



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 206393

Present:

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

-versus-

MICHAEL JOSON y ROGANDO,
Defendant-Appellant.

Promulgated:

JAN 21 2015

X-----

DECISION

PEREZ, J.:

For consideration by the Court is the Court of Appeals Decision¹ dated 31 August 2012 that affirmed the judgment² of conviction by the Regional Trial Court of Dasmarinas (RTC), Cavite, Branch 90 sitting in Imus, Cavite, convicting appellant Michael Joson y Rogando of the crime of rape of his 14-year old sister.

Appellant was charged with violation of Articles 266-A of the Revised Penal Code in relation to Republic Act No. 7610 in an Information, the accusatory portion of which reads:

¹ Penned by Associate Justice Isaias P. Dicdican with Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela, concurring. *Rollo*, pp. 2-13.

² Presided by Executive Judge Perla V. Cabrera-Faller. *CA rollo*, pp. 9-11.

That on or about the 14th day of May 2009, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological brother and thus a relative within the second degree of consanguinity of [AAA],³ a minor fourteen (14) years of age and born on March 24, 1995, motivated by lust and with lewd design, with the use of force and intimidation and taking advantage of his moral ascendancy over her, did then and there willfully, unlawfully and feloniously have carnal knowledge of said [AAA], against her will and consent, thereby debasing, degrading and demeaning her intrinsic worth and integrity as a child, to the damage and prejudice of said complainant.⁴

On arraignment, appellant pleaded not guilty. Trial ensued. The prosecution's evidence is based on the sole testimony of the victim. AAA lives with appellant and his common-law partner. AAA testified that at around 1:00 in the morning of 14 May 2009, and while appellant's wife was away, AAA was awakened by appellant undressing her. AAA tried to struggle but appellant was tightly holding her arms. After undressing her, appellant kissed and mounted her. Appellant was able to insert his penis into her vagina. AAA felt pain in her genitalia. Thereafter, appellant went back to sleep leaving AAA crying. At about 6:00 or 7:00 in the morning, appellant left AAA with a letter apologizing for what happened and begging her not to tell on his wife. The letter reads:

Ne!

*Sorry Ne. Patawarin mo ko. Dala lang ng kalasingan kaya ko nagawa ang ganung bagay. Sana po wala ng ibang makaalam nito lalu na si Ate Cindy mo. Ayokong masira na naman ang pamilya ko at mga buhay natin. Paki tapon muna to pag tapos mong basahin.*⁵

At around 5:00 in the afternoon of that same date, AAA related to appellant's wife the rape incident.⁶ And on 1 June 2009, AAA, accompanied by her father, reported the incident to the police and she executed a sworn statement detailing the rape.⁷

³ The victim's real name is withheld pursuant to Sec. 29 of Republic Act No. 7610; Sec. 44 of Republic Act No. 9262 and Sec. 40 of A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

⁴ Records, p. 1.

⁵ Id. at 25.

⁶ TSN, 2 June 2010, pp. 2-6.

⁷ Records, p. 9.

The prosecution presented a provisional medico-legal report on the examination conducted on AAA by Irene D. Baluyut of Philippine General Hospital which essentially states that there is no evident injury on AAA at the time of the examination.

Also submitted as part of the prosecution's evidence is the birth certificate of AAA to prove that she was still a minor at the time the rape was committed on 14 May 2009.

