



Republic of the Philippines
Supreme Court
Manila

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

JUL 26 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 223553

Present:

- versus -

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

ROGELIO BAGUION A.K.A.
"ROGEL,"
Defendant-Appellant.

Promulgated:

July 4, 2018

Wilfredo V. Lapitan

X ----- X

DECISION

MARTIRES, J.:

This is an appeal from the Decision,¹ dated 29 October 2015, of the Court of Appeals in CA-G.R. CR.-H.C. No. 01840 which affirmed with modification the Decision,² dated 28 March 2014, of the Regional Trial Court, Branch 12, [XXX]³ (RTC), in Criminal Case No. R-ORM-10-00085-HC, finding Rogelio Baguion a.k.a. Rogel (*accused-appellant*) guilty of Statutory Rape.

Prayer

¹ Rollo, pp. 4-14; penned by Associate Justice Renato C. Francisco with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring.

² CA rollo, pp. 25-34; penned by Presiding Judge James Clinton R. C. Nuevo.

³ The city where the crime was committed is blotted to protect the identity of the rape victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

THE FACTS

In an Information, dated 11 May 2010, accused-appellant was charged with statutory rape. The information reads:

That on or about the 8th day of October 2009, at around 11:50 in the morning at [XXX], and within the jurisdiction of this Honorable Court, the above-named accused: ROGELIO BAGUION @ "Rogel," armed with a "MACHETE," by means of force, threat and intimidation, with lewd design and taking advantage of the innocence and minority of the complainant, did then and there wilfully, unlawfully, and feloniously had carnal knowledge of said victim "AAA,"⁴ 10 years of age, without her consent, against her will, and to the prejudice of her development and well-being as a child.

In violation of Article 266-A, RPC as amended by RA 8353.⁵

Accused-appellant pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the victim AAA, her mother BBB, and Dr. Amelia C. Cam (*Dr. Cam*) as witnesses. Their combined testimony tended to establish the following:

At 11:50 a.m., on 8 October 2009, and while she was home alone and fast asleep, AAA was awakened by accused-appellant, who was a neighbor and whom she called "Tiyo Roel." With a machete in his hand, accused-appellant threatened AAA not to do anything, otherwise, he would kill her and her nephew. He then held AAA and forced her to go with him to his house, which was eight (8) meters away from AAA's.⁶

At his house, accused-appellant undressed himself and AAA and thereafter he performed the push-and-pull motion on her, but his erect penis

⁴ The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (*Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances*). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*); R.A. No. 8505 (*Rape Victim Assistance and Protection Act of 1998*); R.A. No. 9208 (*Anti-Trafficking in Persons Act of 2003*); R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and R.A. No. 9344 (*Juvenile Justice and Welfare Act of 2006*).

⁵ Records, p. 2.

⁶ TSN, 25 April 2011, pp. 5-6, 10.

failed to fully penetrate AAA's genitalia. Despite the lack of full penetration, AAA still felt severe pain.⁷

Accused-appellant then closed down his house and went out to gather *tuba*. AAA, whom accused-appellant left behind, found a hole at the *bangera* or wash area, through which she went out and returned home. AAA did not immediately report the incident to her mother out of fear that accused-appellant would kill her and her nephew.⁸

On 14 October 2009, Francisco Cabusas (*Cabusas*) and accused-appellant were drinking at AAA's house. Sometime during the drinking session, the two fought and they accused one another of molesting AAA. BBB, mother of AAA, then asked the latter who molested her. AAA, who was already crying at that time, told BBB that it was accused-appellant who threatened her with a machete and forcibly brought her to his house where she was raped.⁹

The following morning, on 15 October 2009, AAA and BBB went to the Department of Social Welfare and Development (*DSWD*), and proceeded to report the incident likewise to the police authorities.¹⁰ On the same day, AAA was subjected to physical examination by Dr. Cam who testified later: that there was redness in the perihymenal area, i.e., surrounding the hymen; that there was no laceration or injury noted at the time of the examination; that the redness in said area of the vagina was not normal but it may disappear in three (3) days; that there was a possibility that the redness was caused by consistent rubbing, sexual abuse or application of external force; and that it was possible that even if the incident occurred on 8 October 2009, the redness would have still persisted up to 15 October 2009, the date of AAA's examination.¹¹

Version of the Defense

Accused-appellant denied the allegations against him, saying on 8 October 2009, he stayed at home as he was ill due to his arthritis. On 13 October 2009, he went to a nearby store to buy milk. On his way, he saw AAA being cradled by Cabusas. When he admonished the latter for embracing the child, Cabusas got angry and threatened him that a case

⁷ Id. at 7-9.

⁸ Id. at 7-8, 10.

