



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 187734

Present:

- versus -

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

ANTONIO OSMA, JR. Y
AGATON,
Accused-Appellant.

Promulgated:

29 AUG 2012

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DECISION

LEONARDO-DE CASTRO, J.:

This is an appeal from the Decision¹ of the Court of Appeals in CA-G.R. CR.-H.C. No. 02917 dated December 19, 2008, affirming the conviction of accused-appellant for statutory rape in Criminal Case No. 4467 and modifying his conviction in Criminal Case No. 4468 from statutory rape to qualified rape.

The two separate informations were filed on September 26, 2002, charging accused-appellant as follows:

¹ Rollo, pp. 2-19; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

Criminal Case No. 4467

That sometime in the month of December 2000 in XXX² and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 10 years old, against her will and consent, to her damage and prejudice.³

Criminal Case No. 4468

That at or about 10:00 o'clock in the morning of March 14, 2002 at XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, with the use of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, AAA, 12 years old, against her will and consent, to her damage and prejudice.⁴

Accused-appellant pleaded not guilty to both charges. During pre-trial, the parties agreed to stipulate on the following, among other things: (1) the victim, AAA, is the legitimate daughter of accused-appellant and his wife, BBB; (2) accused-appellant, BBB and their family lived in XXX; AAA, however, stayed with her grandparents, who are paying for her education; and (3) accused-appellant never left their residence during the whole month of December, 2000. He was in their residence on March 14, 2002 at ten in the morning.

The prosecution presented the following as witnesses: (1) Dr. Joana Manatlao, the Municipal Health Officer of XXX; (2) CCC, the maternal grandfather of the private complainant; and (3) AAA, the private complainant.

² The real name and personal circumstances of the complainant and any other information tending to establish or compromise her identity are withheld pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006). Fictitious initials shall be used in their stead.

³ Records (Crim. Case No. 4467), p. 26.

⁴ Records (Crim. Case No. 4468), p. 26.

Dr. Manatlao examined AAA on April 30, 2002 and found old lacerations on her vagina. According to Dr. Manatlao, the lacerations appear to have been inflicted several months prior to the examination.⁵

CCC testified that he is the father of BBB, the latter being the mother of AAA and wife of accused-appellant. His wife, DDD, died recently. The family of accused-appellant resided in XXX, but AAA lived with her grandparents, CCC and DDD, since she was four years old. Her grandparents paid for her education. AAA went home to her parents' house occasionally on weekends and holidays. CCC's residence was around 20 kilometers away from accused-appellant's.⁶

On April 27, 2002, after the wedding of another daughter of CCC, DDD told CCC that AAA was raped by accused-appellant. The following day, DDD and AAA went to the Department of Social Welfare and Development (DSWD) office in their locality but were advised to bring AAA to a doctor for examination. CCC and AAA went to their Municipal Health Office where Dr. Manatlao conducted her examination. When they received the medical certificate, CCC and AAA went to the Philippine National Police (PNP) Station to file a complaint against accused-appellant. On cross-examination, CCC admitted that he had no personal knowledge of the crime that was committed.⁷

AAA testified that she was the eldest of six children of accused-appellant and BBB. AAA was born on March 9, 1990,⁸ as evidenced by a

⁵ TSN, January 21, 2003, pp. 4-10.

⁶ TSN, December 1, 2004, pp. 4-11.

⁷ Id.

⁸ TSN, March 6, 2006, p. 4.

Certification from the Civil Registrar's Office.⁹ She was thus ten years old in December 2000.

One night in the aforementioned month of December 2000, while AAA was in the residence of her parents, she slept in the *sala* with her father, her six-year-old brother, and younger sisters. Her mother slept in an adjoining room. When AAA was awakened, her shorts were already pulled down. She saw accused-appellant's face as he was already on top of her. Accused-appellant inserted his penis into her vagina, causing pain. When accused-appellant was through, he placed her shorts back on and they went to sleep.¹⁰

On March 14, 2002, AAA was in the residence of her parents. While she was gathering pilinuts with her uncle, the latter asked her to get the scythe. She went into the house to get it. Accused-appellant, who was waiting for her, pulled her into a corner. He removed her shorts and inserted his penis into her vagina. During this time, accused-appellant and AAA were the only people in the house as her mother, BBB, was washing clothes and her siblings were with her mother. Accused-appellant thereafter placed back her shorts. AAA proceeded to get the scythe.¹¹

During a wedding ceremony, AAA reported the incidents to her grandmother, DDD, who got angry and informed one of AAA's aunts. DDD and the aunt informed CCC. AAA and CCC went to the DSWD to report the incidents. AAA and CCC thereafter went to a doctor at the health center, Dr. Manatlao.¹²

⁹ Records (Crim. Case No. 4468), p. 4.

