Regional Trial Court, Branch 199 of Las Piñas City, in Criminal Case No. 05-0433, the decretal portion of which, reads:

WHEREFORE, the Court finds the accused Ryan T. Mascardo **GUILTY beyond reasonable doubt** of the crime of Rape under Art. 266-A (par. 2) of the Revised Penal Code and hereby imposes the Indeterminate Penalty of imprisonment ranging from TWO (2) YEARS, as minimum, to THREE (3) YEARS, as maximum of PRISION CORRECCIONAL with the accessory penalty of the law. Accused is likewise directed to indemnify the victim AAA the amount of Fifty Thousand Pesos (P50,000.00) as moral damages and another amount of Fifty Thousand Pesos (P50,000.00) as exemplary damages.

However, the sentence imposed upon him is in the meantime suspended. Suspension of sentence shall still be applied even if the child is already eighteen years of age at the time of his conviction. This rule is in line with the Rule on Juveniles in Conflict with the Law and the Rule on the Examination of a Child Witness.

The Court Social Worker assigned is hereby directed to submit her recommendation as to the DISPOSITION MEASURES to be imposed in a hearing to be called by the court.

Let a copy of this Decision be furnished the parties and their counsels and the Court Social Worker for their information and guidance.

SO ORDERED. (Emphasis in the original)

THE ANTECEDENTS

The facts based on the RTC's assailed Decision^[3] are, as follows:

AAA^[4], a 7 year old^[5] minor, and appellant, 16 years old, are second cousins. On November 23, 2003, AAA was outside the store of appellant when the latter called her to their store. Once inside the store, appellant forced AAA to sit on his lap and tied her right leg to a nearby cabinet with a plastic string. Appellant pulled down her short pants and inserted his right forefinger, twice, in AAA's vagina. AAA tried to throw stones at appellant. When he finished, he removed the string from her leg and warned her not to tell her parents or there would be a family feud. AAA ran away.

On February 14, 2004, BBB, AAA's father, related that his daughter told him that, "*kinalikot ni Ryan ang pepe ko.*" AAA narrated that the sexual assault happened when her mother, CCC, went to the house of her father, Lolo Enteng, who was sick. BBB reported the incident to the police and barangay officials.

Thereafter, AAA and BBB went to the Children's and Women's Desk of the Las Piñas police station where AAA executed a *Sinumpaang Salaysay* (Exhibit "A")^[6]. They were referred to the NBI for medico-legal examination. CCC narrated that she noticed an inflammation in the private part of her daughter but when she asked her about it, AAA refused to speak; she did not press her about it. On February 14, 2004, she learned from BBB that her nephew by her cousin, Lilibeth, had molested AAA.

On February 16, 2004, Dr. Joseph Palermo, medico-legal officer, conducted physical and genital examination on AAA and found that there is a deep healed hymenal laceration at 6 o'clock position (Exhibit "C-1").^[7] AAA was in a non- virginal state physically and there were no external signs of trauma noted on her body at the time of the examination.

Appellant denied the charges against him. He testified that on November 23, 2003, at around 10 o'clock in the morning, his mother woke him up and told him that his Lolo Enteng was sick and vomiting blood. She went to assist his grandfather go to the hospital. He was told to stay at the house of his aunt, which he did, and played the play station with his cousins the whole time he was there.

On February 16, 2004, he was at school attending his class' junior-senior prom, when he received a text message from his cousin Gemma, that his mother, Kuya Al, Tito Levy, Tita Riza and Tito Lito were all waiting for him at the school gate; also waiting for him outside were the father and brother of AAA. His Tito Lito asked him if there was truth to the allegations of AAA's family that he "touched" her. He answered in the negative. He was ordered to sleep at his Tita Riza's house for fear that AAA's family might do him harm.

Appellant added that the accusations against him was prompted by the ill-will and grudge harbored by AAA's family against his family. AAA's family is envious of his family. They also had issues regarding the payment of the electric bill as they shared an electric meter. Moreover, the store where the alleged sexual assault took place was already closed at that time.

Lilibeth Mascardo stated that appellant was left at the house of his grandfather Enteng on November 23, 2003. She said that the charges against her son was the

product of an altercation between the two families because of disagreements on payments of water and electric bills. On February 13, 2004, she was surprised that BBB went looking for appellant and accusing him of touching AAA. BBB even threw stones at their house, and which incident her family had recorded in the police blotter. Lilibeth stated that her son denied having touched AAA.

Mary Jane Ferrer, aunt of AAA, and appellant testified that on November 23, 2003, AAA stayed with CCC who was with them at their Lolo Enteng's house. They only left at lunch time to eat and returned at around 2:30 in the afternoon. She also confirmed the feud between the two families.

After trial, on October 28, 2009, the RTC issued the assailed decision,

Appellant filed this appeal and assigns the following errors:^[8]

I.

