



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 194581

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
PEREZ,
SERENO, and
REYES, JJ.

DANILO MIRASOL AGUSTIN alias
"DANNY" and GEORGE SALAS
HARDMAN,

Accused,

DANILO MIRASOL AGUSTIN alias
"DANNY,"

Promulgated:

Accused-Appellant.

JUL 02 2012

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DECISION

REYES, J.

This case saddens us as victim ZZZ¹ did not truly get the full weight of justice because of technicalities and failure on the part of the prosecutor to file the proper informations. We join the trial court in its belief that both Danilo Mirasol Agustin (accused-appellant Agustin) and George Hardman (accused Hardman) raped ZZZ for a number of times. But like the trial court, we are saddened that a guilty man escapes punishment due to the prosecutor's inadvertence to file the proper informations, a knowledge that

¹ Consistent with *People v. Cabalquinto*, 533 Phil. 703 (2006), we will withhold the real name of the rape victim and will use instead the initials ZZZ.

any prosecutor must possess if our criminal justice system should work.² Notwithstanding this sorry event, we are tasked to review the present case.

The Case

We now resolve the appeal under Rule 124 filed by accused-appellant Agustin from the Decision³ dated February 18, 2010 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03518.

Antecedent Facts

Private complainant victim ZZZ was a 12-year-old girl who was then residing at San Fernando, Pampanga. Her father who had another partner is now deceased, while her mother has another family.⁴

One day, her stepmother fetched her from her grandmother's house. Her stepmother brought her to Guadalupe in Makati City and was left there. Victim ZZZ then walked towards Parañaque City until she reached a *Barangay* Hall in that city where she met accused-appellant Agustin. The latter then offered to feed her at his house which was just near the *Barangay* Hall.⁵

Accused-appellant Agustin brought ZZZ to the ground floor of the house he was renting from accused Hardman. She stayed with accused-appellant Agustin for one year, starting from the time accused-appellant Agustin brought her to the house. In her one year stay with accused-appellant Agustin, victim ZZZ was molested by accused-appellant Agustin and accused Hardman five times on separate occasions.⁶

² CA *rollo*, p. 57.

³ Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Priscilla J. Baltazar-Padilla and Francisco P. Acosta, concurring; *rollo*, pp. 2-20.

⁴ CA *rollo*, p. 18.

⁵ Id.

⁶ Id.

On the first instance, accused-appellant Agustin raped victim ZZZ by inserting his penis into her mouth. On the second instance, accused Hardman inserted his penis into ZZZ's private part after lubricating it with cooking oil and thereafter, Hardman put his penis into ZZZ's mouth. On the third instance, both accused-appellant Agustin and accused Hardman raped victim ZZZ. While her hands were tied, Agustin and Hardman succeedingly ravaged her youthful body, both inserted their penises into her organ. Accused Hardman even poked his penis into the mouth of ZZZ while it was discharging semen. On the fourth instance, accused-appellant Agustin raped ZZZ again in the former's house. And finally, on the fifth instance, ZZZ was again raped by accused-appellant Agustin at the house of accused George Hardman.⁷

In all these five instances, victim ZZZ would watch pornographic materials with accused-appellant Agustin. It would happen either in the morning or in the evening at accused-appellant Agustin's house and while his wife was away. As much as ZZZ would want to escape, she could not do so because the door was closed. Victim ZZZ also did not muster the courage to report to authorities her ordeal because accused-appellant Agustin and accused Hardman warned her against telling anybody, otherwise they would kill her. Accused-appellant Agustin threatened victim ZZZ that she would be riddled with bullets; he even hit her with a belt. Victim ZZZ did not tell accused-appellant Agustin's wife because she believed the latter would not believe her story. Every time she was raped, she felt pain.⁸

After the fifth instance of rape, accused-appellant Agustin transferred to Purok 4 near the Silverio Compound because accused-appellant Agustin and accused Hardman quarreled. Victim ZZZ went with accused-appellant Agustin to his new home at the Silverio Compound. It was at that place where victim ZZZ had the courage to report the incident to a certain Ate Lilia, victim ZZZ's neighbor, who subsequently reported the incident to a

⁷ Id. at 19.