¹⁰ TSN, March 6, 2006, pp. 7-12.

¹¹ Id. at 12-13; TSN, September 5, 2006, p. 5.

¹² TSN, March 6, 2006, pp. 14-16.

AAA further testified that she did not immediately tell her mother, BBB, about the incidents because she was afraid of her father, who she claimed was very cruel and was fond of beating them.¹³

The defense carefully scrutinized AAA's account with a cross-examination that took four trial dates to conclude. During cross, AAA testified that as of December 2000, she was still unaware that it was wrong for a father to have sexual intercourse with her daughter as she was just in Grade V then.¹⁴ She admitted that after the alleged incident in December 2000, she just continued sleeping.¹⁵ AAA's mother did not assist her in filing and pursuing the complaints, as she might be confronted by accused-appellant. It was her grandparents, CCC and DDD, who assisted her in initiating the cases. At the time of her testimony on June 6, 2006, however, both CCC and DDD were already dead.¹⁶

AAA was confronted about her sworn statement during preliminary investigation where the word "rape" or the Bicolano "*linupigan*" was used, despite her earlier testimony that she did not yet understand the said word at that time. AAA answered that she merely narrated what happened.¹⁷

On redirect, AAA clarified that she identified her father in December 2000 when she was being raped when he spoke, saying the word "*masiram*." She also recognized the odor of her father.

The defense presented accused-appellant as its lone witness. Accused-appellant testified that AAA was his and BBB's daughter. AAA was the eldest of his and BBB's six children. AAA was in her kindergarten years

¹³ Id. at 16-17.

¹⁴ TSN, April 17, 2006, p. 12.

¹⁵ Id. at 14.

¹⁶ TSN, June 6, 2006, pp. 7-9.

¹⁷ Id. at 11-15; TSN, September 5, 2006, pp. 12-13.

when she started living with her grandparents CCC and DDD, in their residence which was twenty kilometers from that of accused-appellant's home. Accused-appellant claims, however, that he spent for the school expenses of AAA.¹⁸

Accused-appellant's house, which was made of bamboo and *anahaw*, had dimensions of 9 meters by 5 meters. The house was situated in a lot owned by his in-laws, CCC and DDD. During nighttime, the house was illuminated by a kerosene lamp in front of the bedroom.¹⁹

According to accused-appellant, it was impossible for him to have raped AAA in December 2000 since there were other persons inside the bedroom at that time. It was also impossible for him to have raped AAA on March 14, 2002, since there were many people around at that time, including his wife, children, and AAA's uncle. It was CCC and DDD who initiated the cases against him because of their grudge against him as he was asking for their share in a parcel of land that was transferred to his sister-in-law.²⁰

He only learned of the cases filed against him when the police officers apprehended him in May 2002. His children cried when he was arrested in their own residence.²¹

On July 23, 2007, the RTC rendered its Joint Judgment convicting accused-appellant. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, accused ANTONIO OSMA Y AGATUN, JR. is found by this court GUILTY beyond reasonable doubt for two (2) counts of statutory rape and for each count, hereby sentence him to suffer the penalty of *reclusion perpetua*,

¹⁸ TSN, November 27, 2006, pp. 5-11.

¹⁹ Id. at 5-11.

²⁰ Id. at 12-13.

²¹ Id. at 13-14.

and to pay the victim, [AAA], the amount of FIFTY THOUSAND PESOS (Php50,000.00) each for the two (2) cases as civil indemnity and FIFTY THOUSAND PESOS (Php50,000.00) each for the two (2) cases as moral damages or in the total amount of TWO HUNDRED THOUSAND PESOS (Php200,000.00) for the two (2) cases.

In the service of his sentence, the accused shall be entitled to the full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, he shall be credited only in the service of his sentence of four fifths (4/5) of the time during which he has undergone preventive imprisonment in accordance with Article 29 of the Revised Penal Code.²²

On appeal, the Court of Appeals modified the RTC Decision as follows:

WHEREFORE, the trial court's Decision dated July 23, 2007 is affirmed, subject to the modification that accused-appellant is found guilty of qualified rape in Criminal Case No. 4468. In both Criminal Cases Nos. 4467 and 4468, the civil indemnity and moral damages are each increased to ₱75,000.00 and accused-appellant is further ordered to pay AAA exemplary damages of ₱25,000.00 in each case.²³

Accused-appellant adopts before this Court his Appellant's Brief before the Court of Appeals, which proffered the following Assignment of Errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED, DESPITE THE WEAKNESS OF THE PROSECUTION'S EVIDENCE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.²⁴

²² CA rollo, p. 79.

