



Republic of the Philippines
Supreme Court

Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

SEP 14 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 209032

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
LEONEN,* JJ

-versus-

VIVENCIO AUSA,
Accused-Appellant.

Promulgated:

August 3, 2016

X-----*Wilfredo V. Lapitan*-----X

RESOLUTION

PEREZ, J.:

For review is the appeal filed by appellant Vivencio Ausa from the 27 September 2012 Decision¹ of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00984 which affirmed with modification the Judgment² dated 3 September 2008, of the Regional Trial Court (RTC), Branch 2, Borongan City, Eastern Samar, in Criminal Case No. 11297, finding appellant guilty beyond reasonable doubt of the crime of Simple Rape.

In accordance with the ruling of this Court in *People v. Cabalquinto*,³ the real name and identity of the rape victim, as well as the members of her

* Additional Member per Raffle dated 1 August 2016.

¹ *Rollo*, pp. 3-15; Penned by Associate Justice Zenaida T. Galapate Laguilles with Associate Justices Edgardo L. De los Santos and Pamela Ann Abella Maxino concurring.

² Records, pp. 256-275; Presided by Judge Leandro C. Catalo.

³ 533 Phil. 703 (2006).

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immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother, BBB. AAA's personal circumstances as well as other information tending to establish her identity, and that of her immediate family or household members, are not disclosed in this decision.

Appellant was charged before the RTC with the crime of rape, to wit:

That at about 7:30 in the evening of June 22, 2001 at Bgy. x x x, Llorente, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with force and violence and with lewd design, willfully, unlawfully and feloniously have carnal knowledge with [AAA], a 10 year old girl, against her will and consent, to the damage and prejudice of the victim.⁴

On arraignment, appellant pleaded not guilty to the crime charged. AAA testified on the details of the crime in the trial that followed. AAA's mother, BBB, and the examining physician, Dr. Mario D. Baconawa (Dr. Baconawa), likewise testified.

The evidence shows that in the afternoon of 22 June 2001, AAA was in the town plaza watching a contest when a neighbor, appellant, dragged her to the back of a nearby school building. AAA screams and pleas for help were futile, drowned out by the program's loud music. Appellant removed AAA's underwear. AAA struggled to free herself but appellant overpowered her and forcibly inserted his male organ into AAA's. AAA cried and felt pain and discovered her female organ bleeding. After appellant freed her, AAA went home with her female genitalia still bleeding. She then related her ordeal to her mother who wasted no time in going to AAA's grandmother to ask for *mutya ng tubig* (healing water) for AAA to drink. The following day, BBB brought AAA to the police authorities to report the incident and to a doctor for physical examination.⁵

Municipal Health Officer Dr. Mario D. Baconawa (Dr. Baconawa) examined AAA on 23 June 2001 and he issued a Medical Certificate which states as follows:

-Fresh lacerations of the hymen at 12:00 o'clock, 3:00 o'clock, 6:00 o'clock, 7:00 o'clock & 9:00 o'clock positions

-Abrasion about .5 – 1 cm in diameter at the posterior commissure

⁴ Records, p. 1.

⁵ TSN, 17 June 2002, pp. 2-9; TSN, 28 May 2002, pp. 4-9.



- Circular abrasions around the labia minora
- Vaginal canal admits one finger without resistance and with blood oozing from the vaginal canal
- Vaginal smear for the presence of spermatozoa (no result available)
- No other pertinent physical examination finding⁶

Dr. Baconawa explained during trial that AAA's lacerations could have been caused by the insertion of a male organ and that such number of lacerations are attributable to the weakness of the hymen.⁷

Appellant interposed the defenses of denial and alibi. He claimed that he had been blind since he was a year old and needed assistance to go around since then, rendering it impossible for him to commit such a crime. He also maintained that he had been away at the time of the commission of the crime.⁸ Appellant's mother corroborated appellant's claim of disability.⁹ Appellant's nephew and a distant relative likewise testified to support appellant's assertion that he had been somewhere else at the time of the alleged rape.¹⁰

After trial, on 3 September 2008, appellant was found guilty beyond reasonable doubt of rape. The RTC disposed:

WHEREFORE, in view of the foregoing, accused Vivencio Ausa @ "Beben" is hereby found **GUILTY** of the crime of simple **RAPE** and is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the private offended party the amounts of Fifty Thousand (Php50,000.00) pesos as civil indemnity and Fifty Thousand pesos (Php50,000.00) as moral damages.

