Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 189280**
	Present:
- *versus* -	SERENO, *CJ.,* Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, and REYES, *JJ.*
ALBERTO DELIGERO y BACASMOT, Accused-Appellant.	Promulgated: APR 17 2013

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00495MIN dated August 29, 2008, which affirmed with modification the conviction of accused-appellant Alberto Deligero y Bacasmot for the crime of rape.

Accused-appellant was charged with qualified rape in an Information dated December 16, 2002, to wit:

> The undersigned accuses ALBERTO DELIGERO Y BACASMOT, grandfather of herein complainant, of the crime of Rape, committed as follows:
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> That sometime on December 15, 2000 and any time thereafter, and until July 2002, at x x x, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force, did then and there willfully, unlawfully and feloniously have

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1 *Rollo*, pp. 3-27; penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

> carnal knowledge with his own granddaughter, one [AAA],[2] a minor, 15 years of age, against her will.[3]

On September 9, 2003, accused-appellant pleaded not guilty[4] to the offense charged. Thereafter, trial ensued. The prosecution presented complainant AAA and Medico-Legal Officer Dr. Edgar S. Savella of the National Bureau of Investigation (NBI), Caraga Regional Office. We quote with approval the summary of the testimonies of the witnesses by the Court of Appeals:

> AAA was already seventeen (17) years old at the time of her testimony before the court *a quo*. She was barely thirteen (13) years old when appellant allegedly raped her.
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> Appellant is AAA's granduncle, being the brother of her paternal grandfather. Appellant had eight (8) children from his estranged wife who lived in another barangay. AAA fondly calls appellant "Papa." In the early part of 2000, appellant resided with AAA's family for about four (4) months. After building his own house, appellant moved in to his new house. AAA also transferred to appellant's new house. AAA's parents were promised by appellant that he would send AAA to school. AAA recalled that she lived with appellant for about three (3) years and during those years, AAA claimed to have been raped by appellant many times.
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> Sometime on December 15, 2000, while inside the bedroom of appellant's house, AAA was awakened from her sleep when she felt appellant inside her "malong" which she used as blanket. Appellant, who was already naked, held AAA's hands and mounted her. While on top of AAA, appellant threatened AAA not to tell her parents because he would kill her. Appellant then inserted his penis into her vagina. AAA felt appellant's penis penetrating her four (4) times. AAA could not offer any resistance because of the threat earlier made by appellant. She felt pain and noticed that her vagina bled.
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> AAA further testified that her parents later on came to know of her defilement when appellant started telling the people in the neighborhood that she was pregnant. At the instance of her father, AAA and appellant were invited to the police station to be investigated. They then proceeded to the National Bureau of Investigation, Caraga Regional Office, where AAA executed her sworn statement on October 7, 2002. In the said sworn statement, AAA narrated that when the rumors of her pregnancy had spread in the neighborhood, appellant instructed her to admit that it was her boyfriend, Boyet, who was responsible for her pregnancy. Fearing for her and her family's lives, AAA claimed that she was forced to admit that it was Boyet who got her pregnant. However, the truth was that it was appellant who got her pregnant.
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> Dr. Edgar S. Savella, medico-legal officer of NBI Caraga Regional Office testified that when he examined AAA, the latter was already pregnant. He found no laceration in AAA's hymen. He explained that

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2 The real names of the victim and her family, with the exception of accused-appellant, are withheld pursuant to Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, 533 Phil. 703 (2006).

3 Records, p. 1.

4 Id. at 26.

60% of rape victims have distensible hymen, which means that no laceration can be found in the hymen. A distensible hymen admits a 2.5 cm tube, which is the average size of an adult male organ in full erection. So, if an object with a 2.5 cm diameter is inserted into the vagina with distensible hymen, the hymen will not break. When asked during cross-examination whether it was possible that the sexual act could be consensual in the absence of laceration, Dr. Savella explained that it is the type of hymen that determines such possibility.

For the defense, appellant testified that AAA's father is his nephew, being the son of his brother. Appellant disclosed that sometime on June 2000, he lived with AAA's family and stayed with them for about four (4) months. During his four (4) month stay with AAA and her family, he slept in the sala of the family house with AAA. He claimed that since the sala was at the first floor of the house and the bedrooms were at the second floor, AAA's parents and siblings would often see him and AAA sleeping together. Oftentimes when he and AAA would sleep together at the sala, appellant testified that they shared only one (1) "malong," which they used as a blanket. After four (4) months, appellant transferred to his new house which he built fronting the house of AAA and her family. Appellant further testified that when he moved in to his new house, AAA moved in with him as well. Appellant claimed that from that time on, he and AAA were already living together as husband and wife. The alleged amorous relationship between him and AAA was known to the public, particularly their neighbors.

