



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Laitan
 WILFREDO V. LAITAN
 Division Clerk of Court
 Third Division
 JUL 18 2016

THIRD DIVISION

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PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 206294

Present:

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

-versus-

CERILO "ILOY" ILOGON,
 Accused-Appellant.

Promulgated:

June 29, 2016

X-----*Wilfredo V. Laitan*-----X

RESOLUTION

PEREZ, J.:

Before us is an appeal from the Decision¹ of the Court of Appeals, Cagayan de Oro City, Twenty-Second Division, in CA-G.R. CR-HC No. 00837-MIN dated 24 February 2012, which dismissed the appeal of appellant Cerilo "Iloy" Ilogon and affirmed with modification the Judgment² dated 12 May 2010 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 37, in Criminal Case No. 2003-324, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

The real name and identity of the rape victim, as well as the members of her immediate family, including other identifying information, shall not

* Additional Member per Raffle dated 13 June 2016.

¹ Rollo, pp. 3-19; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Edgardo A. Camello and Pedro B. Corales concurring.

² Records, pp. 112-117; Presided by Presiding Judge Jose L. Escobido.

be disclosed pursuant to the Court's ruling in *People v. Cabalquinto*.³ We shall refer to the rape victim as AAA, her mother as BBB. The rest of AAA's relatives shall be called by their initials.

The prosecution established that in the afternoon of 15 December 2002, six (6) year-old AAA was at her aunt L's house, playing with her cousins J and P. They climbed up the roof of the house where AAA was left behind crying because she could not go down after the others. Appellant, nicknamed "Iloy" and her aunt's neighbor, helped AAA by carrying her down but towards his own house. There, appellant removed his clothes, covered AAA's mouth, kissed her and had carnal knowledge of her. AAA felt pain and cried. Afterwards, nearing nighttime, AAA ran away and went home.⁴

Around nine o'clock in the evening of the same day, AAA complained to her mother of bodily ache and pain and that she could not urinate as her female organ was painful. BBB examined and found it to be reddish in appearance. The next day, BBB found out about the incident from AAA's cousins J and P which AAA confirmed. BBB searched for appellant to no avail. BBB thus reported the incident to the police and thereafter, BBB brought AAA to the Northern Mindanao Medical Center (NMMC) for physical examination.⁵

AAA was physically examined by Dr. Harry L. Rodriguez, Medical Officer III of NMMC who reported in the Living Case Report that AAA's hymen had healed lacerations at three o'clock and six o'clock positions.⁶

Appellant was charged with the crime of rape in an Information, the accusatory portion of which reads as follows:

That on or about December 15, 2002, at x x x, x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously committed an act of sexual assault upon AAA, a 6-year old minor, by inserting his penis into her genital, against her will, thereby causing the following on the genital of AAA, to wit:

Hymen- with healed laceration at 3 & 6 o'clock positions;

³ 533 Phil. 703 (2006).

⁴ TSN, 11 May 2006, pp. 1-9 and 15-16.

⁵ TSN, 1 February 2006, pp. 9-15; TSN, 11 May 2006, p. 9.

⁶ Records, p. 75.

Contrary to and in violation of Article 266-A of the Revised Penal Code.⁷

Upon arraignment, appellant pleaded not guilty to the crime charged. During pre-trial, the parties stipulated, among others, that: (1) the nickname of the accused is Iloy; (2) AAA and appellant are neighbors; (3) AAA is the daughter of BBB and that (4) AAA is a minor.⁸

Appellant interposed the defense of denial. He admitted having helped carry AAA down the roof but denied the rape charge.⁹ Three (3) neighbors were presented as witnesses to corroborate appellant's story.¹⁰ Appellant's wife likewise took the witness stand to support her husband's version of the incident.¹¹

After trial, the RTC on 12 May 2010 found appellant guilty beyond reasonable doubt of qualified rape. The RTC found no reason not to lend credence to the positive and consistent testimony of AAA. The dispositive portion of the RTC Decision reads:

WHEREFORE, the [c]ourt finds accused Cerilo "Iloy" Ilogon guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A and 266-B of the Revised Penal Code, as amended, and the said accused is hereby sentenced to suffer the penalty of reclusion perpetua. Moreover, the accused is sentenced to pay the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) by way of moral damages and another sum of FIFTY THOUSAND PESOS (P50,000.00) by way of civil indemnity.¹²

The Court of Appeals affirmed the RTC's evaluation of AAA's credibility and found no misapprehension or misappreciation of facts. The Court of Appeals however modified the section on damages, to wit:

WHEREFORE, the May 12, 2010 Judgment rendered by the Regional Trial Court[,] Branch 37, Cagayan de Oro City in Criminal Case No. 2003-324 finding accused-appellant Cerilo Ilogon guilty beyond reasonable doubt of Rape and sentencing him to suffer the penalty of

⁷ Id. at 3.

⁸ Id. at 28.

⁹ TSN, 5 May 2008, pp. 4-6.

¹⁰ TSNs, 16 October 2006, 14 December 2006 and 5 March 2008.

¹¹ TSN, 24 June 2008.

¹² Records, p. 117.



reclusion perpetua with all the accessory penalties is **AFFIRMED** with **MODIFICATION** as to damages.

Accused-appellant is **ORDERED** to pay the victim the sum of:

1. PhP75,000 as moral damages;
2. Civil Indemnity of P75,000.00; and
3. Exemplary damages of P30,000.00 with simple interest on the above damages accruing at the rate of six percent (6%) per annum from the finality of this decision until fully paid.¹³

Now before the Court for final review, we affirm appellant's conviction.

The law, in Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act No. 8353,¹⁴ defines and punishes 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.

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

X X X X

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

X X X X

- 5) When the victim is a child below seven (7) years old;

X X X X

¹³ *Rollo*, pp. 17-18.

¹⁴ Effective 22 October 1997.

Statutory rape 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. The absence of free consent is conclusively presumed when the victim is below the age of twelve (12). Sexual congress with a girl under twelve (12) years old is always rape. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. To convict an accused of the crime of statutory rape, the prosecution should prove: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.¹⁵

Of primary importance in rape cases is the credibility of the victim's testimony because 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.¹⁶ Testimonies of child victims are given full weight and credit, for 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.¹⁷

The prosecution presented proof of the required elements of statutory rape. AAA's age, only six (6) years old at the time of the crime, was evidenced by her *Birth Certificate*;¹⁸ she was born on 19 May 1996, while the alleged rape was committed on 15 December 2002. AAA, as a ten (10) year old, positively identified in court appellant as the perpetrator of the crime.¹⁹ AAA, in open court, also related the painful ordeal of her sexual abuse by appellant down to the sordid details. 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.²⁰ We quote the pertinent portions of AAA's testimony:

Q: By the way do you know Cerilo Ilogon or Iloy?

A: Yes, Ma'am.

Q: And are you neighbors with "Iloy"?

A: Yes, Ma'am.

¹⁵ *People v. Mingming*, 594 Phil. 170, 185-186 (2008); See also *People v. Sabal*, 734 Phil. 742, 745 (2014).

¹⁶ *People v. Pascua*, 462 Phil. 245, 252 (2003).

¹⁷ *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

¹⁸ Records, p. 74; TSN, 1 February 2006, pp. 3-4.

¹⁹ TSN, 11 May 2006, pp. 9-10.

²⁰ Records, pp. 116-117.

x x x x

Q: Where were you when Iloy removed his clothes in his house?

A: I was on the floor.

Q: On the floor of Iloy's house?

A: Yes, Ma'am.

Q: And when Iloy removed his clothes and you were on the floor, what did he do to you if any?

A: He covered my mouth.

Q: After he covered your mouth, what did he do next?

A: He kissed my mouth.

x x x x

Q: What did he use to prick your vagina AAA?

A: His penis.

Q: Did you see Iloy used (sic) his penis to prick your vagina [AAA]?

A: Yes, Ma'am.

x x x x

Q: When Iloy pricked your vagina with his penis what did you feel?

A: I felt pain.

Q: And considering that you felt pain, didn't you shout?

A: But he covered my mouth.

Q: And after he pricked your vagina with his penis, what if any did Iloy do?

A: He also inserted his finger into my vagina.

Q: What did you feel when Iloy directed his finger into your vagina?

A: It's painful.

Q: And did you cry because of the pain?

A: Yes, Ma'am.²¹

Some leading questions were warranted given the circumstances. A child of tender years may be asked leading questions under Section 10(c), Rule 132 of the Rules of Court. Section 20 of the 2000 Rule on Examination

²¹ TSN, 11 May 2006, pp. 6-8.

of a Child Witness also provides that the court may allow leading questions in all stages of examination of a child if the same will further the interests of justice. This rule was formulated to allow children to give reliable and complete evidence, minimize trauma to children, encourage them to testify in legal proceedings and facilitate the ascertainment of truth.²²

The medical report of the physician confirms the truthfulness of the charge.²³ While indeed the physician was not presented in court, it bears underscoring however that medical examinations are merely corroborative in character and not an indispensable element for conviction in rape. Primordial is the clear, unequivocal and credible testimony of private complainant which the Court, together with both the trial and appellate courts, so finds.²⁴

The Court rejects appellant's defense of denial. Being a negative defense, if the defense of denial is not substantiated by clear and convincing evidence, as is the case herein, it merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.²⁵ It has been ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. 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 Significantly, one of the defense witnesses, Merlinda Gongob, confessed her dislike of and ill feelings towards BBB, reason to consider her not an unbiased witness.²⁷

Further, although the rape incident in the case at bar was reported to the police eighteen (18) days after, such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be a mere concoction or impelled by some ill motive.²⁸

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

Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-

²² *People v. Ugos*, 586 Phil. 765, 772-773 (2008).

²³ Records, p. 75.

²⁴ See *People v. Lerio*, 381 Phil. 80, 88 (2000).

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

²⁶ Id. at 807-808.

²⁷ TSN, 14 December 2006, pp. 12-13.

²⁸ *People v. Sarcia*, 615 Phil. 97, 117 (2009).

Rape Law of 1997, carries the penalty of *reclusion perpetua* unless attended by qualifying circumstances defined under Article 266-B. In the instant case, as the victim, AAA is below seven (7) years old, specifically six (6) years old at the time of the crime, the imposable penalty is death. The passage of Republic Act No. 9346 debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, we affirm the penalties imposed by the RTC and the Court of Appeals.²⁹ However, in view of Republic Act No. 9346, the penalty of *reclusion perpetua* should be imposed without the eligibility of parole.

The award of damages on the other hand should be modified and increased as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.³⁰ Further, 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.³¹

WHEREFORE, premises considered, the Decision dated 24 February 2012 of the Court of Appeals of Cagayan de Oro City, Twenty-Second Division, in CA-G.R. CR-HC No. 00837-MIN, finding appellant Cerilo “Iloy” Ilogon guilty beyond reasonable doubt of the crime of qualified rape in Criminal Case No. 2003-324, is hereby **AFFIRMED with MODIFICATIONS** that appellant is not eligible for parole. Appellant is also **ORDERED** to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 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.

²⁹ Pursuant to Section 3 of R.A. 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) which states that:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

³⁰ *People v. Gambao*, 718 Phil. 507 (2013).


³¹ *People v. Vitero*, 708 Phil. 49, 65 (2013).



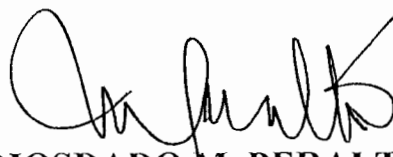


JOSE PORTUGAL PEREZ
Associate Justice

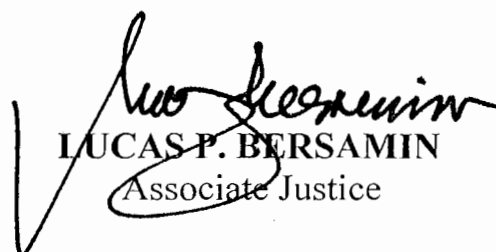
WE CONCUR:




PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




LUCAS P. BERSAMIN
Associate Justice



BIENVENIDO L. REYES
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.



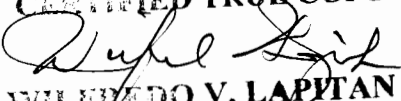
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 18 2016