Appellant admitted that AAA is his sister but he proffered the defense of alibi and claimed that he was staying in Alfonso, Cavite on 14 May 2009 and only went back to his house in Dasmariñas on 26 May 2009. Appellant vehemently denied the accusation against him and speculated that AAA resented him because he was strict with his sister. Appellant also denied writing the apology letter and presented his specimen handwriting in court.⁸

After evaluating the evidence, the trial court found appellant guilty beyond reasonable doubt of the crime of rape and meted out the penalty of *reclusion perpetua*. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused MICHAEL JOSON y ROGANDO guilty beyond reasonable doubt of the crime of rape as defined in Article 266-A paragraph 1 of the Revised Penal Code in relation to Republic Act No. 7610, and hereby sentences the accused to suffer the penalty of *reclusion perpetua*, and the said accused is hereby ordered to indemnify the victim by way of moral damages in the amount of Php50,000.00, civil indemnity *ex-delicto* in the amount of Php50,000.00 and exemplary damages in the amount of Php25,000.00.⁹

The trial court found credible the testimony of AAA. It noted that appellant even wrote to the victim that he was sorry for what he has done. The trial court considered the letter as admission against appellant's interest.

Appellant filed a Notice of Appeal.¹⁰ On 31 August 2012, the Court of Appeals rendered the assailed decision affirming the judgment of conviction.

⁸ TSN, 10 November 2010, pp. 2-4.

⁹ CA *rollo*, p. 11

¹⁰ Id. at 13.

Appellant filed a Notice of Appeal¹¹ with the appellate court. In a Resolution¹² dated 19 June 2013, the Court ordered the elevation of the records and directed the parties to file their respective supplemental briefs should they so desire. However, appellant and the Office of the Solicitor-General both manifested that they were adopting their respective appeal briefs previously filed with the Court of Appeals.¹³

In his Appeal Brief, appellant maintains that the prosecution failed to prove all the elements of rape as defined under Article 266-A of the Revised Penal Code, particularly the elements of force, threat or intimidation. Appellant argues that AAA did not allege that she was threatened by appellant with the use of any firearm or any bladed weapon nor did appellant say anything to threaten or intimidate her. With respect to moral ascendancy, appellant contends that the Court in a recent case did not consider a brother as one of those close kin who has moral ascendancy over a victim that would substitute for force and intimidation. Appellant further points out that there was no showing of any resistance on the part of AAA to his alleged sexual advances.

Upon a careful evaluation of the case, we find no reason to reverse appellant's conviction.

For a charge of rape under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.¹⁴

AAA gave a complete account of her ordeal in the hands of her own brother, to wit:

¹¹ *Rollo*, p. 14.

¹² *Id.* at 19.

¹³ *Id.* at 21-25.

¹⁴ Art. 266-A. *Rape; When and How Committed*. – Rape is committed:

1) By a man who 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 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.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

- Q: Do you know one Michael Joson?
A: *Opo.*
- Q: Why do you know him?
A: He is my brother.
- Q: Is he inside the courtroom?
A: *Opo.*
- Q: Please point to him. (Witness points to a man wearing a yellow tshirt, who when asked what his name is, answered "Michael Joson.")
- Q: On May 14, 2009, around 1:00 o'clock in the afternoon, where were you?
A: *Nasa bahay po.*
- Q: What were you doing in your house?
A: *Tulog po.*
- Q: What time did you wake up?
A: *Sa tingin ko po mga 1:00 o'clock.*
- Q: Will you please tell this Honorable Court the reason why you woke up early?
A: *Hinuhubaran po niya ako.*
- Q: Who are you referring to?
A: *Ng kapatid ko.*
- Q: He was undressing you? So what did you do while he was undressing you, while you were lying or sleeping? That's why you were awakened?
A: *Opo.*
- Q: So what happened next when you felt that he was undressing you?
A: *Pumalag po ako, kasi hinihigpitan po niya ako sa braso ko.*
- Q: So what else did you do?
A: *Sabi po niya kasi, wag daw po ako maingay.*
- Q: Who was your companion in the house, aside from your brother? Who else was there in the house?
A: *Wala po.*
- Q: Where were they?
A: *'Yung asawa niya po, umuwi sa kanila.*
- Q: What about your parents, where were they?
A: *'Yung tatay ko po, nagtatrabaho.*
- Q: Your mother?

A: *Patay na po.*

Q: What happened next when you were told not to shout?