Sometime on June 14, 2002, AAA's mother came and fetched AAA. AAA then worked at a videoke bar. After three (3) months, AAA went home to her family but stayed there for one (1) night only. Appellant testified that AAA went back to his house and confided that she would be getting married. AAA told appellant that she'll be marrying her boyfriend, Boyet, a "tricykad" driver. In the course of their conversation, AAA confided also to appellant that her menstrual period had been delayed. Afterwhich, appellant informed AAA's father that [his] daughter could be pregnant. Instead, he was arrested and was then brought to the police station to be investigated.

At the police station, AAA allegedly admitted that it was Boyet who got her pregnant. Appellant claimed that there were people at the police station who witnessed AAA's declaration. Together with AAA's mother, appellant then brought AAA to a public hospital to have her medical examination.

On cross-examination, appellant claimed he courted AAA, which the latter accepted. During his four (4) month stay with AAA's family, he had sexual intercourse with AAA when they both slept together at the sala. When asked whether they exchanged letters professing their love for each other, appellant answered in the affirmative. The latter testified that when he visits Gingoog City, he would send letters to AAA. On the other hand, AAA allegedly wrote him letters as well. However, appellant disclosed that he tore the letters sent to him by AAA because the latter requested him to do so for fear that her father would discover the said letters.

To bolster his claim that he and AAA were lovers, appellant testified that he intended to marry AAA. He even made AAA as one of his beneficiaries in his Social Security Service retirement plan.

> Appellant also claimed that AAA's father could have been impelled by revenge in filing the case against him. According to appellant, AAA's father harbored ill-feelings towards him because he reported to his previous employer that AAA's father sold four (4) hectares of land owned by the said employer without the latter's knowledge.
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> Corroborating appellant's testimony that he and AAA were living together as husband and wife was Rudy L. Escatan (hereafter referred to as Rudy). Rudy testified that he knew appellant and AAA because both were his neighbors. During those times that AAA lived with appellant, Rudy would often see appellant and AAA together. Both acted as husband and wife. Further, Rudy testified that he saw appellant and AAA kissing each other numerous times.[5] (Citations omitted.)

On September 20, 2006, the trial court rendered its decision. The dispositive portion of the decision reads:

> WHEREFORE, the Court finds the accused Alberto Deligero y Bacasmot **GUILTY** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, par. 1(a) in relation to Article 266-B, par. 5 of the Revised Penal Code, as amended by Republic Act No. 8353.
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> He is sentenced to suffer an imprisonment of **RECLUSION PERPETUA** instead of death by lethal injection, which penalty has been abolished.
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> Further, he is ordered to pay private complainant and her family the sum of Seventy[-]Five Thousand Pesos (₱75,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.
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> In the service of his sentence, he shall be credited with the full time benefit during which time he has undergone preventive imprisonment if he agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners, if not only 4/5 as provided under Article 29 of the Revised Penal Code.
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> He shall serve his sentence at the Davao Prison and Penal Farm, Panabo City, Davao del Norte.[6]

According to the trial court, the testimony of AAA was straightforward. Accused-appellant failed to show any ill motive on the part of AAA to impute such a grave offense against her granduncle. The trial court was not convinced with the sweetheart theory advanced by accused-appellant, and observed that the latter did not admit that he and AAA were lovers when they were brought to the police substation in Butuan City. Accused-appellant instead insinuated at that time that a certain Boyet could have impregnated AAA.

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5 *Rollo*, pp. 5-9.

6 CA *rollo*, p. 43.

Pursuant to the ruling of this Court in *People v. Mateo*,[7] the Court of Appeals conducted an intermediate review of the decision of the trial court. On August 29, 2008, the Court of Appeals rendered its decision affirming with modification the findings of the trial court:

> **WHEREFORE**, premises considered, the Decision dated September 20, 2006 of the Regional Trial Court, 10th Judicial Region, Branch 1, Butuan City, is hereby **AFFIRMED with MODIFICATIONS**. Appellant Alberto Deligero y Bacasmot is **SENTENCED** to suffer the penalty of *reclusion perpetua* for the crime of simple rape committed against AAA in Criminal Case No. 9740, with no possibility for parole. Appellant is further **ORDERED** to indemnify AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000,00 as moral damages. Costs against appellant.[8]

While the Court of Appeals sustained the findings of fact by the trial court, it held that the crime committed by accused-appellant was only simple rape. Primarily, the Court of Appeals held that the unauthenticated photocopy of AAA's baptismal certificate was not sufficient to prove the age of AAA. Furthermore, while it was alleged in the Information that accused-appellant is AAA's grandfather, what was proven during the trial was that he was AAA's granduncle, being the brother of AAA's paternal grandfather.