⁸ Id. at 18-19.

certain Ate Baby who then reported the matter to the *barangay*.⁹

Accused Hardman was the first to be apprehended and was followed by accused-appellant Agustin. Police Officer Tan (PO Tan) and Ms. Cherylyn Tan's (Cherylyn) testimonies were dispensed with after the parties stipulated on them. Meanwhile, Dr. Irene Baluyot (Dr. Baluyot) testified as an expert witness. Dr. Baluyot's final medical report showed bruises and multiple scars on victim ZZZ's body, while the anogenital examination showed healing abrasion and redness in the perihymenal area fossa navicularis as well as scratch marks and scars on the perineum or the media aspect of the thigh of the child victim ZZZ.¹⁰

Accused-appellant Agustin was subsequently charged in an Information¹¹ dated January 28, 2005 with the crime of Rape under Article 266-A, par. 1(a) and Article 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353 in relation to Section 5(b), R.A. No. 7610, and which was docketed as Criminal Case No. 05-0143. The Information states as follows:

That on or about the 25th day of January 2005, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, by means of force, threats or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with complainant [victim ZZZ], a minor 12 years old, against her will and consent, which acts are detrimental to the normal growth and development of the minor-complainant.

CONTRARY TO LAW.¹²

During trial, aside from the testimony of victim ZZZ, the prosecution also presented Dr. Baluyot who testified on the Final Medical Report on victim ZZZ. Meanwhile, the defense presented both accused-appellant

⁹ Id. at 19.

¹⁰ Id. at 19-20.

¹¹ Id. at 12.

¹² Id.

Agustin and accused Hardman.¹³

Accused-appellant Agustin in his defense simply denied the accusation against him. He claimed that he reported for work everyday, including Saturdays and Sundays, from 6:00 o'clock in the morning to 6 o'clock in the evening; and that on January 25, 2005, he reported for work at 6:00 o'clock in the morning and went home at nighttime and that he did not go home in the afternoon of January 25, 2005. He also denied that his co-accused Hardman raped victim ZZZ. However, while he was denying the accusation against him, accused-appellant Agustin could not offer any motive or reason why victim ZZZ charged him of rape.¹⁴

As to accused Hardman, he admitted knowing victim ZZZ since the latter lived with accused-appellant Agustin at the ground floor of his house; he claimed knowing accused-appellant Agustin for one year. He alleged that on January 25, 2005, he started working at about 5:00 o'clock in the morning and that at around noontime, he was at the corner of Valley 2 and Dr. A. Santos Avenue doing his work as a barker. He asserted that he went home at 6:30 in the evening, rested and did not go out of the house. He was allegedly with his wife, his child, his stepson Joel, a certain Leovina Morong, Jeffrey, Shirley and other unnamed individuals. However, defense did not present any of the named individuals above. He also claimed that he did not see victim ZZZ on that day nor did he go to the house of accused-appellant Agustin. He denied raping the victim.¹⁵

The Ruling of the RTC

The RTC, after weighing all the pieces of evidence, found accused-appellant Agustin and accused Hardman guilty of the crime charged. The RTC noted that victim ZZZ recounted several episodes of sexual molestation

¹³ Id. at 50-53.

¹⁴ Id. at 52-53.

¹⁵ Id. at 53.

involving both accused-appellant Agustin and accused Hardman, but they were indicted only for the rape committed on January 25, 2005. Thus, while the RTC believes that both accused-appellant Agustin and accused Hardman were found guilty, it only convicted Agustin since Hardman did not conspire with Agustin when the latter raped ZZZ on January 25, 2005.¹⁶

On the defense of accused-appellant Agustin, the RTC found it hard to believe his alibi and denial since his statement that he was in some other place was not corroborated by other testimonies. Furthermore, it was also proven that even if he was at work at the time of the rape he could easily go to the *locus criminis* because of its proximity to his place of work.¹⁷

The RTC also gave credence to the testimony of victim ZZZ because despite her tender age of 12 years old, she was able to narrate the event that happened on January 25, 2005. In fact, the testimony of Dr. Baluyot strengthened the claim of ZZZ and belied altogether accused-appellant Agustin's defense.¹⁸

On the guilt of accused Hardman, the RTC has this to say:

It should be stressed that the Court believes that both accused had molested the private complainant but given the fact that what appeared in the information was only the abuse committed on 25 January 2005 which was proven to have been committed by accused Danilo Agustin, the Court can do no less but acquit the accused George Hardman.