A: *Hinubaran niya po 'yung ibaba ko, tapos pumatong po siya sa ibabaw ko tapos pinaghahalikan niya ko.*

Q: Was he able to undress you?

A: *Opo.*

Q: Totally?

A: *Opo.*

Q: Thereafter, what did you do?

A: *Pinaghahalikan niya po ako.*

Q: What were you doing?

A: *Umiiyak lang po ako.*

Q: What about the accused, what did he do to you?

A: *Pumatong po siya sa ibabaw ko.*

Q: He went on top of you? Thereafter what did the accused do next?

A: *Pilit niya pong ipinapasok ang ari niya sa ari ko.*

Q: Was he able to insert his penis?

A: *Opo.*

Q: For how long?

A: *Matagal po.*

Q: How did you feel when his organ was inside your organ?

A: *Masakit po.*

Q: And what (*sic*) you trying to do while his organ was inside?

A: *Umiiyak lang po ako.*

Q: After that, what happened next?

A: *Pinaghahalikan niya pa rin po ako, tapos tumayo po siya sandali tapos humiga po uli siya. Natulog po.*

Q: What about you, you went to sleep also?

A: *Hindi po, umiiyak lang po ako.*

Q: The following day, in the morning, were you not able to sleep after that incident?

A: *Hindi po.*

Q: What did you do?

A: *Doon lang po, umiiyak lang po.*

Q: What about the accused?

A: *Doon lang din po siya.*

Q: Beside you?

A: *Opo.*

Q: And what happened next, at 6:00 o'clock in the morning or 7:00 o'clock?

A: *May iniwan po siyang sulat.*

Q: Where did he go, if you know?

A: *Sa trabaho po.*

Q: What was the letter all about?

A: *Humihingi po siya ng sorry.*¹⁵

Her testimony has established all the elements of rape required under Article 266-A of the Revised Penal Code. First, appellant had carnal knowledge of the victim. AAA positively identified her own brother as the assailant. She was likewise unwavering in her narration that appellant inserted his penis into her vagina. Second, appellant employed threat, force and intimidation to satisfy his lust. At this juncture, we quote with approval the ruling of the Court of Appeals on this point:

The Supreme Court has, time and again, ruled that the force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape. The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age.

In the case at bench, the accused-appellant employed that amount of force sufficient to consummate the rape. It must be stressed that, at the time of the incident, AAA was only 14 years old. Considering the tender years of the offended party as compared to the accused-appellant who was in the prime of his life, the act of the accused-appellant in pinning the arms of AAA to avoid any form of resistance from her suffices. Force or intimidation is not limited to physical force. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point.

x x x x

We are not persuaded by the accused-appellant's insistence that the absence of any resistance on the part of AAA raised doubts as to whether the sexual congress was without her consent. The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent. Physical resistance need not be established in rape when

¹⁵ TSN, 2 June 2010, pp. 2-5.

threats and intimidation are employed and the victim submits herself to her attackers of because of fear.

Besides, physical resistance is not the sole test to determine whether a woman voluntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. After all, resistance is not an element of rape and its absence does not denigrate AAA's claim that the accused-appellant consummated his bestial act.¹⁶

Anent appellant's argument that as a brother he lacks moral ascendancy over her sister, the victim, that could substitute for force and intimidation, our ruling in *People v. Villaruel*,¹⁷ as cited by the Court of Appeals, has rejected such proposition.