Accused-appellant appealed to this Court through a Notice of Appeal.[9] On February 22, 2010, accused-appellant filed a Manifestation[10] stating that he will no longer file a supplemental brief as all relevant matters have already been taken up in his Appellant's Brief with the Court of Appeals. Thus, he brings before us the same Assignment of Errors:

> I.
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> THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE ITS INCREDIBILITY.
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> II.
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> THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

Accused-appellant anchors his prayer for acquittal on the following points, which, according to him, are undisputed: (1) accused-appellant was unarmed; (2) there was no proof of great disparity in terms of physical

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7 G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
8 *Rollo*, p. 26.
9 Id. at 28-30.
10 Id. at 47-50.
11 CA *rollo*, pp. 15-15A.

strength or capacity between accused-appellant and AAA; and (3) AAA never put the slightest resistance against accused-appellant.[12]

We find accused-appellant's contentions too feeble to warrant a reversal of his conviction.

Accused-appellant's being unarmed is inconsequential considering the circumstances of the instant case. We have previously held that "in rape committed by close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation."[13] Accused-appellant, AAA's granduncle, is certainly a person having moral influence and ascendancy over AAA. AAA would surely observe the deference accorded by her own parents to accused-appellant, her father's uncle. Indeed, AAA herself fondly called accused-appellant as "Papa," showing that she more or less treated him like her own father.

Neither is it required that specific evidence be presented to prove the disparity in physical strength between AAA and accused-appellant. As argued by the prosecution, accused-appellant is a grown man who is used to hard work and manual labor as a farmer and a chainsaw operator, while AAA is a very young girl when she was allegedly raped and when she testified. It was the trial court which had the opportunity to observe the physical disproportion between them and considered the same in finding accused-appellant guilty. Accordingly, it is not for this Court to reverse the findings of fact of the trial court on this matter.

Accused-appellant's assertion that "there is nothing in the record that would show that [accused-appellant] verbally threatened the complainant in order to accomplish the x x x bestial acts"[14] is downright misleading. AAA clearly stated in her testimony that accused-appellant threatened to kill her:

Q What was his position when he was inside your "malong" that woke you up?
A He was holding my hands and he was on top of me.

Q What was he wearing while he was inside your "malong" holding your hands and he was on top of you?
A He was already naked.

Q And when he laid on top of you what else did he do?
A He told me not to tell my parents what he was doing to me.

Q You said he raped you, how did he rape you?

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12 Id. at 15A-16.
13 *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.
14 CA *rollo*, p. 16.

> A He laid himself on top of me and threatened me not to tell my parents what happened because if I would, he will kill me.[15]

Accused-appellant likewise points out that there was no laceration of the hymen of AAA according to the medical evidence presented by the prosecution. Certainly, accused-appellant cannot use this evidence to assert that he never had carnal knowledge of AAA, as he had already admitted the same in his assertion of his sweetheart theory. Accused-appellant even admitted in open court that he was the father of AAA's baby.[16]

Moreover, this medical finding does not prove that the sexual intercourse between accused-appellant and AAA was consensual. Prosecution witness Dr. Savella, who made the above medical finding, had adequately explained that the absence of laceration was not due to the absence of force during the intercourse, but because of the type of hymen of the subject. This echoes the observation in *People v. Llanto,*[17] where this Court noted several extreme cases of distensible or elastic hymen remaining intact in spite of sexual contact:

> [I]t is possible for the victim's hymen to remain intact despite repeated sexual intercourse. x x x. Likewise, whether the accused's penis fully or only partially penetrated the victim's genitalia, it is still possible that her hymen would remain intact because it was thick and distensible or elastic. We stated in *People v. Aguinaldo* that the strength and dilability of the hymen varies from one woman to another such that it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue. In some cases even, the hymen is still intact even after the woman has given birth. (Citations omitted.)

Furthermore, an examination of the testimony of AAA shows that the alleged rape had not been attended by a huge physical struggle that would have caused injuries to AAA. Instead, accused-appellant apparently subdued AAA by threatening to kill her. The lack of injuries, therefore, is consistent with the testimonial evidence presented by the prosecution.

This Court has likewise repeatedly held that the sweetheart theory, as a defense, necessarily admits carnal knowledge, the first element of rape. In *People v. Mirandilla, Jr.,*[18] we held that "[t]his admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual."