²³ Id. at 154.

²⁴ Id. at 57.

Criminal Case No. 4467

Accused-appellant assails the Decisions of the courts *a quo* primarily on the basis of the alleged lack of credibility on the part of the private complainant, AAA. Accused-appellant cites an instance in AAA's testimony when she was smiling. According to accused-appellant, it is surprising that a daughter who was sexually abused by his father would take such matter lightly, considering the gravity of the accusation.²⁵

Accused-appellant further argues that AAA's testimony that she was raped sometime in December 2000 is incredible, considering the size of the sleeping area where the act supposedly occurred. The defense points out AAA's statement that a mere stretching of an arm during the time the supposed rape happened would disturb the person sleeping beside her.²⁶

This Court is unswayed by the foregoing arguments. In the determination of credibility of witnesses, this Court, as a general rule, will not disturb the findings of the trial court unless it plainly overlooked certain facts of substance and value that, if considered, might affect the outcome of the case. This is mainly due to the fact that it was the trial court that heard the witnesses and observed their deportment and manner of testifying during the trial.²⁷ In the case at bar specifically, the trial court was in the best position to determine whether AAA's facial expressions and demeanor manifested a blithe unconcern about the alleged injustice done to her, or merely an effort to appear courteous to the judge and lawyers. AAA's smiling can hardly be considered a fact of substance and value that should affect the outcome of the case, especially since she is a very young witness with little or no experience in court proceedings. The trial court regarded the

²⁵ Id. at 58.

²⁶ Id. at 60.

²⁷ *People v. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 783.

following narration of AAA during her testimony as having been “made in a clear, convincing and straight forward manner”²⁸:

PROSECUTOR NAZ:

Q- Now, [AAA], tell us, where were you sometime in the month of December 2000?

A- I was in our house at [XXX].

Q- What unusual incident happened on said date and time, if you recall?

A- I was raped.

Q- Who raped you?

A- My father.

Q- Is that father you are referring to the one you pointed to a while ago?

A- Yes, sir.

Q- Where did it happen?

A- In our house.

Q- Where is that house situated?

A- In [XXX].

Q- Do you remember who were the other persons present on that date?

A- My brothers and sisters.

Q- How many brothers and sisters do you have?

A- One (1) brother and four (4) sisters.

x x x x

Q- You were raped as you said, by your father on that day, December 2000 at [XXX]. Tell us how it was done.

ATTY. BARREDA:

Witness Your Honor is smiling. For the record.

WITNESS:

A- It was nighttime. We were sleeping with my brother and sisters and I was sleeping beside my father and my brother and sisters.

PROSECUTOR NAZ:

Q- So, what happened while you were sleeping together with your father, brother and sisters?

A- When I was awakened, my shorts was already removed.

Q- What followed next?

A- I was raped.

Q- How was it done to you?

ATTY. BARREDA:

Witness Your Honor is smiling.

COURT:

Take note of the manifestation of Atty. Barreda.

WITNESS:

A- His penis was inserted into my vagina.

PROSECUTOR NAZ:

Q- So, what did you feel?

A- It was painful.

Q- So, what happened, if any?

A- After that, my shorts was again put back.

Q- Who put back your shorts?

A- My father.²⁹

Since AAA was born on March 9, 1990, as evidenced by the Certification from the Civil Registrar's Office, she was 10 years and 9 months old when the crime charged in Criminal Case No. 4467 was committed. As such, the crime charged and proven is one of statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age.³⁰ Proof of force and consent is immaterial if the woman is under 12 years of age, not only because force is not an element of statutory rape, but also

²⁹ TSN, March 6, 2006, pp. 7-11.

³⁰ *People v. Ramos*, G.R. No. 179030, June 12, 2008, 554 SCRA 423, 430.

because the absence of free consent is presumed. Conviction will lie provided sexual intercourse is proven.³¹

Criminal Case No. 4468

The trial court likewise found the following testimony of AAA as regards the alleged rape committed on March 14, 2002 credible:

Q- Now, on March 14, 2002 at about 10:00 o'clock in the morning, do you remember where were you?

A- I was at home.

Q- Where is that house again situated?

A- In XXX.

Q- What happened while you were there on that date and time?

A- When my uncle requested me to get a scythe there, I was pulled by my father.

Q- With your or is this father of yours the same father you mentioned a while ago?