If it were the intention of the prosecution to indict the accused of several episodes as narrated by the private complainant, several informations could have been filed, as the molestations committed in this case could not be considered a continuing crime, there having been separate criminal intents, thus:

“Where the information against the accused charges only one (1) rape he cannot be convicted of five (5) counts of rape committed on other dates (People vs. Guiwan, 331 SCRA 70, April, 27, 2000).”¹⁹

¹⁶ Id. at 54-56.

¹⁷ Id. at 57.

¹⁸ Id. at 57.

¹⁹ Id.

Accused-appellant Agustin was sentenced to suffer the penalty of imprisonment of *reclusion perpetua* with the period of his confinement considered part of the service of his sentence and to indemnify victim ZZZ by way of moral damages in the amount of ₱100,000.00. The RTC acquitted accused Hardman of the crime charged in the information because of reasonable doubt on his guilt.²⁰

The Ruling of the CA

The CA affirmed with modification the ruling of the RTC, reducing the award of moral damages from ₱100,000.00 to ₱50,000.00 and directing accused-appellant Agustin to pay civil indemnity to victim ZZZ in the amount of ₱50,000.00.²¹ In affirming the RTC Decision, the CA followed the long settled rule that it will not disturb the findings of the trial court as to the credibility of the witnesses because it is in a better position to observe the witnesses' candor and behavior in the witness stand. In the instant case, the trial court found ZZZ's testimony credible for being categorical, straightforward and consistent. The CA also stressed the fact that the victim was a minor, aged 12 years old, and that settled is the rule that when a woman, especially if a minor, declares she has been raped she reveals all that is necessary to prove that rape was committed. In addition, ZZZ's testimony was corroborated by the medical findings of Dr. Baluyot who conducted the medical examination on her and found that a healing abrasion at 7 o'clock area and redness at 5 o'clock area in the victim's perihymenal area and fossa navicularis are consistent with ZZZ's allegation that she was raped before the examination. The CA also did not give due credence to accused-appellant Agustin's contention that the RTC should have not believed ZZZ because for more than a year she did not report the incidents of rape accused-appellant Agustin and accused Hardman committed against her. The CA chose to give weight to the fact that Agustin and Hardman hurt her

²⁰ Id. at 58.

²¹ *Rollo*, p. 20.

and threatened her of harm so as to instill fear in ZZZ's young mind, forcing her to keep her silence on her ordeal. Finally, the CA agreed with the RTC in disregarding the defenses accused-appellant Agustin and accused Hardman raised. It held that denial and alibi are inherently weak and cannot prevail over the rape victim's positive identification of her rapist, and it cannot be believed when accused-appellant failed to prove the physical impossibility of his presence at the *locus criminis* at the time of rape.²²

Issues

Considering that accused-appellant Agustin and plaintiff-appellee People adopted their respective briefs²³ before the CA, we now rule on the matter based on the lone assignment of error which the accused-appellant raised in his brief²⁴ before the CA, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.²⁵

Our Ruling

We dismiss the appeal.

After a careful review of the records of this case, we see no reason to reverse or modify the findings of the RTC, especially because the CA has affirmed the same, albeit a reduction in the award of moral damages from ₱100,000.00 to ₱50,000.00 and an addition of ₱50,000.00 as civil indemnity.

²² Id. at 15-18.

²³ Id. at 28-30 and 34-35.

²⁴ CA *rollo*, pp. 37-47.

²⁵ Id. at 39.