⁹ TSN, 29 April 2011, pp. 5-6.

¹⁰ Id. at 6-7.

¹¹ TSN, 28 March 2011, pp. 5-10.



would be filed against him. The following day, BBB called him up and told him that a case for rape would be filed against him.¹²

The RTC Ruling

In its decision, the RTC found accused-appellant guilty of statutory rape. It ruled that AAA was credible as she positively identified accused-appellant as the one who raped her. The RTC added that even if there was no rupture of the hymen, this did not negate the commission of the crime of rape; for it is already a well-settled rule that full penile penetration is not an element in the crime of rape. The *fallo* reads:

WHEREFORE, accused ROGELIO BAGUION @ “Rogel” is found guilty beyond reasonable doubt of Statutory Rape as penalized under the Revised Penal Code as amended by R.A. 8353 and sentencing him to suffer the penalty of reclusion perpetua and ordering him to pay the victim AAA fifty thousand pesos (P50,000.00) as moral damages, and twenty-five thousand pesos (P25,000.00) as exemplary damages, and to pay the costs.

SO ORDERED.¹³

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

In its decision, the CA affirmed the conviction of accused-appellant but modified the amount of damages awarded. It held that where the victim was threatened with bodily injury, as when the rapist was armed with a deadly weapon, such constituted intimidation sufficient to bring the victim to submission to the lustful desires of the rapist. The CA opined that although the victim testified that accused-appellant’s erect penis did not penetrate her vagina, the prosecution was able to establish that his penis touched the labia of the victim. It noted that AAA felt pain because the penis of accused-appellant touched her vagina while the former was performing push-and-pull movements; and that AAA’s testimony was corroborated by Dr. Cam when she testified that the victim suffered redness in the area of her labia minora. The appellate court declared that rape is consummated by the slightest penile penetration of the labia; thus, it concluded that accused-appellant committed statutory rape against the victim who was 10 years old at the time of the incident. The CA disposed of the case in this wise:



¹² TSN, 21 February 2012, pp. 5-18.

¹³ CA *rollo*, p. 34.

WHEREFORE, the appeal is hereby DENIED. The Regional Trial Court's Judgment finding accused-appellant ROGELIO BAGUION @ "ROGEL" guilty beyond reasonable doubt of statutory rape is AFFIRMED with MODIFICATION. Accused-appellant is sentenced to reclusion perpetua and ordered to pay AAA the sums of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages, with an interest of 6% per annum from the finality of this decision until its full satisfaction.

SO ORDERED.¹⁴

ISSUE

Hence, this appeal. Accused-appellant adopts the same assignment of error he raised before the appellate court, *viz*:

THE COURT A QUO ERRED IN PRONOUNCING THE GUILT OF ROGELIO BAGUION DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT¹⁵

Accused-appellant asserts that he could not have abducted AAA because his house was surrounded by the houses of AAA's relatives; that if indeed a sexual intercourse occurred, AAA could have yelled for help even while the aggressor was still making his advances; and that her relatives would surely have noticed when she was being forcibly brought out from her house.¹⁶

THE COURT'S RULING

The appeal is bereft of merit.

Statutory rape is committed by sexual intercourse with a woman below 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 they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of

¹⁴ Rollo, p. 14.

¹⁵ CA rollo, p. 18.

¹⁶ Id. at 18-21.

proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.¹⁷

As to the first element, AAA' s age at the time of the commission of the offense is uncontroverted. Her birth certificate, which was duly presented and offered in evidence, shows that she was born on 17 January 1999,¹⁸ thus, she was only 10 years and 8 months old at the time she was raped.

As regards the second and third elements, AAA positively identified accused-appellant as the person who molested her. She clearly and straightforwardly narrated the incidence of rape as follows:

[Prosecutor Encina]: Do you remember AAA if anything happened to you on October 8, 2009?

[AAA]: Yes, [sir]. I can remember.

Q: On this date October 8, 2009 at around 11:50 in the morning, where were you?

A: I was at home asleep, Ma'am.

Q: Who was with you at that time?

A: I was alone, Ma'am.

x x x x

Q: When you said you fall asleep AAA, what happened next?

A: Somebody awaken me, Ma'am.

Q: What did somebody do to wake you up?

A: I heard a voice saying "hoy" 3x and when I woke up I saw a person named "Tiyo Roel," Ma'am.

Q: Who is this "Tiyo Roel" you are referring to?

A: Our neighbor, Ma'am.

Q: Is he the same as the accused in this case Rogelio Baguion?

A: Yes, Ma'am. He is the one.

Q: Have you known this Rogelio Baguion for a long time AAA?

A: Yes, Ma'am.

Q: When you said you saw him when you opened your eyes, what was he doing?

