



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 218255

Present:

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

- versus -

JERRY BUGNA y BRITANICO,
Accused-Appellant.

Promulgated:

April 11, 2018

X

[Signature] X

DECISION

MARTIRES, J.:

This is an appeal from the 17 December 2014 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01055-MIN, which affirmed with modification the 15 May 2012 Decision² of the Regional Trial Court, Branch 26, Surallah, South Cotabato (RTC), in Criminal Case Nos. 4613-S and 4614-S, finding accused-appellant Jerry Bugna y Britanico (*Bugna*) guilty beyond reasonable doubt of two counts of Qualified Rape defined and penalized under Article 266-B(1) of the Revised Penal Code (RPC).

[Signature]

¹ Rollo, pp. 3-20; penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

² CA rollo, pp. 38-45; penned by Presiding Judge Roberto L. Ayco.

THE FACTS

In an Information dated 28 March 2008, Bugna was charged with the Crime of Rape committed against his very own daughter, AAA.³ The accusatory portion of the information reads:

That on or about 7th day of April 2007 at around 8:00 o'clock in the evening, in their own house situated at [REDACTED] Province of South Cotabato and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one [AAA], 16 years old and his own biological daughter against her will and consent.

CONTRARY TO LAW.⁴

In a separate Information of the same date, Bugna was charged with another count of rape against AAA. The accusatory portion of the information reads:

That on or about 21st day of December 2007 at around 2:00 o'clock in the morning, in their own house situated at [REDACTED] Province of South Cotabato and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one [AAA], 16 years old and his own biological daughter against her will and consent.

CONTRARY TO LAW.⁵

During his arraignment on 16 July 2008, Bugna, with the assistance of his counsel, pleaded "Not Guilty" to both counts of rape.⁶

Evidence for the Prosecution

The prosecution presented AAA and Dr. Neil T. Crespo (*Dr. Crespo*) as witnesses. Their combined testimonies tended to establish the following:

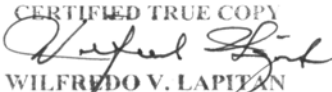
Sometime in April 2007, AAA and her four siblings were about to go to sleep when Bugna arrived drunk from a drinking session. At around 8:00 P.M., while they were sleeping, she felt her father removing her shorts.

³ 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*).

⁴ Records (Criminal Case No. 4614-S), p. 1.

⁵ Records (Criminal Case No. 4613-S), p. 1.

⁶ Id. at 15.

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Bugna then inserted his fingers into AAA's vagina. Unsatisfied, he removed his finger and decided to mount AAA and inserted his penis into her vagina. Perturbed, AAA asked Bugna why he was doing this to her – to which the latter replied that if her uncle was able to use her why not her father. During the incident AAA felt pain in her genitals and was nervous and scared of her father. Her mother was away during that time.⁷

Thereafter, on 21 December 2007, AAA and her siblings were again left alone in their house with their father because their mother went to General Santos City. At around 2:00 A.M. of the said date, she again felt her father pulling down her shorts. AAA attempted to run but Bugna was able to grab her and instructed her to lie down. While on the floor, he went on top of her scared daughter and inserted his penis into her vagina. Thereafter, Bugna went back to sleep and left AAA in pain, who felt a sticky watery substance come out of her vagina. AAA was able to report the incident to her mother only after some time because Bugna warned her that her mother might send him to jail if she found out.⁸

On 2 January 2008, Dr. Crespo conducted a physical examination on AAA, wherein he noted that AAA's genital area had healed lacerations.⁹

Evidence for the Defense

The defense presented Bugna as its lone witness whose testimony sought to prove the following:

On 4 April 2007, at around 8:30 A.M., Bugna travelled with his ducks to Tacurong, Sultan Kudarat, and stayed there until 1 May 2007. Thereafter, he went to Bayugan, Agusan del Sur, until 31 December 2007, and was never able to go back home.¹⁰

The RTC Ruling

In its 15 May 2012 decision, the RTC found Bugna guilty of two counts of rape. The trial court noted that AAA positively identified her father as her assailant; as such, Bugna's defense of denial and alibi deserved scant consideration. The dispositive portion reads:

WHEREFORE, foregoing premises considered and discussed, the court finds the evidence of the prosecution sufficient to establish the guilt of the accused beyond reasonable doubt. Accused, Jerry B. Bugna, is

⁷ TSN, 25 June 2009, pp. 8-13.

