



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 201732

Present:

SERENO, *CJ.*,
 Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, *JJ.*

- versus -

JESUS BURCE,
 Accused-Appellant.

Promulgated:

26 MAR 2014

X ----- X

DECISION

LEONARDO-DE CASTRO, J.:

For Our resolution is the appeal of the Decision¹ dated June 3, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03906, which affirmed with modification the Decision² dated April 2, 2009 of the Regional Trial Court (RTC) of Naga City, Branch 28, in Criminal Case Nos. RTC'08-0169-RTC'08-0173, finding accused-appellant Jesus Burce (Burce) guilty beyond reasonable doubt of the qualified rape of his own daughter AAA,³ as defined under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353.

Upon the sworn complaint of AAA's mother, the Assistant Prosecutor of Naga City filed with the RTC five Informations, all dated May 7, 2007, charging Burce with raping AAA on five separate occasions. The first Information, docketed as RTC'08-0169, reads:

That on or about 10 December 2005, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-

¹ *Rollo*, pp. 2-17; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring.

² Records, pp. 109-120; penned by Judge Rosita L. Lalwani.

³ The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

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named accused, father of the herein private complainant, [AAA], 14 years old, 5 mos. and 13 days, having been born on June 27, 1991, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said complaining witness, against her will and consent, to her damage and prejudice.⁴

The other four Informations filed in RTC'08-0170 to RTC'08-0173 were similarly worded as above, except for the alleged date of the commission of the rape, how the rape was committed, and age of AAA who was still a minor at the time the rape occurred.⁵

The five cases were consolidated and jointly tried.

When arraigned on June 19, 2008, Burce pleaded not guilty to all five rape charges.⁶

During pre-trial, the parties admitted that AAA was a minor and Burce's daughter; that AAA has a sister, DDD, who is also Burce's daughter; and that AAA was born on June 27, 1991 per her Birth Certificate, marked as one of the exhibits of the prosecution.⁷

The prosecution presented the following witnesses during trial: (1) AAA, the victim;⁸ (2) BBB, AAA's mother and Burce's wife;⁹ (3) CCC, AAA's sister-in-law;¹⁰ and (4) Dr. Raoul V. Alcantara (Alcantara), physician-medico legal officer of the National Bureau of Investigation (NBI), Daraga, Albay.¹¹ The prosecution also submitted several documentary evidence including AAA's Birth Certificate¹² and the NBI Preliminary Report¹³ dated November 8, 2007 of Dr. Alcantara stating that (1) no extra-genital physical injury was noted at the time of examination, and (2) the medico-genital findings show definitive signs of previous blunt force injury to the hymen.

Evidence for the defense solely consisted of accused-appellant's testimony.¹⁴

The RTC rendered its Decision on April 2, 2009, convicting Burce of rape only in Criminal Case No. RTC'08-0169 and acquitting him of the four

⁴ Records, p. 1.

⁵ No copies of the Informations in RTC'08-0170 to RTC'08-0173 were attached to the records of the case elevated to this Court, resultantly, the details were lifted from the said Informations as quoted in the RTC Decision dated April 2, 2009. (Records. pp. 109-111.)

⁶ Records, pp. 33-34.

⁷ Id. at 36-37.

⁸ TSN, September 11, 2008, September 16, 2008, October 27, 2008 and February 23, 2009.

⁹ TSN, February 16, 2009.

¹⁰ TSN, August 5, 2008 and August 11, 2008.

¹¹ TSN, July 28, 2008.

¹² Records, p. 58; Exhibit "A."

¹³ Id. at 59; Exhibit "C."

¹⁴ TSN, January 16, 2009, February 9, 2009 and February 23, 2009.

other charges in Criminal Case Nos. RTC'08-0170 to RTC'08-0173. The RTC decreed:

In Criminal Case Nos. RTC'08-0170, RTC'08-0171, RTC'08-0172 and RTC'08-0173, the prosecution, having failed to establish the guilt of the accused beyond reasonable doubt, accused, Jesus Burce, is hereby ordered ACQUITTED of the offense charged.

In Criminal Case No. RTC'08-0169, the prosecution having established the guilt of accused, Jesus Burce, beyond reasonable doubt, he is hereby ordered CONVICTED of the offense charged and is hereby ordered to suffer the penalty of RECLUSION PERPETUA, without eligibility of parole.

Accused Jesus Burce, is likewise ordered to pay the private complainant the following damages:

- a. Seventy-Five Thousand (₱75,000.00) Pesos as civil indemnity;
- b. Seventy-Five Thousand (₱75,000.00) Pesos as moral damages;
- c. Twenty-Five Thousand (₱25,000.00) Pesos as exemplary damages.¹⁵

Burce appealed his conviction by the RTC in RTC'08-0169 before the Court of Appeals.