A: He told me should I tell anybody what will happen next he will kill me and my nephew, Ma'am.

¹⁷ *People v. Garcia*, 695 Phil. 576, 587 (2012).

¹⁸ Records, p. 11.

Q: What was he carrying at that time while he was telling you that?

A: A machete, Ma'am.

Q: After saying "don't do anything," what else did he do?

A: He forced me, Ma'am, to go with him to his residence?

Q: How far is his residence from your house?

A: To the front walling of this Court which distance is estimated to 8 meters, more or less, Ma'am.

Q: Did you resist at that time AAA?

A: I resisted, Ma'am.

Q: At that time while he was forcing you to go with him to his house he was holding his machete?

A: Not anymore, Ma'am. He put it down.

Q: Was he holding you?

A: Yes, Ma'am.

Q: Were you able to reach his house AAA?

A: Yes, Ma'am.

Q: What did he say when you reached his house?

A: He undressed me, Ma'am.

Q: How about himself, did he also undress himself?

A: Yes, Ma'am.

Q: After he undressed himself and he undressed you, what did he do?

A: "Iya gi saghid-saghid ang iya oten sa ako bisong ug naa mi gawas na puti sa iya oten" which means that he rubbed his penis on my vagina and a little while he ejaculated a white substance, Ma'am.

Q: When he made "saghid-saghid" movement AAA was his penis erected?

A: Yes, Ma'am. It was.

Q: You also said that he ejaculated a white substance, what happened next?

A: He closed the whole house and thereafter he went out and gathered "tuba," Ma'am.

Q: How about you where were you?

A: He left me behind and I found a little hole at a "bangera" where I egret [sic] and proceeded to my residence, Ma'am.

Q: Did he threaten you again after he ejaculated?

A: No, Ma'am. Not anymore.

[Court]: Ms. Witness, you said that the accused penis was erected, did that penis touch your vagina?



A: Yes, your Honor.

Q: In what manner did the accused let his penis touch your vagina?

A: "Sakyod-sakyod" meaning he was then performing a push and pull motion, your Honor.

Q: When you say "saghid-saghid" is that the same thing as "sakyod-sakyod?"

A: Yes, your Honor.

Q: What do you mean by or the meaning of "saghid-saghid," is that similar by touching your vagina by that penis without getting inside your vagina or when you say "sakyod-sakyod" which means push and pull motion, is that penis really penetrates to your vagina?

A: His erected penis only touches my vagina but it did not penetrate, your Honor. x x x x¹⁹

AAA' s testimony is sufficient to convict accused-appellant of statutory rape. The nature of the crime of rape often entails reliance on the lone, uncorroborated testimony of the victim, which is sufficient for a conviction, provided that such testimony is clear, convincing, and otherwise consistent with human nature.²⁰ Questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied the appellate courts. The rule is even more stringently applied if the appellate court has concurred with the trial court.²¹

During her examination of AAA, Dr. Cam found redness on the victim's labia majora. Dr. Cam opined that such injury was possibly caused by consistent rubbing through sexual abuse.²² Although such medical finding, left alone, was susceptible of different interpretations, AAA's testimonial narration about how accused-appellant had sexually assaulted her, including how his penis had only slightly penetrated her vagina, confirmed that he had carnal knowledge of her.

In *People v. Teodoro*,²³ the Court explained:

In objective terms, carnal knowledge, the other essential element in consummated statutory rape, does not require full penile penetration of the female. The Court has clarified in *People v. Campuhan* that the mere touching of the external genitalia by a penis capable of consummating the

¹⁹ TSN 25 April 2011, pp. 5-8.

²⁰ *People v. Olimba*, 645 Phil. 468, 480 (2010).

²¹ *People v. Barcelá*, 734 Phil. 332, 342-343 (2014).

²² TSN 28 March 2011, pp. 5-6.

²³ 704 Phil. 335 (2013).



sexual act is sufficient to constitute carnal knowledge. All that is necessary to reach the consummated stage of rape is for the penis of the accused capable of consummating the sexual act to come into contact with the lips of the pudendum of the victim. This means that the rape is consummated once the penis of the accused capable of consummating the sexual act touches either labia of the pudendum. As the Court has explained in *People v. Bali-balita*, the touching that constitutes rape does not mean mere epidermal contact, or stroking or grazing of organs, or a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, but rather the erect penis touching the labias or sliding into the female genitalia. Accordingly, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape proceeds from the physical fact that the labias are physically situated beneath the mons pubis or the vaginal surface, such that for the penis to touch either of them is to attain some degree of penetration beneath the surface of the female genitalia. It is required, however, that this manner of touching of the labias must be sufficiently and convincingly established.²⁴

In the case at bar, there is no dispute that there was no full penile penetration of the victim's vagina as narrated by AAA herself. However, it is also undisputed that accused-appellant's erect penis touched the victim's labia majora as corroborated by the medical findings. Thus, the Court finds no reason to reverse the conviction of accused-appellant of statutory rape.

