

TWENTY-SECOND DIVISION

[CA-G.R. CR HC NO. 00913-MIN, December 10, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESSIE CANQUE, ACCUSED-APPELLANT.

DECISION

PEREZ, J.:

This is an Appeal from the Decision^[1] of the Regional Trial Court of Cagayan de Oro City, Branch 19, dated 31 January 2011, finding accused-appellant Jessie Canque (accused-appellant) guilty beyond reasonable doubt of Qualified Rape in Criminal Case No. 2008-72. Accused-appellant was originally charged not only for Qualified Rape in Criminal Case No. 2008-72 but also for violation of Section 5(b) of Republic Act No. 7610 in Criminal Case No. 2008-73. The indictments read as follows:

For Criminal Case No. 2008-072:

"On 01 August 2007, at Purok 4, Lanise, Claveria, Misamis Oriental, Philippines, within the jurisdiction of the Honorable Court, the above-named accused through force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with fifteen-year (15) old AAA,^[2] against her will and her consent to her damage and prejudice.

AAA is found to have mental retardation. The qualifying aggravating circumstance in No. 10 Article 266-B of the Revised Penal Code, that is when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the offense is attendant.

Contrary to and in violation of Article 266-A Paragraph 1 in relation to Article 266-B of the Revised Penal Code as amended by RA 8353."^[3]

For Criminal Case No. 2008-073:

"Sometime in 2006 up to July 31, 2007, at Purok 4, Lanise, Claveria, Philippines, within the jurisdiction of this Honorable Court, the above-named accused knowing fully well the minority and the mental disability of AAA did then and there willfully, unlawfully and feloniously have carnal knowledge with fifteen-year (15) old AAA, by inserting his finger(s) and penis into her vagina, sucking her breasts, kissing and touching the different parts of her body against her will and without her consent, and which act debases, degrades and demeans the intrinsic worth and dignity of AAA as a child as a human being and is prejudicial to the child's

development.

The victim is found to have mental retardation.

Contrary to and in violation of Section 5 paragraph b of RA 7610.”^[4]

During arraignment, accused-appellant pleaded “not guilty” to both accusations. A joint trial ensued.

The Facts

The prosecution presented four (4) witnesses, which include the minor private complainant AAA, her mother BBB, Dr. Jamilla B. Watamama, the physician who examined AAA, and Estela S. Ferrarez, the psychologist who evaluated her mental state.

AAA averred that accused-appellant Jessie Canque (Jessie) had sexually molested her on several occasions. She positively declared that when he abused her, Jessie took off her clothes, bra, short pants and panty, and inserted his penis in her vagina. He would then make a push-and-pull movement, and after he ejaculated, he would spread it on her body specifically on her breast. Jessie would also squeeze her breast, strike her head with the use of a wood, and often slap her face and pull her hair. He would drag her into the dirty kitchen, and would twist her arm, box her back, and bite her several times. Jessie would bring with him a bolo and would poke the tip thereof to her vagina, and threatened to kill her if she tells anybody what he did to her. AAA claims that she felt pain after Jessie inserted his penis in her vagina the first time he did it to her. After that first incident, she tried to evade him but Jessie would pursue her. AAA also averred that Jessie inserted his forefinger in her vagina.^[5]

AAA confirmed that she reported the incident to the school principal whom she referred to as Mrs. Villanueva and to her teacher named Mrs. Helen Humuwad. She further averred that Jessie first molested her in a farm, and the second incident took place in their house, specifically in their room at around 10:00 o'clock in the morning. Similar incidents happened in the afternoon and in the evening, and Jessie would not stop until her sibling arrived home. AAA was afraid to reveal to her father, mother and sibling what Jessie had been doing to her because of Jessie's threats that he will kill her.^[6]

AAA's mother (BBB) claims that her daughter is a mental retardate. AAA cannot cope with her lessons so much so that she kept repeating the Grade 1 curriculum and had to go back to Grade 2 three times. BBB had AAA examined by Psychiatrist Marlou Sustiguer who informed her that her daughter is a mental retardate.^[7]