In the case at bar, accused-appellant miserably failed to discharge this burden. The testimony of the 54-year old Rudy Ecatan, which was presented

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15 TSN, March 10, 2004, p. 8.
16 TSN, April 22, 2005, pp. 9-10.
17 443 Phil. 580, 594 (2003).
18 G.R. No. 186417, July 27, 2011, 654 SCRA 761, 772.

by the defense to prove that accused-appellant and his 13-year old grandniece were lovers, is unconvincing and relies too much on his hasty conclusions rather than factual observations. Ecatan, who admitted that he was very close to accused-appellant,[19] believes that accused-appellant and AAA were lovers just because the former is the father of AAA's child. The trial court was quick to discover that even this "knowledge" about the paternity of the child was hearsay:

> Q What can you say to the charge against Alberto Deligero?
> A It is a lie, sir.
>
> Q Why do you say that it is a lie?
> A Because the girl had delivered a baby.
>
> Court:
>
> Q Who is the father of the baby?
> A Alberto.
>
> Q How did you know that?
> A I know about this because they are our neighbors.[20]

Ecatan's reliance on hearsay was further shown by his unawareness of the true blood relationship between AAA and accused-appellant:

> Q How is Alberto related to [AAA]?
> A They are saying that Alberto is the grandfather of [AAA].
>
> Q Is it true that Alberto Deligero is really the grandfather of [AAA]?
> A Yes, sir.
>
> Q Because their family names are the same?
> A Yes, sir.[21]

Accused-appellant's indecisiveness with his defense shows as well that he was being less than truthful. During the initial investigation, he claimed that a certain Boyet was AAA's boyfriend and was the father of AAA's child. During the trial, however, after AAA denied knowing any person named Boyet, accused-appellant now claims that he and AAA were lovers.

The trial court, which had the opportunity to observe the deportment and manner of testifying of Ecatan and accused-appellant, on one hand, and that of AAA, on the other, concluded that it was AAA who was telling the truth. We have repeatedly held that factual findings of the trial court, especially when affirmed by the Court of Appeals, are "entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct

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19 TSN, March 16, 2006, p. 7.
20 Id. at 5-6.
21 Id. at 6.

presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified."[22] Thus, where the accused-appellant, as in the case at bar, fails to show that both the trial court and the Court of Appeals overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the witnesses and of their respective versions, this Court is constrained to affirm such uniform factual findings.

The trial court found accused-appellant guilty of qualified rape under Article 266-B, paragraph 5(1) of the Revised Penal Code, which provides:

> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
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> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The Court of Appeals modified the Decision of the trial court and adjudged accused-appellant to be liable only for simple rape, ruling that the unauthenticated photocopy of AAA's baptismal certificate was not sufficient to prove the age of AAA. The Court of Appeals furthermore ruled that while it was alleged in the Information that accused-appellant is AAA's grandfather, what was proven during the trial was that he was AAA's granduncle, being the brother of AAA's paternal grandfather.

We agree with the modification of the Court of Appeals. Moreover, we note that even if the correct blood relationship of being AAA's granduncle was alleged in the Information, and the age of AAA was proven by sufficient evidence, accused-appellant would still be liable for simple rape. The granduncle, or more specifically the brother of the victim's grandfather, is a relative of the victim in the fourth civil degree, and is thus not covered by Article 266-B, paragraph 5(1).

Finally, this Court finds it appropriate to hold accused-appellant liable to AAA for exemplary damages. In *People v. Rante*,[23] the Court held that exemplary damages can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show

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22 *People v. Taguibuya*, G.R. No. 180497, October 5, 2011, 658 SCRA 685, 690-691, citing *People v. Condes*, G.R. No. 187077, February 23, 2011, 644 SCRA 312, 322-323; *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, 544 Phil. 468, 479 (2007); *People v. Taan*, 536 Phil. 943, 954 (2006); *Bricenio v. People*, 524 Phil. 786, 793-794 (2006); *People v. Pacheco*, 468 Phil. 289, 299-300 (2004).

23 G.R. No. 184809, March 29, 2010, 617 SCRA 115, 127.

the highly reprehensible or outrageous conduct of the offender. In the case at bar, accused-appellant exhibited an extremely appalling behavior in forcing himself upon his thirteen-year old grandniece, threatening to kill her, and even persisted in humiliating her by depicting her as a girl with very loose morals. Accordingly, "to set a public example [and] serve as deterrent to elders who abuse and corrupt the youth,"[24] we hereby award exemplary damages in the amount of ₱30,000.00 to AAA in accordance with Article 2229[25] of the Civil Code.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00495MIN dated August 29, 2008 is hereby **AFFIRMED** with **MODIFICATION**. In addition to the amounts awarded by the Court of Appeals, accused-appellant Alberto Deligero y Bacasmot is further ordered to pay ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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24 Id.

25 Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

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