

SPECIAL ELEVENTH DIVISION

[CA-G.R. CR-HC No. 05740, December 11, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICOLAS TUBILLO Y ABELLA, ACCUSED-APPELLANT.**

DECISION

PAREDES, J.:

THE CASE

THIS APPEAL, filed by accused-appellant Nicolas Tubillo y Abella (accused-appellant), seeks to reverse and set aside the Decision^[1] dated July 4, 2012, issued by the Regional Trial Court, Branch 225, Quezon City in Criminal Case No. Q-06-139031, the decretal portion of which reads, thus:

WHEREFORE, accused Nicolas Tubillo y Abella is **found guilty beyond reasonable doubt of simple rape** as defined under Art. 266-A, *The Revised Penal Code*. He is **sentenced** to suffer imprisonment with the duration of *reclusion perpetua* pursuant to Art. 266-A, *The Revised Penal Code*. He is **ordered to pay** HGE^[2] P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages, plus interest of 6% per annum on each of the amounts reckoned from the finality of this *Decision*, and the costs of suit.

SO ORDERED.

THE ANTECEDENTS

On February 20, 2006, an Information^[3] was filed charging accused-appellant with rape in relation to Republic Act No. 7610^[4] (RA7610):

That on or about the 1st day of February 2006, in Quezon City, Philippines, the said accused, by means of force, violence and intimidation and at knife point, commit an act of sexual assault upon one HGE, a minor, 13 years of age, by then and there while complainant was sound asleep alone inside the room, forcibly opened the door then accused motivated by sexual desire, undressed her, pulled down her underwear and mounted on top of her, and thereafter have carnal knowledge with said complainant, all against her will and without her

consent, which act debases, degrades and demeans the intrinsic worth and dignity of said HGE, as a human being, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

Accused-appellant was arraigned^[5] on April 5, 2006 and, with the assistance of counsel, entered a plea of "Not Guilty".

During the pre-trial^[6], the prosecution and the defense stipulated on the following: the identity of the accused-appellant; territorial jurisdiction of the court; private complainant HGE is a minor, 13 years old; police investigation and inquest proceedings were conducted; and, letter-referral submitted by Police Station 6 was prepared.

Thereafter, trial proceeded.

The prosecution presented the testimonies of HGE^[7] and Dr. Paul Ortiz^[8], whose combined testimonies tended to establish that:

HGE, a minor then thirteen (13) years of age, lives with AAA, the person who "adopted" her and who is gay, at 249 St. Peter Street, Barangay Holy Spirit, Quezon City.

On February 1, 2006, at around 10 o'clock in the evening, HGE was home alone as AAA works as a beautician at a salon from 2 o'clock in the afternoon until 10 o'clock in the evening and usually arrives home at around 11:30 in the evening. HGE was asleep and was awakened when accused-appellant, a neighbor, entered the house by breaking the padlock of the door.

Upon entry, accused-appellant removed HGE's clothes and his own. He then forcibly inserted his penis in her vagina by pushing his body towards her. HGE felt pain but she did not resist as accused-appellant was poking a knife at her neck. The incident lasted about 30 seconds.

On February 8, 2006, HGE told her tita, the sister of her father, about the incident.

Dr. Paul Ortiz, the Medico-Legal Officer who examined HGE, found a shallow healed laceration at 7 o'clock position in the hymen; the periurethral and vaginal smears were found negative for spermatozoa; the findings are suggestive of remote history of blunt force or penetrating trauma to the hymen which may have been caused by the penetration of an erect penis. The defense presented accused-appellant^[9], who denied the accusation and testified that the complaint was filed because HGE's aunt was angry when he tried to collect some money from HGE.

On July 4, 2012, the RTC rendered a Decision^[10] finding accused-appellant guilty beyond reasonable doubt of simple rape under Article 266-A of the Revised Penal Code.

Aggrieved, accused-appellant filed this appeal.

THE ISSUE

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT ACCUSED-APPELLANT'S GUILT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

The appeal is bereft of merit.

In *People of the Philippines vs. Ben Rubio y Acosta*^[11], the Supreme Court reiterated the guiding principles in deciding rape cases, *viz.*:

(a) an accusation of rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.

As a result of these guiding principles, the credibility of the victim becomes the single most important issue.

Accused-appellant contends that the testimony of HGE is riddled with glaring inconsistencies rendering her version highly improbable as HGE testified that the accused-appellant raped her for the first time on February 1, 2006 but subsequently testified that accused-appellant raped her around six (6) times since October 28, 2005; that after the supposed rape incident, HGE went about her usual activities as if nothing happened, even staying out late at night unaccompanied, thereby belying her claim that she was raped; and the imputation of ill-motive for filing the complaint should have raised reasonable doubt as to the credibility of the testimony of HGE.

Due to 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^[12]. In this case, the testimony of HGE was taken out of context by the defense.

The alleged glaring inconsistency in the testimony of HGE on whether she was raped for the first time by accused-appellant on February 1, 2006 or not, was clarified^[13], thus:

ACP VILLANUEVA:

Now, HGE, for purposes of clarification, you stated in your Answer in Question No. 7, "*Simula pa noong October 28, 2005 ay hinalay na ako ng suspect at mula noon ay halos inaaraw-araw akong hinalay ng suspect, do you affirm that allegation*, HGE?

A: Yes, sir.

Q: Now, during your direct examination, you mentioned that the February 1, 2006 incident was the first time only rape incident that you suffered in [sic] the hands of the accused. Now, which is which, Ms. Witness?

A: The February 1, 2006, sir.

Q: So you mean to say there was no rape incident that happened prior to the incident which happened on October 28, 2005?

A: Yes, sir.

Q: But who supplied this statement, Ms. Witness, were you the one who gave this statement?

A: Yes, sir.

Q: Do you understand my question, Ms. Witness?

COURT:

Naintindihan mo ba yung tanong sa'yo, HGE? Paulit uli natin yung tanong[,] ha?

ACP VILLANUEVA:

Now, which is true, Ms. Witness, there were other rape incidents that were committed against you by the accused prior to the February 1, 2006 incident or there is only one rape incident and that occurred only on February 1, 200[6]?

A: There was a prior incident that happened on October 28, 2005, sir.

Q: Could you recall, Ms. Witness, the number of times did the accused rape you prior to February 1, 200[6] incident?

A: Around 6 times, sir.

Q: How come in those previous rape incidents, you did not report said incidents to your parents or to your relatives?

A: Because he threatened to kill me if I will tell anybody. (*Italics in the original*)

The perceived inconsistency is trivial. The previous rape incidents since October 28, 2005 were not reported because of the overwhelming fear HGE felt against her abuser, accused-appellant; and the fact that it was not reported does not mean that it did not happen. Also, the alleged inconsistency may have been brought about by the confusion in the way the question was phrased, so much so that the court *a quo* had to prod the prosecutor to simplify his questions.

The argument that after the supposed rape incident, HGE went about her usual