BBB averred that she first met Jessie sometime in 1997, as he was then residing in a lot owned by her parents-in-law. Jessie left, but came back in 2004 with his father who bought the land from the parents-in-law of BBB and eventually lived thereon. The said land was just near their house. Later on, Jessie's father left and Jessie was left alone. Hence, sometime in 2005, Jessie asked permission from BBB if he could stay in their house, which she acceded to. BBB also had to tend their farm at Libona, Bukidnon, so the persons left in their house were her husband, Jessie, AAA,

a 20-year old son, and three (3) other daughters aged 24, 18 and 16.^[8]

Sometime in 2007, after her birthday, AAA revealed to her teacher what Jessie did to her. The teacher relayed to BBB the information she got from AAA. Eventually, AAA confessed to her and told her, *"Ma, what I told my teacher is true that Jessie Canque did bad things to me."* AAA told her she was afraid because Jessie threatened to kill her if she reveals it to her mother. AAA also told her that when Jessie was done molesting her, he would place a bolo on her neck, wipe the semen that he ejaculated from her neck and all over her body, and that Jessie would molest her every time there is no person in their house. After hearing these from AAA, BBB went to the police station to report the incident, the DSWD to seek assistance, and the provincial hospital for AAA's medical examination.^[9]

Dr. Jamilla B. Watamama (Dr. Watamama), the physician who conducted the medical examination on AAA on 14 August 2007, testified on her findings per Living Case Report. The genital examination findings show: GENITALIA-TANNER 4; INTROITUS – OLD HEALED HYMENAL LACERATION AT 6 O'CLOCK POSITION. She explains that the laceration was already healed as it was there for a month, and that at the time of her examination, she had not seen any fresh laceration. She also described the position of the laceration located at 6 o'clock position at the lower part of the hymen. She opined that the laceration was probably caused by a foreign object, thru jogging or masturbation or possibly thru self-infliction by careless movement.^[10]

During her interview with AAA, AAA relayed to her that the rape incident happened at around 10:00 A.M., and that it began from the year 2006 until AAA saw Dr. Watamama in August 2007. AAA also revealed to her that Jessie poked his bolo in between her thigh and threatened her.^[11]

Dr. Watamama also opined that AAA is a special child. AAA's mental intelligence is far from being normal for her age. At her age of fifteen (15) years when examined, AAA's intelligence level is only that of a grade 1 student as in fact she had a hard time talking to her. Dr. Watamama clarified that her basis for assessing that AAA is a special child was not only AAA's demeanor but also her mental and physical state thru the MSA. She observed that AAA was able to understand simple questions and that she knew the name of the accused without anybody coaching her.^[12]

Estela S. Ferrarez (Ferrarez), the psychologist who evaluated the mental state of AAA testified on her findings as per Psychological Evaluation Report. AAA's psychological test skill one result shows: ***"infantile regression which classified her at the level of a five year old mental functioning."***^[13] Ferrarez explains that this means that even though AAA is already sixteen (16) years old, her mental state is still that of a four (4) or five (5) years old. Ferrarez explains that their (mental retardate) mental state as children would make them aware of dates and time but they are not particular of specific dates. AAA may not be specific of the date but she could recall and connect incidents. Ferrarez testified that AAA specifically mentioned the sexual abuse and mentioned the name "Jessie." She did not ask AAA what exactly happened but as she understood it, it was against AAA's will that her clothes were removed. Ferrarez added that AAA can manage herself like taking a bath, but does not know how to get food. She manifests difficulty in speech, but she is consistent.^[14]

On the one hand, the evidence for the defense include the testimonies of accused-appellant, his mother Marietta Canque, and a neighbor Edgar Sandigan.

Accused-appellant Jessie Canque admitted that he knew AAA since she is the granddaughter of the owner of the land located at Lanisi, Claveria, Misamis Oriental, that he and his father tilled. Jessie likewise admitted that he has been to Claveria where he was born and where he spent his elementary and high school days. He left Claveria after he had a misunderstanding with his father. The last time he went to Claveria was in March 2006.^[15]

Jessie raises the defense of alibi. He also countered that all the allegations in the Information are mere fabrications, and that AAA was given money by her mother to pin him down. Jessie testified that he was at San Simon, Pagatpat, Cagayan de Oro City, the second week of July to 15 August 2007. He worked in a "Tuba-tuba" plantation of the Philippine National Oil Company or TRICOP where he took charge of the workers, the fertilizers, equipments, including the collection of the salaries of employees who worked thereat on a "pakyaw" basis. He worked from 6:00 in the morning to 6:00 in the afternoon at the plantation, and sleeps in the area where they had a tent. The place is a kilometer away from the highway with no public utility vehicles.^[16] The only means of transportation from Pagatpat Elementary school to his area of work at San Simon is "habal-habal" (motorcycle for hire), and in the absence thereof, one has to walk.^[17]