***Accused-appellant's defense
of denial and alibi are
inherently weak.***

It is well-settled that denial is an "intrinsically weak defense which must be supported by strong evidence of non-culpability to merit credibility."²⁵ Alibi, on the other hand, is the "weakest of all defenses, for it is easy to contrive and difficult to disprove and for which reason it is generally rejected. For the alibi to prosper, it is imperative that the accused establishes two elements: (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission."²⁶

Accused-appellant was unable to establish any of the foregoing elements to substantiate his alibi. He merely claimed that he could not have committed the offense because he was at his house, suffering from arthritis. This testimony is uncorroborated. Hence, in contrast to AAA's direct, positive, and categorical testimony, accused-appellant's defense will not stand.



²⁴ Id. at 352-353.

²⁵ *People v. Deliola*, 794 Phil. 194, 209 (2016).

²⁶ Id.

Accused-appellant's insistence that AAA's lack of resistance negates the commission of rape is nothing but a futile and desperate attempt to reverse his conviction. In addition, no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape. Even the lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused.²⁷ It is worth emphasizing that in statutory rape, proof of force, intimidation or consent is unnecessary. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old.²⁸

As regards the contention that AAA's house is surrounded by the houses of her relatives, as such, they could have seen accused-appellant bringing AAA to his house, it is pure speculation. AAA's relatives may not have been at home at that time or they could have been inside having their lunch considering that the incident occurred around noontime.

Based on the foregoing, it is clear that all the elements of statutory rape have been proven in the instant case. The conviction of accused-appellant must be upheld.

Pecuniary liability

The Court finds that pursuant to *People v. Jugueta*,²⁹ the award of damages in the present case must be modified. As regards statutory rape, the award should be ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. In addition, all the damages awarded shall earn legal interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The 29 October 2015 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01840 is **AFFIRMED WITH MODIFICATION** as to the amount of damages. Accused-appellant Rogelio Baguion is **GUILTY BEYOND REASONABLE DOUBT** of **STATUTORY RAPE** and is hereby sentenced to suffer the penalty of ***reclusion perpetua, without eligibility for parole***. Accused-appellant is ordered to pay AAA the following amounts: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. All monetary awards for damages shall earn interest


²⁷ *People v. Pareja*, 724 Phil. 759, 778 (2014).

²⁸ *People v. Arpon*, 678 Phil. 752, 772 (2011).

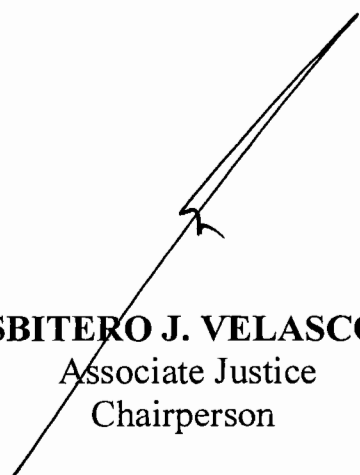
²⁹ 783 Phil. 806 (2016).


at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

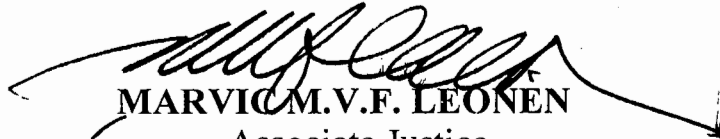
SO ORDERED.



SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

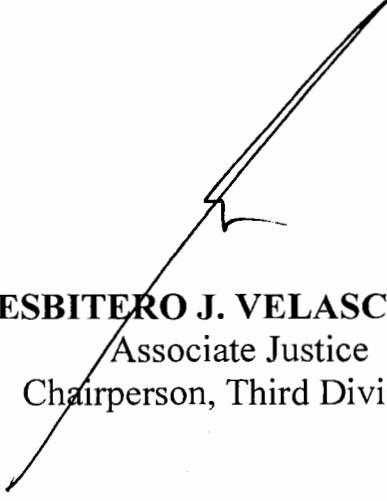

LUCAS P. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

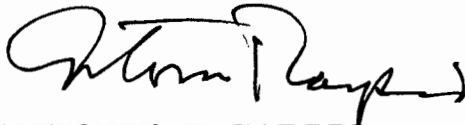
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



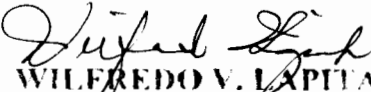
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 26 2018