Accused-appellant Agustin claims that the trial court gravely erred in giving credence to the victim ZZZ's version despite numerous inconsistencies and contradictions in her testimony. Accused-appellant Agustin further argues that ZZZ's silence and failure to report her ordeal for one year are actions contrary to human experience. He insists that because of the above arguments, the prosecution failed to prove his guilt with moral certainty.

We disagree with accused-appellant Agustin's contentions.

Offhand, like the CA, we resolve this case guided by these time-tested principles in deciding rape cases, namely: (1) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.²⁶

With these principles in mind, we agree with the RTC and the CA in finding victim ZZZ's credibility beyond doubt. Our jurisprudence has time and again held that we give great weight to the trial court's assessment when what is at issue is the victim's credibility. The trial court's finding of facts is conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. We hold on to this because the trial court had all the opportunity to observe directly the witnesses' deportment and manner of testifying. It can better evaluate the testimonial evidence of witnesses than the appellate court can do.²⁷

²⁶ *People v. Ben Rubio*, G.R. No. 195239, March 7, 2012; *People v. Estrada*, G.R. No. 178318, January 15, 2010, 610 SCRA 222, 230; *People v. Sanchez*, 320 Phil. 60, 68 (1995).

²⁷ *Id.* See also *People v. Apattad*, G.R. No. 193188, August 10, 2011, 655 SCRA 335, 349, citing *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 590.

Furthermore, based on the records and the observations of the court *a quo*, victim ZZZ who was then only 12 years old graphically narrated the beastly acts done to her, to wit:

T: Kailan nangyari yung ginawang masama sa iyo ni Danilo?

S: Noong Martes (January 25, 2005).

T: Saan naman yun nangyari?

S: Sa loob ng bahay namin (Silverio Compound, Purok 4, Bgy. San Isidro, Parañaque City.

x x x x

T: Paano nag-umpisa yung masamang nangyari sayo?

A: Tinawag po ako ni Tito Danilo sa kapitbahay namin, sumigaw siya tinawag nya ako kasi may utos daw sya.

T: Pagpunta mo sa kanya ano inutos niya?"

S: **Chupain ko daw sya.**

T: **Ginawa mo ba?**

S: **Hindi po, tinalikuran ko sya tapos sinampal niya ako.**

T: **Pagkasampal nya sayo ano nangyari?**

S: **Umiyak po ako tapos hinila nya damit ko kaya napunit tapos sinabi niya "ayaw mo ng chupa" tapos hinubad nya po ang short ko pati panty ko.**

T: **Ano yung sumunod na nangyari?**

S: **Pinahiga niya ako tapos pinasukan niya ako, ipinasok nya yung titi nya sa pepe ko.**

x x x x

T: Ilang beses ka ginawan ng masama ni Tito Danilo?

S: **Tatlo, una noong nakatira kami sa Valley 2 magkasama sila ni Kuya George pumunta sa bahay si Kuya George tapos sabi nya wag daw akong maingay kaya sumigaw ako tapos nagising si Tito Danilo sabi nya wag daw akong maingay kaya sumigaw ako tapos sinabi ni Kuya George na sya daw mauna sa akin kasi sya daw ang may-ari ng bahay pero sinabi naman ni Tito Danilo na sya daw mauna kasi sya daw ang nag-ampon sa akin. Nauna nga po si Kuya George, nagjakol sya tapos sinabi nya "chupain mo, chupain mo" pero hindi ko ginawa tapos pinasok niya na yung titi niya sa pepe ko tapos noong may lumabas na parang sipon sinabi nya kay Tito Danilo na "Danny ikaw naman". Hinawakan yung kamay ko ni Kuya George, pinasukan na ako ni Tito Danilo tapos sinabi ni Kuya George na "bilisan mo lang kasi ako naman" pagtapos ni Kuya George uli pumasok sa akin tapos si Tito Danilo uli. Tapos sinabi ni Tito Danilo na wag daw akong maingay kasi tatadtarin daw nya ako ng bala tapos sabi ni Kuya George "ako din magtagu-tago ka na papatayin kita pag maingay ka". Tapos yung**

pangatlo yung kinuwento ko kanina.²⁸ (Emphasis supplied)

Rightfully, the RTC and the CA gave credence to the testimony of the victim who did not only narrate her ordeal in a straightforward, convincing, and consistent manner, but also in a graphic and nauseating fashion. Indeed, we cannot imagine that a 12-year-old girl could describe vividly how accused-appellant Agustin and his co-accused Hardman deflowered and continuously ravaged her. We cannot imagine a child, as young as the victim, could utter words which are unutterable, unless she in fact saw and experienced the same. But the hard truth looks us in the eyes and tells us that victim ZZZ, a child at that time, has experienced the greatest injustice that an adult can do to a little girl – to deprive her of her dignity, her childhood and her innocence.