Jessie further alleged that he never left San Simon, Pagatpat on 1 August 2007 as he was then working and even slept that evening in their tent.^[18] During the entire period from the second week of July to second week of August 2007, Jessie saw his wife only once and that was when he went home in the afternoon of 2 August 2007 to Sihayon, Tagoloan, where he proceeded after he got his salary from the office in Carmen, Cagayan de Oro City.^[19] Jessie recounted that from March to November 2006, he was residing at Sihayon, Tagoloan; from 6 November 2006 to 10 January 2007, he attended to his wife who allegedly gave birth to their son at the Northern Mindanao Medical Center (NMMC); and from 2 February 2007 until August 2007, he was at Budiongan, Gingoog City, the place of his parents-in-law since the latter wanted to see their grandson.^[20]

Marietta Canque (Marietta) averred that Jessie lived in their house in Sihayon, Sta. Cruz, Tagoloan, Misamis Oriental throughout the year 2006, and has never changed residence in the years 2006 and 2007. Jessie lived with them together with her daughter, her grandson and Jessie's wife. She added though that sometime in the month of July of 2006, she worked at Macasandig, Cagayan de Oro, and would only go home to Sihayon every weekend.^[21]

During cross-examination, Marietta admitted that they bought a 4-hectare land at Lanisi, where BBB was their caretaker and trusted hand in charge of laborers working at their land. In 2004, her husband planted the land with tomatoes and took care of it. Her husband would often go to their farm in the morning and be back at Sihayon in the afternoon using a motorcycle. In the year 2005, their children would go with her husband to Lanisi, Claveria and back to Minsakoba. She could not estimate the distance from Lanisi to Minsakoba, but merely gave the

information that the fare from Lanisi to Minsakoba was only P35.00. Marietta also clarified that Jessie went with his father to Lanisi from 2004 to 2007. It was only in March 2006 that Jessie stayed in Sihayon and never left for Claveria.^[22]

Edgar Sandigan (Sandigan), a neighbor and a co-worker of Jessie for three weeks testified that from mid July to August 2007, he worked with Jessie, planting seedlings for the TRICOP (Tribal Communities Association of the Philippines). Jessie was their "leadman" who was responsible for the materials to be used as seedlings. It was Jessie who followed up the issuance of seedling from Pagatpat and also decides what they are going to do, and the one who decides and/or recommends who will be hired. Sandigan also presented a voucher evidencing the payment for the labor they rendered on 31 July and 1 August 2007 addressed to Jessie Canque, who in turn will give then their share as salary for planting seedlings. Sandigan worked with six (6) other co-workers for three weeks and slept together in the same tent, but he could not remember their surnames including the name of their employer whom he identified as one "Edgar", his namesake. It was only Jessie Canque whom Edgar knew well among the people he worked with at San Simon, Pagatpat.^[23]

On 31 January 2011, the lower court rendered a Decision finding the accused-appellant guilty beyond reasonable doubt of the crime of Qualified Rape. The dispositive portion of the Decision reads:

ALL THE FOREGOING CONSIDERED, the Court finds accused Jessie Canque in FC Criminal Case 2008-072 GUILTY beyond reasonable doubt of the crime of QUALIFIED RAPE for which the Court imposes upon him the penalty of Reclusion Perpetua.

Jessie Canque is further adjudged to pay "AAA" Php 75,000.00 in civil indemnity and Php50,000.00 in moral damages. With costs.

The charge in FC Criminal case No. 2008-073 is ordered DISMISSED.

Aggrieved, appellant raises before Us this lone assignment of error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The Court's Ruling

The appeal is without merit.

Accused-appellant asserts that he cannot be convicted of the crime of rape under Article 266-A(1) because the prosecution has not proved 1) the fact of penetration and 2) the use of force, threat and intimidation.

Appellant argues that his right to be informed of the nature and cause of the accusation against him has been violated because the crime apparently proved is different from the one alleged in the information.

We find no basis to sustain appellant's argument because appellant was convicted of