



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 208716

Present:

SERENO, C. J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

- versus -

ELADIO B. LUMAHO alias
"ATTUMPANG,"
Accused-Appellant.

Promulgated:

SEP 24 2014

x ----- x

DECISION

PEREZ, J.:

This is an appeal filed by herein accused Eladio B. Lumaho alias "Attumpang" (Lumaho) from the Decision¹ of the Court of Appeals, affirming with modification the decision of conviction rendered by the Regional Trial Court of Lagawe, Ifugao, and finding the accused guilty of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code.

The Facts

Before the Regional Trial Court of Lagawe, Ifugao, Lumaho was charged with one count of the crime of rape under Art. 266-A and B of the Revised Penal Code as amended in relation to Republic Act No. 7610.

¹ Penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting, concurring. *Rollo*, pp. 2-11.

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Criminal Case No. 1765

That sometime in the morning of December, 2007, at Nuntiguing, Panubtuban, Asipulo, Ifugao, hence, within the jurisdiction of this Honorable Court, the above-named accused DID then and there willfully, unlawfully and feloniously by force and intimidation have sexual intercourse with one [AAA],² a minor, seven (7) years of age, at the time of the commission of the offense and a daughter of the accused, against her will and consent.³

When arraigned on 20 April 2010, he pleaded not guilty to the offense charged.⁴

Version of the Prosecution

The victim, AAA, then 7-years-old, narrated that her father, accused Lumaho, raped her sometime in December 2007. She narrated that she was staying in her grandfather's house in Panubtuban, Asipulo, Ifugao, when she decided to visit her father Lumaho in his house located also in Panubtuban. Upon reaching his house, she narrated that Lumaho brought her to a shanty and he removed her shirt, pants and panty. He then had carnal knowledge of AAA by inserting his penis inside her vagina. The victim felt pain and cried after the wrongful deed of her father. Lumaho warned AAA not to tell anybody about the incident. However, the crime eventually came to the knowledge of BBB (distant grandmother), prompting BBB and AAA to go to the police station to report the crime. Afterwards, AAA was brought to the hospital⁵ for medical examination. Though the victim failed to recall the exact date of the commission of rape, she remembered that it happened in December because she was on a school vacation and Christmas carols were being played during that time.⁶

On cross-examination, AAA narrated that after the death of her mother, she stayed with her grandfather's house as she did not like to stay with her father. While on school break sometime in December 2007, she visited her father, but such visit led to the commission of rape.⁷

² The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of their immediate family or household members, shall not be disclosed to protect her privacy and fictitious initials shall, instead, be used, in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-10-11-SC dated 19 October 2004.

³ Records, p. 1.

⁴ Id. at 22.

⁵ Ifugao Provincial Hospital.

⁶ TSN, 8 July 2010, pp. 2-7.

⁷ Id. at 6-9.

The prosecution likewise presented Dr. Mae Codamon-Diaz (Dr. Diaz), the medico-legal expert assigned at Ifugao Provincial Hospital who examined AAA. Dr. Diaz narrated that on 28 January 2008, she examined AAA in relation to her complaint of sexual abuse against her father. Upon receipt of such information, she interviewed AAA and elicited from her that she was sexually abused by her father one month ago. Upon examining AAA's genitalia, Dr. Diaz found out that there was a month-old healed laceration on the part of the victim's hymen.⁸

During Dr. Diaz's cross-examination, the defense emphasized that a healed laceration on a genitalia can likewise indicate that a sexual abuse may have happened earlier than December 2007. It was also highlighted that laceration can also be caused by other means such as sexual manipulation and insertion of a blunt object.⁹

Finally, the prosecution presented its last witness, BBB. BBB testified that she is the first cousin of the grandmother of AAA. She testified that sometime in March 2008, AAA's cousin, CCC, went to her and told her about the rape incident committed against AAA. Out of pity, she brought AAA to the police station to report the crime. In her presence, AAA narrated to the investigating officers that she (AAA) was sexually abused by her own father Lumaho. Thereafter, CCC accompanied AAA to the hospital to be medically examined.¹⁰ During cross-examination, however, BBB clarified that the first part of her testimony was narrated to her by CCC while the last part was what she heard during the investigation in the police station.¹¹

Aside from the testimonies of AAA, Dr. Diaz and BBB, the prosecution likewise offered as evidence a certificate issued by the Office of the Civil Registry of Asipulo, Ifugao that AAA was born on 12 January 2000¹² to prove that she was a minor when the incident of rape happened. The medical certificate¹³ issued by Dr. Diaz was also presented.¹⁴

⁸ TSN, 20 July 2010, pp. 2-3.