⁸ Id. at 15-18.

⁹ TSN, 23 July 2009, pp. 6 and 10-11.

¹⁰ TSN, 22 February 2012, pp. 5-6.



therefore found GUILTY of the crime of two (2) counts of Rape against his own daughter as charged in the above informations.

ACCORDINGLY, he is hereby sentenced to suffer the penalty of reclusion perpetua in each of the cases.

He is further ordered to pay the private offended party the amount of ₱50,000.00 in each case, as moral damages.

SO ORDERED.¹¹

Aggrieved, Bugna appealed before the CA.

The CA Ruling

In its assailed 17 December 2014 decision, the CA substantially affirmed the RTC judgment and modified only the damages awarded. The appellate court found AAA's testimony to be credible considering it was straightforward and consistent. It expounded that Bugna's moral ascendancy substituted the element of violence and intimidation. The CA explained that Bugna's unsubstantiated alibi has no leg to stand on in view of AAA's positive identification of him. It ruled:

WHEREFORE, the appeal is DENIED. The Decision dated May 15, 2012 of the Regional Trial Court, [REDACTED] South Cotabato, Branch 26, in Criminal Cases Nos. 4613-S and 4614-S is hereby AFFIRMED, finding accused-appellant Jerry Bugna y Britanico GUILTY beyond reasonable doubt of two (2) counts of qualified rape, with MODIFICATION of the award of civil indemnity, ordering accused-appellant to pay AAA, in each case, ₱75,000.00 as civil indemnity ex delicto, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of 6% per annum from date of finality of this judgment until fully paid.

SO ORDERED.¹²

Hence, this appeal raising:

ISSUE

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF RAPE

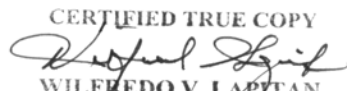
THE COURT'S RULING

The appeal has no merit.



¹¹ CA rollo, p. 45.

¹² Rollo, p. 19.

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There is qualified rape when a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the victim has carnal knowledge with a minor through force, threat or intimidation.¹³ In other words, the element of qualified rape is as follows: (a) there is sexual congress; (b) with a woman; (c) done by force and without consent; (d) the victim is a minor at the time of the rape; and (e) offender is a parent (whether legitimate, illegitimate or adopted) of the victim.¹⁴

In the case at bench, all the foregoing elements are present to convict Bugna for two counts of rape committed against AAA.

It is axiomatic that the evaluation of the RTC judge of the credibility of the witness, coupled by the fact that the CA affirmed the trial court's findings, is binding upon the Court,¹⁵ unless it can be established that facts and circumstances have been overlooked or misinterpreted, which could materially affect the disposition of the case in a different manner.

After a careful scrutiny of the records, the Court finds no reason to depart from the findings of the courts *a quo*.

It is settled that an accused may be convicted based solely on the testimony of the witness, provided that it is credible, natural, convincing and consistent with human nature and the normal course of things.¹⁶ In her testimony, AAA unflinchingly recalled her harrowing experience at the hands of her own father, who was supposed to be her protector but was instead the monster lurking in her nightmares. In addition, AAA's testimony is rendered more credible and believable because Bugna neither alleged nor proved that AAA was motivated with ill will or malice in testifying against him.¹⁷ She testified:

PROSECUTOR VALDEZ-DAMO:

Q: And you filed two (2) cases of rape against your father, right?

A: Yes, ma'am.

Q: Could you recall when was the first incident?

A: In April, 2007.

Q: What time when the alleged incident happened, if you could recall?

A: In the evening.

Q: Where were you then at that time?



¹³ Article 266-A in connection with Article 266-B of the RPC.

¹⁴ *People v. Buclao*, 736 Phil. 325, 336 (2014).

¹⁵ *People v. Colentava*, 753 Phil. 361, 376 (2015).