The Court of Appeals summarized the prosecution's version of events, thus:

At midnight of December 10, 2005, the victim, [AAA], was sound asleep in a house located somewhere in the vicinity of x x x, Naga City when she was awakened by appellant who removed her shorts and panty, and went on to sexually ravish her. [AAA] easily recognized appellant since the light was turned on.

[AAA] resisted by pushing appellant away, but he immediately held her hands, pinned her legs with his legs and inserted his penis into her vagina. While he was inside her, [AAA] fought and pushed him. Thereafter, she felt pain in her vagina and pitied herself for what her own father had done to her.

Thereafter, appellant repeated his dastardly acts against [AAA] on several occasions more. The last rape incident was on September 16, 2007 and was witnessed by [CCC], the victim's sister-in-law, through a five (5)-inch hole in a divider made of old plywood. [CCC] clearly witnessed the whole incident as she was only four (4) meters away and the room was well-illuminated by a 7-watt fluorescent.

¹⁵ Records, p. 120.

CCC reported what she had seen to [BBB], mother of the victim. [AAA] was eventually constrained to reveal to them appellant's sexual forays on her body. Forthwith, [BBB] and [CCC], along with the victim, went to the barangay hall to report the rape incidents to Barangay Captain Regmalos.

On November 8, 2007, the victim was examined by Dr. Raoul Alcantara. The results of her medico-genital examination revealed definitive signs of previous blunt force injury in her hymen, probably caused by the penetration of an erect male organ.¹⁶

The appellate court likewise gave the following gist of Burce's defense:

[Burse] vehemently denied raping his daughter [AAA] on December 10, 2005, claiming that he was always out at night, driving a tricycle as a source of living. He insinuated that [AAA] pursued the rape cases against him as she was interested in getting the ₱10,000.00 victim's compensation, similar to what was purportedly awarded to her sister [DDD] in connection with another rape case filed against him wherein he pled guilty out of remorse. Considering that he was acquitted in the four (4) other rape charges (Criminal Case Nos. RTC 08-0170, RTC 08-0171, RTC 08-0172 and RTC 08-0173), where the same witnesses, whose credibility was impeached by numerous flaws, testified, he contended that he should likewise be acquitted in the present case on appeal.¹⁷ (Citations omitted.)

In its Decision dated June 3, 2011, the Court of Appeals affirmed with modification the RTC judgment of conviction against Burce, to wit:

WHEREFORE, with the **MODIFICATION** declaring appellant ineligible for parole, the decision dated April 2, 2009 of the Regional Trial Court of Naga City, Branch 28, in Criminal Case No. RTC 08-0169 is **AFFIRMED** in all other respects.¹⁸

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs before us and adopting instead their respective briefs before the Court of Appeals.¹⁹

Burse raises a lone assignment of error in his Brief:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ONE COUNT OF QUALIFIED RAPE.²⁰

¹⁶ *Rollo*, pp. 4-5.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 16.

¹⁹ *Id.* at 28-34.

²⁰ *CA rollo*, p. 52.

Burce faults the RTC for finding him guilty beyond reasonable doubt of raping AAA on December 10, 2005. Burce insists that he should be acquitted of said rape charge, just as he was acquitted of the other four rape charges, given the numerous flaws in the testimonies of the prosecution witnesses. Burce, in particular, highlighted the following RTC findings which were the bases for his acquittal of the four rape charges:

[I]n the other incidents of carnal knowledge upon [AAA] by the accused, other than the December 10, 2005 incident, the Court noted the following findings, culled from the testimony of [AAA] herself and of prosecution witness [CCC].

According to [AAA], she did not shout for the people in their place are loquacious. She was afraid that it will be the subject of grapevine in the neighborhood because she was concerned with what they will say than her safety.

The Court further finds that the filing of these cases came about when according to [AAA], a week after September 16, 2007, she was told by [CCC] that her father was raping her whenever she was fast asleep, which information, [CCC] first divulged to [EEE²¹], and thereafter, it came to the knowledge of [AAA's] mother, [BBB].

Moreover, the Court finds that [AAA] even tried to stop [CCC] from reporting to her mother because the latter might side with her father because a similar thing was done to her sister [EEE] but nothing happened as they agreed to forgive her father.

Further, the Court finds that according to [CCC], during the September 16, 2007 incident, [AAA] was not doing anything, thus, she did not know if [AAA] was asleep. On the following day, [CCC] asked [AAA] if it was painful but the latter responded by asking which one is painful. When asked by [CCC] whether her head is painful, [AAA] answered that her head is not painful.