THE HONORABLE TRIAL COURT ERRED IN GIVING CREDIBILITY AND TRUST TO THE MATERIAL INCONSISTENCIES CONTAINED IN THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II.

THE HONORABLE TRIAL COURT ERRED IN ITS BENEVOLENT AND BLIND ADHERENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT, AAA.

III.

THE HONORABLE TRIAL COURT ERRED IN NOT GIVING WEIGHT AND BELIEF TO THE STRAIGHTFORWARD AND CANDID TESTIMONIES OF THE DEFENSE WITNESSES.

IV.

THE HONORABLE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT, RYAN T. MASCARDO, DESPITE THE FAILURE OF THE PROSECUTION TO PROVE BEYOND REASONABLE DOUBT THAT ACCUSED-APPELLANT, WHO WAS ONLY 16 YEARS OLD WHEN THE CRIME WAS ALLEGEDLY COMMITTED BY HIM, ACTED WITH DISCERNMENT.

THE ISSUE

The main and only issue in this case is whether or not appellant is guilty of the crime of rape by sexual assault under *Article 266-A, paragraph 2 of the Revised Penal Code, as amended*, beyond reasonable doubt.

THE COURT'S RULING

The appeal is without merit.

The first three assigned errors of appellants will be discussed jointly as they pertain to the credibility of witnesses and weight of evidence of the prosecution. In the main, appellant argues that the RTC should have given more weight to his evidence rather than that of the prosecution.

Appellant contends that the testimonies of the prosecution witnesses were riddled with material inconsistencies which militate against the finding of guilt of appellant. Specifically, he points to the testimonies of AAA and BBB as conflicting, in both minor and major points, as follows:

- 1) As to the date when AAA related the incident to BBB. AAA stated that she told BBB of the incident on the same night; while BBB testified that his daughter complained to him of the acts allegedly committed by the accused on February 13, 2004 at more or less 11 o'clock in the evening^[9];
- 2) AAA said that it was her parents who asked her about the incident while BBB stated that it was AAA who told him about it^[10];
- 3) In her cross-examination, AAA was no longer sure whether she reported the incident on the same night or two days later^[11];
- 4) During her direct examination, AAA could not remember when appellant inserted his right forefinger in her vagina and later on, she categorically stated that it was on November 23, 2003^[12];
- 5) At first, AAA stated that she did not protest when appellant allegedly inserted his forefinger in her vagina, but later on, she claimed throwing stones at him^[13]; and
- 6) In his cross-examination, BBB stated that it was not 11 o'clock in the evening when his daughter reported the incident to him, but rather, it was at 8 o'clock in the evening.^[14]

According to appellant these inconsistencies are too numerous and tainted with untruthfulness that they should not have been ignored. ***We are not persuaded.***

Having scoured the transcripts of the testimonies adverted to, We find that the inconsistencies and inaccuracies are minor, such that these manifest truthfulness and candor, and erase any suspicion of a rehearsed testimony^[15]. What is important is that AAA and BBB conveyed what they had actually perceived; and categorically supplied facts which secured the conviction of appellant, despite the passage of time. Verily, victims of crimes and their immediate family, cannot be expected to recall with exact precision the minutiae of the incident. Human memory is not as unerring as a photograph. Different persons having different reflexes produce varying reactions, impressions, perceptions and recollections. Their physical, mental and emotional conditions may have also affected the recall of the details of the incident^[16].

Then, too, appellant questions the findings of fact of the trial court based on the testimonies of the witnesses and the sufficiency of the evidence presented. ***We remain unconvinced.***

The Supreme Court, in the case of ***People of the Philippines vs. Marcelino Dadao, Antonio Sulindao, Eddie Malogsi (deceased) and Alfemio Malogsi***^[17], held:

We have consistently held in jurisprudence that the resolution of such a factual question is best left to the sound judgment of the trial court and that, absent any misapprehension of facts or grave abuse of discretion, the findings of the trial court shall not be disturbed. In *People v. De la Rosa*, we yet again expounded on this principle in this wise:

[T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case (*Citations omitted; Underscoring supplied*).

Moreso in the case at bar where the victim was only about 6 years old at the time of the commission of the crime, for it is settled jurisprudence that testimonies of child victims are given full weight and credit because, when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity^[18].

We share the court *a quo's* finding that AAA's testimony was candid and straightforward. AAA was only about 8 years old at the time she testified in court, but the manner in which she narrated the incident could not have been made in a straightforward manner by a girl her age who was not subjected to such sexual abuse. As the RTC noted, a girl her age could not have concocted the circumstances relating to the incident.

Moreover, the testimony of AAA that she was sexually assaulted is supported by the medical certificate issued by Dr. Palmero who physically examined AAA. The examination showed that there was a deep healed hymenal laceration at 6 o'clock position which could have been inflicted more than 1 week to one year from examination. Said laceration of the hymen is caused by a blunt object, such as a finger, which was inserted in the vagina.

Furthermore, the RTC has sufficiently resolved the factual issues raised by appellant