The fact remains that Myra positively testified in court that her brother sexually molested her in the morning of February 21, 1996. The accused-appellant was her older brother who had definitely moral ascendancy over her. He, being the eldest had definitely moral ascendancy over her. He, being the eldest among the children since both of their parents were dead, the accused-appellant stood as guardian of the siblings. Thus, when the complainant was roused from her sleep to accompany the accused-appellant to buy bread, the complainant obediently followed him. To the accused-appellant, this was highly improbable that the complainant would entertain his plea to go out with him at such an unholy hour or even allegedly knowing fully well that the latter had taken *shabu* and liquor. There is nothing incredible with the complainant's story. Notwithstanding the time or the physical condition of her brother, Myra certainly did not expect that he had other ill motives against her. It certainly is not normal for a brother to take out his lust on his sister. Myra also testified that she did not resist his advances for fear of her life as her brother had two (2) fan knives poking at her as she was being raped. More importantly, the moral ascendancy and influence the accused-appellant has over the complainant sufficiently substitute for the force and intimidation required in rape.¹⁸

Moreover, the RTC, as affirmed by the Court of Appeals found AAA's testimony credible. The trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Thus, the trial court's findings are accorded great respect unless the trial court has overlooked or

¹⁶ *Rollo*, pp. 7-8.

¹⁷ 428 Phil. 449 (2002).

¹⁸ *Id.* at 462-463.

misconstrued some substantial facts, which if considered might affect the result of the case.¹⁹

With respect to appellant's defense of denial and alibi, it is an oft-repeated rule that positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.²⁰

We likewise agree that appellant should suffer the penalty of *reclusion perpetua*. Article 266-B of the Revised Penal Code provides that the death penalty shall also be imposed if the crime of rape is committed 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 to Republic Act No. 9346 which prohibits the imposition of the death penalty, however, the imposable penalty is *reclusion perpetua*.

In conformance with the prevailing jurisprudence, we deem it proper to modify the amount of damages awarded in this case. In *People v. Gambao*,²¹ we increase the amounts of indemnity and damage where the penalty for the crime committed is death but which cannot be imposed because of Republic Act No. 9346, as follow:

1. ₱100,000.00 as civil indemnity;
2. ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and
3. ₱100,000.00 as exemplary damages to set an example for the public good.

¹⁹ *People v. Fernandez*, 561 Phil. 287, 291 (2007) citing *People v. Oliquino*, 546 Phil. 410, 419 (2007); *People v. Diunsay-Jalandoni*, 544 Phil. 163, 175 (2007); *Navarrete v. People*, 452 Phil. 496, 506 (2007); *Nombrefia v. People*, 542 Phil. 355, 363 (2007); *People v. Arnaiz*, 538 Phil. 479, 492 (2006).

²⁰ *People v. Piosang*, G.R. No. 200329, 5 June 2013 citing *People v. Agcanas*, G.R. No. 174476, 11 October 2011, 658 SCRA 842, 847 citing further *People v. Caisip*, 352 Phil. 1058, 1065 (1998).

²¹ G.R. No. 172707, 1 October 2013.

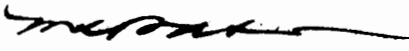
All damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of judgment until fully paid.²²

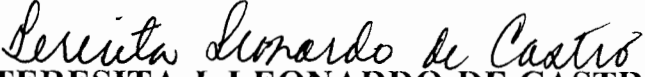
WHEREFORE, the Court of Appeals' decision dated 31 August 2012 finding appellant Michael Joson y Rogando guilty beyond reasonable doubt of rape and sentencing him to *reclusion perpetua* is **AFFIRMED with MODIFICATION**. The civil indemnity awarded is increased to ₱100,000.00; moral damages to ₱100,000.00; and the exemplary damages to ₱100,000.00. The award of damages shall earn interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

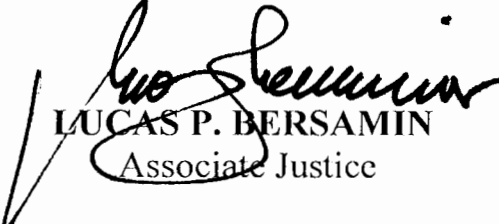
SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice

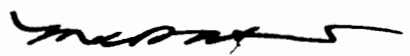
²²

People v. Buclao, G.R. No. 208173, 11 June 2014; *People v. Santiago*, G.R. No. 196970, 2 April 2014.


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