From the foregoing, between the alibi and denial of the accused-appellant and the positive identification and credible testimony of the victim, we cannot but give weight to the latter, especially because the distance between the place where the rape was committed and the workplace of the accused-appellant is simply a walking distance. As we have always held:

Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. [S]ince alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime.²⁹ (Citation omitted)

To escape liability, accused-appellant Agustin also belabors the issue of the victim's failure to immediately report her ordeal. He insists that there is no truth to the victim's accusation because it took one year before she finally had the courage to tell another person of the rape. This argument must also fail. **First**, we have always held that there is no standard behavior

²⁸ CA rollo, pp. 22-23.

²⁹ *People v. Henry Arpon y Juntilla*, G.R. No. 183563, December 14, 2011.

expected of rape victims; depending on the circumstances and their personal and emotional situation, victims react differently. **Second**, it is not rare for young girls to hide for some time the violation of their honor because of the threats on their lives.³⁰ In the instant case, the victim was a minor and had no family to run to. As such, she only had the accused-appellant to take care of her and to feed her. The accused-appellant and his co-accused also threatened her with harm and even death. Thus, all these justify her silence and the delay in reporting her ordeal.

Finally, we reiterate here our dismay for the prosecution's failure to file the proper informations as to the other acts of rape. As shown above, victim ZZZ was violated five times: the first, the fourth, and the fifth by accused-appellant Agustin; the second by accused Hardman; and the third instance by both accused-appellant Agustin and accused Hardman. We can only convict accused-appellant Agustin for the rape committed on January 25, 2005, since it was the rape committed on said date which was properly charged in an information. The trial court was correct in not convicting accused-appellant Agustin for the other acts of rape because, as held in *People v. Guiwan*,³¹ the accused-appellant cannot be convicted of other acts of rape committed on other dates where the information filed against him charges only one (1) rape, which he committed on January 25, 2005.

The trial court was also correct in acquitting accused Hardman despite proof of the commission of the acts of rape on the second and third instances because, *first*, he was not properly charged in those instances and *second*, he was not present at the fifth or during the January 25, 2005 act of rape. Indeed, this is a great blunder, if not an injustice, committed by the prosecutor against victim ZZZ.

³⁰ *People v. Cacayan*, G.R. No. 180499, July 9, 2008, 557 SCRA 550, 563.
³¹ 387 Phil. 82 (2000).

One Last Note

We cannot close this chapter in ZZZ's life without mentioning the responsibility of her parents on what befell her. Of course, her father has gone to the life beyond. But the violation of her honor could not have happened if her mother did not abandon her for another family and if her stepmother did not leave her alone, like a cat, to fend for herself in the wilderness of the city. We cannot close our eyes and simply decide this case without advocating for a stronger law against parents or guardians who leave a helpless child alone to fend for herself.


WHEREFORE, the Decision dated February 18, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 03518 is hereby **AFFIRMED**.

SO ORDERED.



BIENVENIDO L. REYES
Associate Justice


WE CONCUR:




ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division



ARTURO D. BRION
Associate Justice

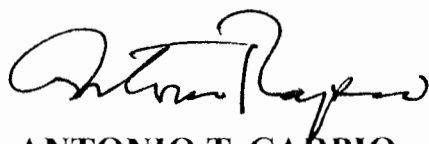


JOSE PORTUGAL PEREZ
Associate Justice


MARIA LOURDES P. A. SERENO
Associate Justice

CERTIFICATION

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.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296)
The Judiciary Act of 1948, as amended)