In view of the testimony of [AAA] that during the September 16, 2007 incident, she was not totally asleep but just kept quiet when her father who was having carnal knowledge of her, this Court cannot but wonder why [AAA], when asked by [CCC] whether it was painful, evaded the question by shifting the question back to her by asking which one is painful. The Court however believes that [AAA] knew to what part of her body was [CCC] referring to when the latter asked her which one is painful.

On the September 16, 2007 incident, the Court further finds that [AAA] was using loose panty and shorts which she just tied because her lower garments had no garter.

Moreover, the Court finds that the family, twelve in all, sleeps side by side in one long mat, thus according to [AAA], her body touches the arms of the one sleeping on her left and right side, which testimony was corroborated by [CCC]. As a matter of fact, according to [CCC], during the September 16, 2007 incident, the accused lifted and took away [GGG],

²¹ Another sister of AAA and DDD.

the youngest child, who was then one year old, thus, creating a space for the accused before he placed himself on top of [AAA].

The Court believes that, during these incidents other than the December 10, 2005 incident, [AAA] had all the opportunity to vindicate her honor but it appears to the Court that she chose to take a passive stance. Strangely enough, instead of, at least, donning herself with something that would have spared her from the swift and easy access of the accused, she opted to wear an ungarmented shorts and panty.²²

Burce's appeal has no merit.

We stress, at the outset, that each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge.²³ Therefore, Burce's acquittal in RTC'08-0170 to RTC'08-0173 does not necessarily result in his acquittal in RTC'08-0169. While the prosecution presented the same witnesses for all the cases, the content, credibility, and weight of their testimonies differ for each charge.

It is also important to note that only Burce's conviction in RTC'08-0169, *i.e.*, for the rape that occurred on December 10, 2005, that is the subject of the appeal before us. We can no longer touch upon the findings of fact and conclusions of law of the RTC in its final and executory decision in RTC'08-0170 to RTC'08-0173 acquitting Burce even though the same markedly demonstrate the gross gender insensitivity of the trial court judge and her deplorable unmindfulness of the plight of the underprivileged or poor minor victim whom the said judge even faulted for the dastardly acts of her own father.

Burce's conviction in RTC'08-0169 is essentially dependent upon AAA's testimony recounting how her father raped her on December 10, 2005. The RTC, as affirmed by the Court of Appeals, gave more weight to AAA's testimony rather than Burce's denial and alibi.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon us. As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.²⁴ Without any clear showing that the trial court and the appellate court overlooked,

²² Records, pp. 117-118.

²³ *People v. De la Torre*, 464 Phil. 23, 45 (2004).

²⁴ *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.

misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.²⁵

After a careful review, this Court is convinced that AAA's unwavering narration of how she was raped on December 10, 2005, together with her positive identification of her own father as the one who raped her, are worthy of belief. With tears in her eyes, a clear indication that she was telling the truth,²⁶ AAA recounted the rape incident on December 10, 2005:

PROS. DELA CRUZ:

Q On December 10, 2005[,] it was the first time that your father molested or raped you, where and what time did it happen?

x x x x

A That was the first time he did that thing to me and it happened in our house.

Q What time?

A Midnight.

Q How did he rape you on that date and time?

A I was sleeping soundly during that time because during that time I used to sleep like that but when I was already in the custody of the DSWD we are trained not to sleep like that.

Q How did you know that you were raped by your father at that time?

A I came to know about that because he was (sic) then removed my shorts and panty and the light was bright during that time.

Q What did you do to resist while he was removing your shorts and panty?

A I was trying to fight him by pushing him.

Q Despite your resistance, what did your father do next?

A That was the time that he held my both hands and held my both legs with his legs.

Q And that time your father has no more underwear?

A No more, sir.

Q And after that, what happened?

A While I was fighting back as I stated he pressed both my hands and held both my legs and inserted his penis into my vagina.

Q While he was doing that while his penis was inside your vagina, what did you do to resist him?

A I pushed him, sir.

Q What happened after your (sic) push him?

²⁵ *People v. Basao and Apole*, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 543.

²⁶ *People v. Ancheta*, 464 Phil. 360, 371 (2004).

A When I pushed him he then left after removing his penis into (sic) my vagina.

Q Where did he go?

A He went out of the room, sir.

x x x x

Q On this December 10, 2005 the first time your father did that to you when your father left you, what did you feel?