Accused having been under detention during the course of the trial is credited in the service of his sentence, with the full time that he have undergone preventive imprisonment, if he had voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise he shall be credited with four-fifths thereof.

With costs.¹¹

⁶ Records, p. 6; The Medical Certificate was issued on 3 July 2001.

⁷ TSN, 27 May 2002, pp. 8-10.

⁸ TSN, 7 May 2004, pp. 4-9.

⁹ TSN, 23 February 2005, pp. 2-4.

¹⁰ TSN, 14 May 2008, pp. 2-15; TSN, 10 July 2008, pp. 2-10.

¹¹ Records, pp. 274-275.

The Court of Appeals affirmed the RTC Decision and rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, the Decision September 3, 2008 of the Regional Trial Court ("RTC"), 8th Judicial Region, Branch 2, Borongan City, Eastern Samar, in Criminal Case No. 11297, finding appellant Vivencio Ausa guilty beyond reasonable doubt of the crime of simple rape is hereby **AFFIRMED with modifications**. Aside from moral damages and civil indemnity, appellant is **ORDERED** to pay the victim exemplary damages of Php30,000.00 and 6% interest *per annum* on all the civil damages from the date of the finality of this decision.¹²

Thus, the instant appeal.¹³ In a Resolution¹⁴ dated 11 November 2013, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties dispensed with the filing of supplemental briefs.¹⁵

There is no merit in the appeal.

Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353,¹⁶ define and punish rape as follows:

Article 266-A. *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 otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority; and
- d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

X X X X

¹² *Rollo*, p. 14.

¹³ *Id.* at 16-17.

¹⁴ *Id.* at 22-23.

¹⁵ *Id.* at 24-25 and 28-29.

¹⁶ Effective 22 October 1997.

Article 266-B. *Penalties*- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

Statutory rape under paragraph 1 (d) of Article 266-A of the RPC, as amended by R.A. No. 8353, is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary as the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). However, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.¹⁷ The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.¹⁸

In *People v. Pruna*,¹⁹ the Court laid down the guidelines in determining the age of the victim:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

¹⁷ *People v. Mingming*, 594 Phil. 170, 185-186 (2008).

¹⁸ *People v. Ramos*, 577 Phil. 297, 304 (2008) citing *People v. Vargas*, 327 Phil. 387, 397 (1996).

¹⁹ 439 Phil. 440, 470-471 (2002) as cited in *People v. Ramos*, supra note 18 at 304-305.



4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

Herein, the age of AAA at the time of the commission of the crime was not sufficiently established. Other than bare testimonial evidence insufficient to meet the legal requirement, no other evidence was presented to prove AAA's age. Thus, appellant cannot be convicted of statutory rape but of simple rape under Article 266-A, paragraph 1 (a) of the RPC, as amended by R.A. No. 8353, the gravamen of which is carnal knowledge of a woman using force, violence, intimidation or threat alleged in the information.

AAA vividly described the rape committed against her on 22 June 2001. Her eloquent recollections during trial revealed a credible, candid, unequivocal and consistent narration of her ordeal, positively identifying it was suffered at appellant's hands. She testified as follows:

Q: AAA, do you know the accused in this case, Vivencio Ausa?

A: Yes, sir.

Q: Why do you know him?

A: Because he is my neighbor.

Q: If he is around, will you please point to Vivencio Ausa?

INTERPRETER TAVERA:

Witness pointing to a person seated at the front bench alone, and when asked his name, he answered, Vivencio Ausa.

x x x x

Q: What did Vivencio Ausa do to you if any?

A: He dragged me to a place behind the school building.

x x x x

Q: And while at the place behind the school building, what happened?



A: He pulled out my panty.

Q: While he was pulling out your panty, what were you doing then?

A: I was struggling to free myself, but he was stronger than me.

x x x x

Q: After he succeeded in removing your panty what did he do with your panty? (sic)

A: He undressed himself, his pant, shirt and brief.

Q: After he undress himself with his pant and brief, what happened?

A: He raped me, sir.

Q: You said, you were raped, will you describe how did it happened (sic) that you were raped?

A: He inserted his private part to my private part also.

x x x x

Q: And what did you feel when his penis was inserted into your vagina?

A: I felt the pain, sir.²⁰

The trial court, which had the better position to evaluate and appreciate testimonial evidence, found AAA's testimony to be more credible than that of the defense. This Court is convinced that the RTC and the Court of Appeals were correct in according full credence to her.