⁹ Id. at 3-4.

¹⁰ TSN, 4 August 2010, pp. 2-3.

¹¹ Id. at 4.

¹² Records, Exhibit A, p. 7.

¹³ Id. at 6.

¹⁴ TSN, 4 August 2010, p. 4.

Version of the Defense

The defense presented its lone witness Roland Bennog (Bennog) to prove that the accused Lumaho was not present in his house in Nuntiguing, Asipulo when the alleged rape happened. He testified that from August 2007 until 3 January 2008, Lumaho was with him in his house located at Naddug, Panubtuban, Asipulo, Ifugao. He stated that it would take at around 20 to 30-minutes to travel from Naddug to Nuntiguing through hiking. He identified AAA as the daughter of Lumaho and remembered that she usually goes to her father's house to eat and ask for money. However, he denied that AAA was able to meet Lumaho on December 2007.¹⁵

During the pre-trial, both parties stipulated that the victim AAA is the daughter of accused Lumaho and AAA was only seven years of age at the time the alleged rape was committed.¹⁶

The Ruling of the Trial Court

The trial court on 5 September 2011 found Lumaho guilty beyond reasonable doubt of the crime of rape and imposed upon him the penalty of *reclusion perpetua* without the benefit of parole in lieu of the non-imposition of the death penalty under Republic Act No. 9346 or the Anti-Death Penalty Law. The dispositive portion reads:

WHEREFORE, premises considered, the court finds accused guilty of rape under Article 266-A and 266-B beyond reasonable doubt and hereby sentences the accused of *reclusion perpetua* without the benefit of parole. The accused is further ordered to pay the private complainant AAA the amount of Seventy Five Thousand (P75,000.00) Pesos as indemnity; Fifty Thousand (P50,000.00) Pesos as Moral Damages and Twenty Five Thousand (P25,000.00) Pesos as Exemplary Damages.¹⁷

In its ruling, the trial court found more credible the positive and straightforward testimony of AAA than the testimony of the defense's witness Bennog. It concluded that the alibi presented cannot stand against the categorical statement of AAA, that, it was her own father who sexually abused her when she went to visit him in his house.

¹⁵ TSN, 5 January 2011, pp. 2-4.

¹⁶ Records, p. 36.

¹⁷ Id. at 99-100.

The Ruling of the Court of Appeals

On 30 May 2013, the appellate court modified the ruling of the trial court as to the imposition of amount of moral and exemplary damages. The dispositive portion reads:

FOR THE STATED REASONS, the September 5, 2011 Decision of the Regional Trial Court is **AFFIRMED with MODIFICATION** that accused-appellant **ELADIO B. LUMAHO alias “ATTUMPANG”** is sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole and is ordered to pay the offended party civil indemnity of Php75,000.00, moral damages of Php75,000.00 and exemplary damages of Php30,000.00.¹⁸

The appellate court sustained the finding of credibility of AAA in her full recollection of the rape. AAA recounted the events vividly and narrated in open court how the accused Lumaho committed the bestial act of rape against her. Further, it dismissed the argument that the victim’s responses in open court were elicited from leading questions, thus, must be disregarded. The appellate court emphasized that the victim was only 7 years of age when the crime of rape was committed and was only 10-years-old when she testified in open court, thus, a leeway must be accorded in her narration. Nevertheless, the answers propounded failed to diminish her credibility especially as against the alibi presented by the defense. As to the penalty, the appellate court affirmed the imposition of the trial court of *reclusion perpetua* without the benefit of parole pursuant to Republic Act No. 9346. Finally, the award of moral and exemplary damages was increased to ₱75,000.00 and ₱30,000.00, respectively, in view of the prevailing jurisprudence.

Our Ruling

After a careful review, we affirm with modification the rulings of the trial court and Court of Appeals.