A- Yes, sir.

Q- What happened next after you were pulled?

A- My shorts was again removed.

Q- In what particular place were you brought?

A- In our house.

Q- Who were there at that time aside from you and your father?

A- None, sir.

Q- Why, where was your mother then?

A- She was washing clothes.

Q- Where?

A- Ahead of our house.

Q- How about your brother and sisters, where were they?

A- They were with my mother.

Q- So, will you tell us how was that rape you mentioned done to you by your father?

³¹ *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 225.

A- When I was pulled and my shorts was removed, he again inserted his penis into my vagina.

Q- What happened next?

A- He again put back my shorts and I proceeded getting the scythe.³²

Accused-appellant similarly argued in Criminal Case No. 4467 that it was impossible for him to have raped AAA when the latter's uncle, mother and siblings were within 50 meters from them. We disagree. We have held time and again that:

[R]ape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. Lust is no respecter of time and place; neither is it deterred by age nor relationship.³³

The insinuations of the defense that the rape charges were falsities fabricated by AAA's grandparents as shown by their participation in the proceedings deserve scant consideration. As held by the trial court, there was nothing improper in the assistance given by CCC and DDD to AAA in the rape case. AAA was merely 12 years old when the cases were initiated. AAA's personal determination to pursue the charges against her father was likewise shown by her coming to court to testify even after both CCC and DDD died.

We have also repeatedly held that "no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and

³² TSN, March 6, 2006, pp. 12-13.

³³ *People v. Cabral*, G.R. No. 179946, December 23, 2009, 609 SCRA 160, 165-166.

embarrassment of a public trial, if her motive [was] other than a fervent desire to seek justice.”³⁴

As observed by the Court of Appeals, however, the trial court erred in convicting accused-appellant in Criminal Case No. 4468 for statutory rape. As clearly stated in the Certification by the Civil Registrar’s Office of the Municipality where AAA was born, AAA was born on March 9, 1990. AAA was thus 12 years and five days old when the second incident of rape occurred. Consequently, accused-appellant cannot be convicted in Criminal Case No. 4468 for statutory rape, which requires that the victim be below 12 years of age.

However, even though accused-appellant cannot be convicted of statutory rape in Criminal Case No. 4468, and despite the absence of evidence of resistance on the part of AAA on said count, his criminal liability for rape nevertheless remains. In *People v. Fragante*,³⁵ we held:

It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent. In *People v. Orillosa*, we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.³⁶

³⁴ *People v. Isang*, G.R. No. 183087, December 4, 2008, 573 SCRA 150, 161.

³⁵ G.R. No. 182521, February 9, 2011, 642 SCRA 566.

³⁶ *Id.* at 579-580.

Proper Penalty and Civil Liability

Both counts of rape, even the statutory rape in Criminal Case No. 4467, would have been punishable by death under Article 266-B of the Revised Penal Code, if not for the enactment of Republic Act No. 9346³⁷ which prohibits the imposition of the death penalty. Article 266-B provides:

Art. 266-B. *Penalties.* – x x x

x x x x

The death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

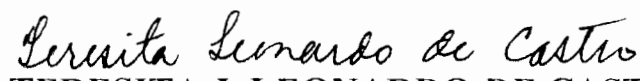
Pursuant therefore to Republic Act No. 9346, the penalty that should be imposed is *reclusion perpetua*. In *People v. Lauga*,³⁸ the Court held that where the rape is committed with any of the qualifying/aggravating circumstances warranting the imposition of the death penalty, the victim is entitled to ₱75,000.00 as civil indemnity *ex delicto* and ₱75,000.00 as moral damages. These amounts were correctly imposed by the Court of Appeals. In *Lauga*, however, where the thirteen-year-old victim was raped by her father, the exemplary damages awarded to the victim was increased to ₱30,000.00. We are adopting this determination and hereby modify the exemplary damages accordingly.

WHEREFORE, the present appeal is hereby **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02917 dated


³⁷ An Act Prohibiting the Imposition of Death Penalty in the Philippines, enacted on June 24, 2006.
³⁸ G.R. No. 186228, March 15, 2010, 615 SCRA 548, 563.

December 19, 2008, affirming the conviction of accused-appellant for statutory rape in Criminal Case No. 4467 and modifying his conviction in Criminal Case No. 4468 from statutory rape to qualified rape is **AFFIRMED**. The exemplary damages awarded to AAA in both Criminal Case Nos. 4467 and 4468 are hereby **MODIFIED**, and increased to ₱30,000.00.

SO ORDERED.



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice