



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2020** which reads as follows:*

**“G.R. No. 248423 (*People of the Philippines v. XXX*)**

This appeal assails the Decision<sup>1</sup> of the Court of Appeals in CA-G.R. CR-HC No. 09935 dated March 14, 2019 affirming appellant XXX’s<sup>2</sup> conviction for qualified rape under Article 266-A (1) in relation to Article 266-B of the Revised Penal Code (RPC) as amended by Republic Act 8353 (RA 8353).

**Antecedents**

Appellant XXX was charged with qualified rape, *viz.*:

The undersigned Provincial Prosecutor and Assistant Provincial Prosecutor accuses XXX of the crime of Rape under Article 2266-A, paragraph 1 of the Revised Penal Code, committed as follows:

That sometime in February 2010, in Guagua, Pampanga, within the jurisdiction of this Honorable Court, the above-named accused, being the father of AAA,<sup>3</sup> a 14-year old minor, born on August 20, 1996, and by means of intimidation, did then and there

- over – eleven (11) pages ...

<sup>1</sup> Penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justices Nina G. Antonio Valenzuela and Perpetua T. Atal-Paño; *rollo*, pp. 3-13.

<sup>2</sup> 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 her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* [533 Phil. 703 (2006)] and Amended Administrative Circular No. 83-2015 dated September 5, 2017.

<sup>3</sup> *Id.*

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willfully, unlawfully and feloniously have carnal knowledge of said AAA against her will and without her consent to her damage and prejudice.

Contrary to law.<sup>4</sup>

The case was raffled to the Regional Trial Court – Branch 52, Guagua, Pampanga. On arraignment, appellant pleaded not guilty. Trial then ensued.<sup>5</sup>

### ***Prosecution's Version***

AAA testified that her mother died of cancer when she was only seven (7) years old. Two (2) years later, when she was nine (9) years of age, appellant, her father, started to rape her. He raped her more than a hundred (100) times until she was thirteen (13) years old. The rapes occurred at home, in their kitchen, on top of a table, inside a comfort room, and in a motel. She recounted how he would kiss her, take her clothes off, force her thighs apart, and forcibly insert his penis into her vagina.<sup>6</sup>

In 2010, at thirteen (13) years of age, she was living in PPP, Guagua, Pampanga with appellant, her half-brother BBB, her half-sister CCC, appellant's new live-in partner FFF, and FFF's young daughter with appellant.<sup>7</sup>

On February 23, 2010, between 9 and 10 o'clock in the evening, she was roused from sleep when she felt appellant embracing and kissing her around her neck, lips, and stomach. She resisted by pushing him away but he was too strong. He succeeded in inserting his penis in her vagina, albeit he was only able to insert half of it because it was too painful for her.<sup>8</sup>

She recalled that appellant raped her almost every day in February 2010 while FFF was away. She lost her focus on her school work and started getting low grades.<sup>9</sup> She could not report the matter to her aunts because appellant prohibited her from visiting them.

Her ordeal only ended when appellant got arrested and jailed for a drug offense. She moved to the house of her aunt EEE. When

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<sup>4</sup> *Rollo*, p. 46.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 71.

<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

she found out that appellant was released on March 26, 2010, she confided her sordid experiences to EEE because she was afraid he might take her home and rape her again. EEE assisted her in filing the instant case.<sup>10</sup>

### ***Defense's Version***

**Appellant** denied the charge and invoked alibi. He testified that every single night during the first three (3) weeks of February 2010, he had been driving a passenger jeepney. In the last week of February, he was at the police station of Guagua, Pampanga because he got arrested for a drug offense. He added that their house was very small and only had two (2) rooms. AAA slept in one (1) room with her siblings BBB and CCC, while he slept in the other room with FFF and their young daughter. AAA fabricated the charge because he prohibited her from having a boyfriend and scolded her for her low grades. CCC even caught her engaging in sexual intercourse with her boyfriend in their house.

CCC testified and corroborated appellant's testimony.<sup>11</sup>

### **The Trial Court's Ruling**

By Decision<sup>12</sup> dated August 10, 2017, the trial court found appellant guilty as charged, thus:

WHEREFORE, this court hereby finds accused XXX GUILTY beyond reasonable doubt of qualified rape by sexual intercourse for which he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and a fine of ₱100,000.00 as exemplary damages.

AAA is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.<sup>13</sup>

The trial court found AAA's testimony clear, convincing, and consistent on material points. She positively identified and pointed to her father, appellant, as her rapist. She recounted how when she was

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Penned by Judge Jonel S. Mercado; *rollo*, pp. 46-60.

<sup>13</sup> *Rollo*, p. 60.

thirteen (13) years old, her father kissed her, took her clothes off, and inserted his penis in her vagina. It, thus, found that all the elements of the crime of qualified rape had been sufficiently established by the prosecution.<sup>14</sup>

### **The Proceedings Before the Court of Appeals**

On appeal, appellant faulted the trial court for relying heavily on AAA's testimony. He vigorously averred that her story was too incredible and inconsistent to be believed. It was illogical that she suffered for four (4) years without telling a single person about it. She had every opportunity to report the alleged rape during all those four (4) years. Yet, she did not. She even visited him in jail. She merely concocted this story because of her grudge against him for prohibiting her from having a boyfriend while she was still studying. It was impossible for him to rape her as he was sleeping in the other room with his live-in partner FFF and their baby. Also, his job as a jeepney driver usually required him to ply his route until late at night.<sup>15</sup>

For its part, the Office of the Solicitor General (OSG) defended the verdict of conviction and maintained that appellant's guilt was proven beyond reasonable doubt. In rape cases, the accused may be convicted solely on the basis of the victim's testimony, provided the same is credible, natural, convincing, and consistent with human nature and the normal course of things. Delay in prosecuting the offense is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant. Too, it is highly unbelievable that a minor child would accuse her very own father of rape and expose her and her family to public ordeal for the simple reason that she was not allowed to have a boyfriend. Last, appellant failed to prove that it was physically impossible for him to have been present at the *locus criminis* on the date and time the rape was committed. Appellant even admitted that he would usually be home by 9 o'clock in the evening.<sup>16</sup>

### **The Court of Appeals' Ruling**

Under Decision<sup>17</sup> dated March 14, 2019, the Court of Appeals affirmed.<sup>18</sup> It found no cogent reason to reverse the trial court's

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<sup>14</sup> *Id.* at 277.

<sup>15</sup> Appellant's Brief. *rollo*, pp. 40-41.

<sup>16</sup> Appellee's Brief. *rollo*, pp. 58-70.

<sup>17</sup> Penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justices Nina G. Antonio Valenzuela and Perpetua T. Atal-Paño; *rollo*, pp. 3-13.

<sup>18</sup> *Rollo*, p. 10.

findings on the credibility of AAA's testimony and the weakness of appellant's defenses. Too, the prosecution was able to prove the guilt of appellant through AAA's testimony beyond reasonable doubt. The fact that AAA kept silent for four (4) years was not enough reason to cast doubt on her testimony. For there was no greater source of fear or intimidation than her own father who had had moral ascendancy over her since birth.<sup>19</sup>

On the other hand, CCC's testimony was doubtful considering she had an interest in the fate of her father, appellant herein. The Court of Appeals held that when a defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism. More, CCC's insinuation that AAA had sexual intercourse with her boyfriend in their house was conjectural, unsubstantiated as it was by independent evidence.<sup>20</sup>

Finally, his defense of alibi crumbled with his own admission that he usually went home around 9 o'clock in the evening.<sup>21</sup>

### **The Present Appeal**

Appellant now seeks anew a verdict of acquittal through the present appeal.<sup>22</sup> Appellant and the OSG manifested<sup>23</sup> that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

### **Issue**

Did the Court of Appeals err in affirming appellant's conviction for qualified rape?

### **Ruling**

The appeal utterly lacks merit.

Rape is defined and penalized under Article 266-A of the RPC as amended by RA 8353, viz.:

**Article 266-A. Rape: When and How Committed.** - Rape is committed:

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<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 10.

<sup>21</sup> *Id.* at 10-11.

<sup>22</sup> *Id.* at 15-16.

<sup>23</sup> *Id.* at 20-25.

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

a) Through force, threat or intimidation;

xxx

Meanwhile, Article 266-B of the same code states that the victim's minority and relationship to the offender qualify the rape and warrants the penalty of death, thus:

Article 266-B. Penalty. – x x x

xxx

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

1) 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;

xxx

Hence, to sustain a conviction for qualified rape, the following elements must concur: (1) appellant had carnal knowledge; (2) with a woman; (3) through force, threat, or intimidation; (4) the victim is under eighteen (18) years of age at the time of the rape; and (5) 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.

Based on AAA's testimony, the People was able to sufficiently establish all the elements of qualified rape here. Appellant had sexual congress with his daughter, who was thirteen (13) years old at the time, by force and against her will, viz.:

Q : Can you recall when on February 2010, the accused raped you?

A : It was a school day, it was a week day, it's either a Monday or a Tuesday, ma'am.

xxx

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Q : And where did the sexual molestation happen?  
A : At home, in the bedroom of the accused and his wife, ma'am.<sup>24</sup>

xxx

Court : When the fiscal asked you if you were sexually abused by the accused, what do you understand by it?  
A : Rape, your honor.  
Court : When the fiscal asked you if you were sexually molested by the accused, what do you understand by the term sexually molested?  
A : Rape, your honor.  
Court : And when you say that you were raped by the accused, what do you mean when you say that you were raped by the accused?  
A : "Ginagalaw po niya ako." He was raping me whenever he wants, your honor.<sup>25</sup>

xxx

Court : When you say that the accused raped you and what you understand by the word rape is "pag ginagalaw ka ng akusado", what did the accused do when according to you he was raping you or "ginagalaw ka"?  
A : He was asking me to take off my clothes and he also asked me to touch his private organ, your honor.<sup>26</sup>

xxx

Q : Madam Witness, you stated again in your Sinumpaang Salaysay that on February 23, 2010, "ay talagang nagpapalag ako at nagalit siya", can you tell us what is this incident?  
A : The incident was I went inside my room and about to lie down and go to sleep, ma'am. At that time my back was facing him, suddenly he embraced me and started to kiss me around my neck, lips, stomach and I was pushing him then, ma'am.<sup>27</sup>

xxx

Q : Did the penis of the accused touch your vagina on February 2010?  
A : Yes, your honor.  
Court : Did his penis enter your vagina?  
A : Yes, your honor.

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<sup>24</sup> *Id.* at 73.

<sup>25</sup> *Id.* at 74.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 52.

Q : When you said the penis of the accused entered your vagina, can you tell us if the whole penis of the accused enter your vagina?

A : What I mean is that he was not able to insert his full penis inside my vagina because it was very painful. I was pushing him and then he [got] irritated then [left], ma'am.<sup>28</sup>

xxx

Court : All right, noted. Let me clarify it. Did a part of the penis of the accused enter your vagina?

A : Yes, your honor.<sup>29</sup>

xxx

AAA positively identified her father, herein appellant, as the person who sexually ravished her. She testified that he suddenly kissed her, took off her clothes, and inserted his penis in her vagina. The fact that only half of his penis entered her vagina does not negate his culpability for qualified rape. For carnal knowledge does not require full penile penetration of the female. Mere touching of the external genitalia by a penis capable of consummating the sexual act is sufficient to constitute carnal knowledge.<sup>30</sup>

Appellant attempts to discredit AAA's testimony, claiming that she merely fabricated the rape charge because he prohibited her from having a boyfriend. He also maintained that the rape could not have taken place considering that his live-in partner FFF and AAA's half-siblings would have heard her shout as they were sleeping in the same room where AAA slept or just in the adjacent room. Finally, it is illogical that she suffered for four (4) years without telling anyone.

We are not convinced.

We note that AAA was only thirteen (13) years old at the time of the rape, as evidenced by her birth certificate.<sup>31</sup> Indeed, courts are inclined to give credit to a child-victim's account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.<sup>32</sup> Too, it is highly inconceivable for a daughter like AAA to impute on her own father a crime as despicable as rape, unless the imputation was the plain truth.<sup>33</sup>

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<sup>28</sup> *Id.* at 75.

<sup>29</sup> *Id.* at 53.

<sup>30</sup> *People v. Besmonte*, 735 Phil. 234, 247 (2014).

<sup>31</sup> *Rollo*, p. 18.

<sup>32</sup> *People v. Ronquillo*, 818 Phil. 641, 651-652 (2017).

<sup>33</sup> *People v. XXX*, G.R. No. 235662, July 24, 2019.



Appellant's claim that rape could not have taken place considering his live-in partner FFF and other children, BBB and CCC who were sleeping either in the same room with AAA or just in the adjacent room, would have heard her should deserves scant consideration. It had been established that FFF was not in the house that night and as for AAA's siblings, they were in the other room.<sup>34</sup> In any event, it is settled that lust is no respecter of time or place. Rapists are not discouraged from committing sexual abuse by the mere presence of people nearby. Rape could even be committed under circumstances as indiscreet as a room full of family members sleeping side by side.<sup>35</sup>

As for AAA's delay in reporting the rape, the same cannot be taken against her. The Court has consistently held that delay in reporting rape incidents, in the face of threats, cannot be taken against the victim.<sup>36</sup> Indeed, it was understandable that AAA would hesitate to report her ordeal to others because the culprit was not just any man but his own flesh and blood who in all thirteen (13) years of her life had had parental authority over her. As the Court of Appeals aptly noted, there can be no greater source of fear or intimidation than one's own father since fathers exercise authority over a person from the time of birth.<sup>37</sup>

Finally, appellant's denial and *alibi* cannot prevail over AAA's positive, spontaneous, and straightforward testimony. Between a categorical testimony which has a ring of truth on one hand, and a mere denial on the other, the former must prevail.<sup>38</sup>

Another. For *alibi* to prosper, it is not enough that appellant proves he was somewhere else when the crime was committed. He must likewise establish that it was physically impossible for him to have been at the *locus criminis* at the time of its commission. Here, appellant himself admitted that he would usually go home around 9 o'clock in the evening.<sup>39</sup> This is consistent with AAA's testimony that appellant raped her inside their home between 9 and 10 o'clock in the evening of February 23, 2010.

It is settled that the trial court's factual findings on the credibility of witnesses are accorded high respect, if not conclusive

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<sup>34</sup> *Rollo*, p. 11.

<sup>35</sup> *People v. Panes*, 817 Phil. 1096, 1103 (2017).

<sup>36</sup> *People v. Briosos*, 788 Phil. 292, 308-309 (2016).

<sup>37</sup> *People v. Pacayra*, 810 Phil. 293-294 (2017).

<sup>38</sup> *People v. XXX*, G.R. No. 230334, August 19, 2019.

<sup>39</sup> *Rollo*, pp. 10-11.

effect, due to its unique opportunity to observe the witnesses' demeanor on the stand. This rule becomes even more compelling when such factual findings are concurred in by the Court of Appeals, as in this case.<sup>40</sup>

Going now to the penalty, Article 266-B of the Revised Penal Code, as amended by RA 8353, prescribes the penalty of *reclusion perpetua* for simple rape. But where 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 the proper penalty is death.<sup>41</sup>

Here, the Information alleged the fact of AAA's minority and her relationship with appellant. During the trial, the prosecution offered in evidence AAA's birth certificate<sup>42</sup> to prove her minority at the time of the incident. Meanwhile, her blood relation with appellant is undisputed. Consequently, the death penalty should have been imposed on appellant were it not for the enactment of RA 9346.<sup>43</sup> The courts below therefore correctly sentenced appellant to *reclusion perpetua*<sup>44</sup> without eligibility for parole.<sup>45</sup>

Further, the courts below correctly held appellant liable for civil indemnity of ₱100,000.00, moral damages of ₱100,000.00, and exemplary damages of ₱100,000.00, in conformity with prevailing jurisprudence.<sup>46</sup> These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

**WHEREFORE**, the appeal is **DENIED**. the Decision of the Court of Appeals in CA-G.R. CR-HC No. 09935 dated March 14, 2019 is **AFFIRMED**.

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<sup>40</sup> *People v. Mabalo*, G.R. No. 238839, February 27, 2019.

<sup>41</sup> Article 266-B(1).

<sup>42</sup> Record, p. 248.

<sup>43</sup> An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>44</sup> Section 3, RA 9346.

<sup>45</sup> A.M. 15-08-02 clarifies:

xxx the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole*" shall be used in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

<sup>46</sup> See *People v. Jugueta*, 783 Phil. 806, 846 (2016).

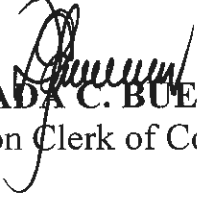
Appellant **XXX** is **GUILTY** of **QUALIFIED RAPE**. He is sentenced to *reclusion perpetua* without eligibility for parole and ordered to **PAY**:

- 1) ₱100,000.00 as civil indemnity;
- 2) ₱100,000.00 as moral damages; and
- 3) ₱100,000.00 as exemplary damages.

These amounts shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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(CA-G.R. CR HC No. 09935)

The Hon. Presiding Judge  
Regional Trial Court, Branch 52  
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