Before this Court, the accused asserts alibi as its main argument. The accused likewise avers error on the part of the appellate court when it found the testimonies of AAA and BBB as credible and trustworthy to render the verdict of conviction against him.

¹⁸

Rollo, pp. 10-11.

We find no merit in the appeal.

Article 266-A, paragraph 1 of the Revised Penal Code describes how rape is committed:

Rape, When and How Committed. – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat or intimidation;**
- b) When the offended party is deprived of reason or is otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (Emphasis ours).

Rape is qualified if 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.¹⁹

In this case, the prosecution established all the elements to constitute as qualified rape.

In open court, AAA positively identified her father Lumaho as the person who had carnal knowledge of her in his shanty. She narrated that when she visited her father, he brought her to a shanty and while inside, he removed all her pieces of clothing, from her shirt up to her panty. He then successfully had a carnal knowledge of her by inserting his penis into her vagina. Without any other recourse, AAA did nothing but cry. Before she left, Lumaho threatened her to keep silent about what happened.

AAA's narration of the crime of rape was strengthened by the testimony of Dr. Diaz, who narrated that upon her examination of AAA's genitalia sometime in January 2008, she found that there was a month-old healed laceration on the victim's hymen. The period was held to consistent with the allegation of rape which happened on December 2007.

¹⁹ Revised Penal Code, Art. 266-B.

In *People v. Manigo*,²⁰ where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place. A rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case.²¹

The accused tried to raise doubt on the victim's credibility due to the answers propounded because of leading questions.

We are unconvinced.

While the Court noticed that some of AAA's responses were elicited from leading questions, we find no fault on the part of the trial court in accepting the testimony of AAA as credible evidence. It must be emphasized that the liberality in this case is acceptable in order to serve the ends of justice. We are not oblivious to the circumstances of the case, a child testifying in open court at the age of ten to narrate that she was raped by her father at the young age of age seven. Truly, liberality is more of an exception. And in this case, we find that exception meritorious.

The liberality of the trial court is not equated to diminished credibility. In straightforward, positive narration, she was able to convey, despite her tender age, the essential details to convict the accused. Jurisprudentially settled is the principle that if a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof.²² Putting more emphasis, the factual findings of the trial court, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal.²³

In the same way, we also dismiss the argument of hearsay evidence.

²⁰ G.R. No. 194612, 27 January 2014 citing *People v. Corpuz*, 517 Phil. 622, 637 (2006).

²¹ *People v. Corpuz*, id.

²² *People v. Manigo*, supra note 20 citing *People v. Arcosiba*, G.R. No. 181081, 4 September 2009, 598 SCRA 517, 526 citing further *People v. Baligod*, 583 Phil. 299, 305 (2008).

²³ *People v. Gani*, G.R. No. 195523, 5 June 2013, 697 SCRA 530 citing *Pielago v. People*, G.R. No. 202020, 13 March 2013, 693 SCRA 476, 485; *People v. Saludo*, G.R. No. 178406, 6 April 2011, 647 SCRA 374, 386-387.

The defense is trying to suggest that BBB's knowledge of AAA's sexual abuse is only hearsay. It emphasized BBB's answer during cross-examination that the first part of her testimony was related only by CCC.

An evidence is considered hearsay if its probative value is not based on personal knowledge of the witness but on the knowledge of some other person not on the witness stand.²⁴ A witness can testify only to those facts which he knows of his personal knowledge and derived from his own perception.²⁵

Upon review of the records, BBB indeed testified that the first portion of her statement was related only by CCC. However, the defense failed to specify with particularity which of the first portion was hearsay. Contrary to the allegation of the defense, what is apparent is the narration of BBB that she personally heard from AAA herself, during police investigation, that she was abused by her father. And this statement obviously does not fall within the ambit of hearsay.

As final argument, Lumaho advanced the defense of alibi □ that he and Bennog were together in the latter's house when the alleged incident happened.

Time and again, this Court has consistently held that alibi is an inherently weak defense because it is easy to fabricate and highly unreliable.²⁶

In his narration, Bennog testified that Lumaho was not in his house at Nuntiguing, Panubtuban when the alleged rape incident happened as the accused was in his house at Naddug, also in Panubtuban, from August 2007 until the summer of 2008. However, it was revealed upon further inquiries that Naddug, where he supposedly was, is only three hundred meters away from Nuntiguing, where the rape was done.