A During that time because it was the first time I felt pain and I could not believe it because he was my father and he do (sic) that to me as his daughter.

x x x x

For the record the witness is crying then wiping [her] tears with the blue handkerchief.²⁷

In contrast to AAA's straightforward and positive testimony, Burce's defenses consisted of denial and alibi. Burce claims he was out of the house at the time of the alleged rape, driving a tricycle to make a living.

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places.²⁸

Burce failed to demonstrate that it was physically impossible for him to have been home on the night of December 10, 2005. Not only was Burce's alibi uncorroborated, Burce's work as tricycle driver would have allowed him to go home with ease anytime he wanted. In fact, BBB, his own wife, testified that Burce would go home late at night to sleep and just leave early in the morning to work again:

PROS. DELA CRUZ:

Q Mrs. Witness, your husband, the accused in this case, testified that he never goes (sic) to your house every time that he has work as a tricycle driver at night. What do you say to that?

A He used to go home every night, sir.

Q At what time did he arrive at your house?

A Sometimes 11:30 or 12:00, Sir.

Q And at what time did he leave?

²⁷ TSN, September 16, 2008, pp. 5-7.

²⁸ *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 257-258.

A About 4:00 or 5:00 of the following day, Sir.²⁹

Equally baseless is Burce's contention that AAA is only charging him with rape because she is interested in getting monetary compensation. Burce insinuates that AAA got the idea when her sister, DDD, earlier lodged a rape complaint against Burce, and after Burce admitted his guilt in said case, he paid ₱10,000.00 as victim's compensation to DDD.

Once more, other than Burce's bare allegations, there is no evidence that his minor daughter, AAA, could be so induced by malice and materialism as to concoct a rape charge against her own father, that would destroy her own and her father's honor, as well as tear her family apart, all for ₱10,000.00. We have held that no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.³⁰ Being young and guileless, AAA had no ill motive to falsely testify and impute such a serious crime against her own father.³¹

All told, we find no reason to reverse the judgment of conviction rendered against Burce by the RTC, and affirmed by the Court of Appeals.

Rape is defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended, which provide:

Art. 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 is 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.

Art. 266-B. *Penalties.* – x x x.

x x x x

²⁹ TSN, February 16, 2009, p. 3.

³⁰ *People v. Isang*, 593 Phil. 549, 559 (2008).

³¹ *People v. Martin*, 567 Phil. 138, 149 (2008).

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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.³² But when the offender is the victim's father, there need not be actual force, threat, or intimidation. The reason for this rule was explained in *People v. Chua*,³³ through former Mr. Chief Justice Renato S. Puno, and we quote:

In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do. (Citations omitted.)

In this case, Burce's carnal knowledge of AAA was established by AAA's testimony, corroborated by Dr. Alcantara's finding of blunt force injuries to AAA's hymen, probably caused by penetration by an erect male organ. Also based on AAA's testimony, Burce used force against her by holding both her hands and pinning her legs beneath his so he could successfully have carnal knowledge of her. Moreover, Burce is AAA's father and his moral ascendancy over his minor daughter is sufficient to take the place of actual force, threat, or intimidation.

To warrant the imposition of the death penalty, the following additional elements must be present: (1) that the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.³⁴

³² *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 337.

³³ 418 Phil. 565, 582 (2001).

³⁴ *People v. Candellada*, G.R. No. 189293, July 10, 2013, 701 SCRA 19, 30.

The qualifying circumstances of relationship (father and daughter) and minority (AAA was only 14 years old, 5 months, and 13 days old on December 10, 2005, when the rape occurred) were duly alleged in the Information, proved during the trial, and even admitted by Burce himself.

Notwithstanding the provisions of Article 266-B of the Revised Penal Code, as amended, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon Burce is *reclusion perpetua*. This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As for the monetary awards, we affirm the award of civil indemnity and moral damages, each in the amount of ₱75,000.00; but increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00. We further subject the indemnity and damages thus awarded to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid, in line with prevailing jurisprudence.³⁵

WHEREFORE, premises considered, the Decision dated June 3, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03906, is hereby **AFFIRMED with MODIFICATIONS**, increasing the award of exemplary damages to ₱30,000.00 and imposing interest upon the amounts of indemnity and damages awarded at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

³⁵ *People v. Vitero*, G.R. No. 175327, April 3, 2013, 695 SCRA 54.

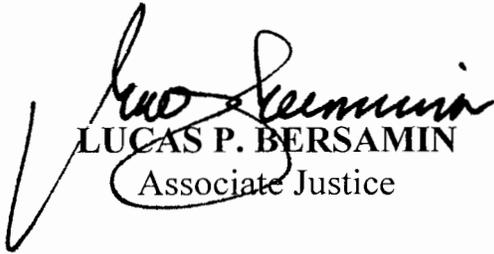
WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
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