The Court has ruled a number of times that testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape lest her claims are true. The child-victim's narration of how she was raped bears the earmarks of credibility, especially if no ill will—as in this case—motivates her to testify falsely against the accused.²¹ When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.²² The accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.²³

²⁰ TSN, 17 June 2002, pp. 3-6.

²¹ *People v. Salazar*, 648 Phil. 520, 531 (2010) citing *People v. Montes*, 461 Phil. 563, 578 (2003).

²² *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

²³ *People v. Pascua*, 462 Phil. 245, 252 (2003).

The medical report and the testimony of the examining physician, Dr. Baconawa, confirm the truthfulness of the charge. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.²⁴

The Court rejects appellant's defenses of denial and alibi. Aside from being weak, these are self-serving evidence undeserving of weight in law if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant.²⁵ Otherwise stated positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.²⁶ Notably, as found by both lower courts, appellant's testimony and that of his nephew are inconsistent and do not support each other's material contentions, raising fatal doubts whether appellant was indeed somewhere else other than the place of the commission of the crime. Moreover, said nephew and the other witness, a distant relative, disingenuously and incredulously remember the exact dates they allege to have been in Borongan, Samar with appellant but curiously not the other times they assert to have gone there as was customary.

The Court likewise disbelieves appellant's assertion that he was incapable of committing the crime charged due to his alleged handicap. The prosecution significantly disputes appellant's claim of complete blindness. It is also noteworthy that appellant had a common-law wife for seven (7) years.²⁷ In any event, the Court notes that the absence of the sense of sight in itself does not completely disable a person from performing sexual congress. In the absence of any allegation to the contrary, for all intents and purposes, he remains a sensual man in complete possession of faculties to gratify one's corporeal needs.

All told, the prosecution was able to establish appellant's guilt of the crime charged beyond reasonable doubt.

Article 266-B of the RPC, as amended by R.A. No. 8353, prescribes *reclusion perpetua* as the penalty for the crime of simple rape. The trial court, concurred by the appellate court, thus correctly imposed the penalty of

²⁴ *People v. Perez*, 595 Phil. 1232, 1258 (2008).

²⁵ See *People v. Tagana*, 468 Phil. 784, 807 (2004).

²⁶ *Id.* at 808.

²⁷ TSN, 7 May 2004, pp. 11-12; TSN, 23 February 2005, pp. 4-5; TSN, 14 May 2008, p. 7.




reclusion perpetua. The Court, however, resolves to increase the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00 and exemplary damages of ₱30,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence.²⁸ The amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.²⁹

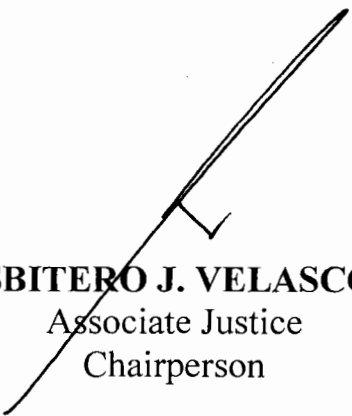
WHEREFORE, premises considered, the Decision dated 27 September 2012 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00984, affirming the conviction of appellant Vivencio Ausa for rape in Criminal Case No. 11297 by the Regional Trial Court of Borongan City, Eastern Samar, Branch 2, is **AFFIRMED** with **MODIFICATIONS**. Appellant is ordered to pay the private offended party as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

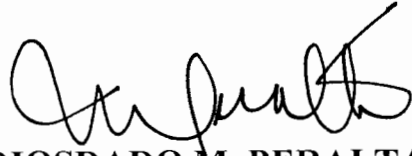

JOSE PORTUGAL HEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

²⁸ *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

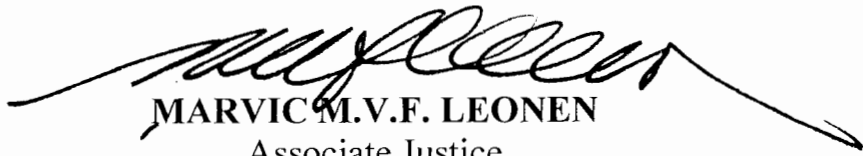
²⁹ *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.



DIOSDADO M. PERALTA
Associate Justice



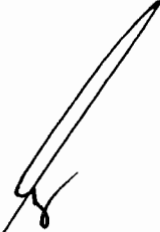
BIENVENIDO L. REYES
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division



MARIA LOURDES P. A. SERENO
Chief Justice

SEP 14 2016