For Lumaho's alibi to be given consideration, he (Lumaho) must be able to establish by clear and convincing evidence that he was in a place other than the *situs criminis* at the time when the crime was committed, such that it was physically impossible for him to have been at the scene of the

²⁴ Regalado, *Remedial Law Compendium*, 10th Revised Edition, 2004, p 736.

²⁵ Rules of Court, Rule 130, Section 36.

²⁶ *People v. Gani*, supra note 23 citing *People v. Veloso*, G.R. No. 188849, 13 February 2013, 690 SCRA 586, 597.

crime when it was committed.²⁷ Undoubtedly, he failed to do so because his own witness said that the distance between the two places was only three hundred meters away.

In criminal law jurisprudence, alibi cannot prevail over the positive and categorical testimony and identification of the complainant. For alibi to prosper, it must be supported by credible corroboration from disinterested witnesses.²⁸ Evidently, Bennog is not a disinterested witness as he is a friend of the accused. Aside from Bennog, no additional witness was presented by the defense to corroborate the physical absence of Lumaho in the scene of the crime. It is worth stressing that even Lumaho himself failed to testify in court to personally deny the accusations against him.

Positive and categorical identification of AAA, without any showing of ill-motive on her part, prevails over an unsubstantiated alibi. An alibi, without any clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given greater evidentiary value over the testimony of AAA who testified on affirmative matters.²⁹

The penalty prescribed for qualified rape is death. As prescribed under Art. 266-B of the Revised Penal Code, death penalty shall be imposed if the crime of rape is committed by a parent against his child under eighteen (18) years of age. As conclusively proven by the prosecution, accused Lumaho had carnal knowledge of his 7-year-old child AAA through force and intimidation. However, in view of Republic Act No. 9346 or the Anti-Death Penalty Law, the penalty of *reclusion perpetua* without the eligibility of parole³⁰ shall be imposed in lieu of the imposition of death penalty.³¹

²⁷ *People v. Gani*, id.

²⁸ *People v. Amistoso*, G.R. No. 201447, 9 January 2013, 688 SCRA 376, 394 citing *People v. Abulon*, 557 Phil. 428, 448 (2007).

²⁹ *People v. Gani*, supra note 23 citing *People v. Ortega*, G.R. No. 186235, 25 January 2012, 664 SCRA 273, 285; *People v. Lansangan*, G.R. No. 201587, 14 November 2012, 685 SCRA 675, 682-683.

³⁰ Resolution No. 24-4-10, Rule 2.2. Disqualifications for Parole - Pursuant to Section 2 of Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," parole shall not be granted to the following inmates:

x x x x

i. Those convicted of offenses punished with *reclusion perpetua*, or whose sentences were reduced to *reclusion perpetua* by reason of Republic Act No. 9346 enacted on 24 June 2006, amending Republic Act No. 7659 dated 1 January 2004 as cited in *People v. Manicat*, G.R. No. 205413, 2 December 2013.

³¹ An Act Prohibiting the Imposition of Death Penalty in the Philippines, 24 June 2006.

Following the new jurisprudential ruling of *People v. Gambao*³² on damages, we increase the amounts of indemnity and damages to be imposed as follows: ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages.³³ In addition, we impose six percent (6%) interest from finality of judgment until fully paid.³⁴

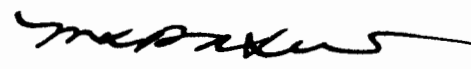
WHEREFORE, the appeal is **DENIED**. The 30 May 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05214 modifying the judgment of conviction dated 5 September 2011 of the Regional Trial Court, Branch 14 of Lagawe, Ifugao is hereby **AFFIRMED** with **FURTHER MODIFICATION** on the amounts of civil indemnity and damages, and imposition of six percent (6%) interest from finality of judgment until fully paid.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


³² G.R. No. 172707, 1 October 2013.

³³ Id.

³⁴ *Roallos v. People*, G.R. No. 198389, 11 December 2013 citing *People v. Veloso*, supra note 26 at 600.

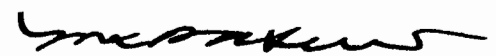

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ESTELA M. PERLAS-BERNABE
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