¹⁶ *People v. Gahi*, 727 Phil. 642, 657 (2014).

¹⁷ *People v. Jalbonian*, 713 Phil. 93, 104 (2013).

A: I was at home.

Q: While you were at home, what were you doing?

A: We were about to go to sleep.

x x x x

Q: What happened on that night?

A: After they drank, he locked all the doors.

Q: And after he locked all the doors, what else did your father do?

A: We fell asleep already and I just felt that he removed my shorts.

PROSECUTOR VALDEZ-DAMO:

May we put it on record, Your Honor, that the victim is already crying.

Q: You said that you felt that your father was removing your shorts, right?

A: Yes, ma'am.

Q: What did you do then?

A: I did not move then he inserted his finger.

Q: Where did he insert his finger, will you tell the court?

A: Into my vagina.

Q: What did you feel at that time?

A: I was nervous.

Q: What did you do when your father inserted his finger into your vagina?

A: It was painful.

Q: And after that, what did your father do?

A: He removed his finger then he put himself on top of me.

Q: What else did your father do?

A: That was when he abused me.

Q: You said that your father abused you. Will you tell the court what do you mean by that?

A: He placed himself on top of me then he inserted his penis into my vagina.

x x x x

Q: Was that the only incident that your father sexually abused you?

A: There were other incidents. The last sexual abuse happened on December 21, 2007.

x x x x

Q: And what happened while you were at home on that date?

A: Early morning, around 2:00 o'clock, I felt that my father was pulling my shorts.



Q: What did you do when you felt that your father was pulling down your shorts?

A: I was trying to prevent his hand and I seated.

Q: And after that, what happened next?

A: I attempted to run but he pulled me.

Q: And after your father pulled you, what happened next?

A: He held my hand, instructed me to lie down and then he put himself on top of me.

Q: What did you feel at that time when your father instructed you to lie down and then he put himself on top of you?

A: I was scared.

Q: And after that, what did your father do?

A: He inserted his penis into my vagina.

Q: For how long?

A: For only around one (1) minute.

Q: After that, what else did your father do?

A: He left and went back to where he was sleeping.

Q: What did you feel when your father put himself on top of you and inserted his penis into your vagina?

A: It was painful.

Q: What else?

A: Then a sticky substance like water came out.¹⁸

Based on AAA's testimony, it was established that she had sexual contact with Bugna and that the same was against her will or was done without her consent. Her testimony was corroborated by the medical findings that she had healed lacerations on her hymen.¹⁹ On the other hand, it was admitted that AAA was Bugna's daughter and was only 16 years old at the time of the rape.²⁰ Thus, it is painstakingly clear that there is overwhelming evidence to find Bugna guilty of the atrocities he had committed against AAA on two separate occasions.

Positive identification of the accused with moral certainty

Bugna challenges that AAA's identification of him as her assailant was doubtful. He points out that that at the time of the incident, there were several persons inside the room and that it was not well-illuminated. Bugna highlights that AAA merely inferred his identity when she concluded that

¹⁸ TSN, 25 June 2009, pp. 8-12 and 15-17.

¹⁹ TSN, 23 July 2009, pp. 10-11.

²⁰ Records, p. 26.

it was her father because there were no other tall persons inside the room and that she only saw a figure and assumed it was her father.

It is true that the identification of the accused in a criminal case is vital to the prosecution because it can make or break its case. This is so because the prosecution has the burden to prove the commission of the crime and the positive identification with moral certainty of the accused as the perpetrator thereof.²¹ Here, AAA was able to identify Bugna as the assailant because while the room they were in was dark, the moon provided sufficient illumination for her to see his face.

Further, even if AAA could not clearly see Bugna's face, the latter's positive identification still meets the standard of moral certainty. In *People v. Caliso*,²² the Court expounded on what constitutes moral certainty in the identification of the accused, to wit:

In every criminal prosecution, no less than moral certainty is required in establishing the identity of the accused as the perpetrator of the crime. x x x The test to determine the moral certainty of an identification is its imperviousness to skepticism on account of its distinctiveness. To achieve such distinctiveness, the identification evidence should encompass *unique* physical features or characteristics, like the face, the voice, the dentures, the distinguishing marks or tattoos on the body, fingerprints, DNA, or any other physical facts that set the individual apart from the rest of humanity.²³

Being her daughter, AAA is intimately familiar with the physical features of Bugna, such as his voice or stature. She could easily distinguish her father from other persons inside the room especially since only her siblings were with them during the rape incidents. Thus, AAA was adamant that it was Bugna who raped her; according to her there was no other tall person inside the room. Further, she could identify him through his voice because after the rape incident they still had a conversation. It is noteworthy that in one of the conversations, the assailant even identified himself as AAA's father. AAA testified accordingly:

PROSECUTOR VALDEZ-DAMO:

Q: What did you do when your father allegedly put himself on top of you and inserted his penis into your vagina?

A: I was asking him why he did it to me.

Q: What was the answer of your father?

A: Allegedly, my uncle was able to use me, so why not me being the father.



²¹ *People v. Maguing*, 452 Phil. 1026, 1045 (2003).

²² 675 Phil. 742 (2015).

²³ *Id.* at 756.

x x x x

Q: After that, what else did you father do?

A: He removed himself from me and slept beside me and he further asked me if I already have experienced a sexual intercourse.²⁴

Positive identification trumps denial and alibi.

To defend himself, Bugna claims that he was not home from April until December 2007. It is settled that positive identification prevails over alibi because it can easily be fabricated and is inherently unreliable.²⁵ In *People v. Dadao*,²⁶ the Court explained that the defense of alibi must be corroborated by disinterested witnesses, to wit:

It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. Hence, **it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.** x x x While the witnesses presented by the defense to corroborate the respective alibis of Marcelino Dadao and Antonio Sulindao **consisted of friends and relatives who are hardly the disinterested witnesses that is required by jurisprudence.**²⁷ (emphasis supplied)

In the case at bar, other than his testimony, Bugna failed to present disinterested witnesses to corroborate his claim that he was not at home from April to December 2007. Faced with such appalling allegations, he could only muster a measly self-serving alibi to defend himself. Surely, such defense fails to convince the Court of Bugna's innocence especially since AAA had positively and convincingly identified him as her abuser.

Resistance in rape committed with force and intimidation.

Bugna assails that he cannot be guilty of rape through force and intimidation because it was never mentioned whether he had a weapon to threaten AAA with. In addition, he argues that there could be no force and intimidation because after the incident, AAA slept beside him as if nothing happened. Likewise, Bugna bewails that if AAA was indeed truly raped, she should have at least offered resistance or attempted to shout for help to awaken her siblings who were in the same room at that time.



²⁴ TSN, 25 June 2009, pp. 12-13.

²⁵ *People v. Ramos*, 715 Phil. 193, 207 (2013).

²⁶ 725 Phil. 298 (2014).

²⁷ *Id.* at 312.

It is true that in rape cases, the prosecution must prove that force or intimidation was actually employed by the accused upon the victim because failure to do is fatal to its cause.²⁸ Nevertheless, in incest rape of a minor, the moral ascendancy of the ascendant substitutes force or intimidation. In *People v. Castel*,²⁹ the Court explained:

It is hornbook doctrine that in the incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of the father would suffice. The moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. One should bear in mind that in incestuous rape, the minor victim is at a great disadvantage. The assailant, by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. **As a consequence, proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim.³⁰ (emphasis and underlining supplied)**

In the present case, actual force and intimidation need not be present to convict Bugna with rape. He was AAA's father and such relationship or influence rendered her unable to resist her father's advances. Similarly, Bugna's insistence that AAA's lack of resistance belies her allegation of rape deserves scant consideration.

In *People v. Joson*,³¹ the Court explained that resistance is not an element of rape and the lack thereof does not necessarily lead to an acquittal of the accused, *viz*:

We are not persuaded by the accused-appellant's insistence that the absence of any resistance on the part of AAA raised doubts as to whether the sexual congress was without her consent. **The failure of the victim to shout for help or resist the sexual advances of the rapist is not tantamount to consent.** Physical resistance need not be established in rape when threats and intimidation are employed and the victims submit herself to her attackers because of fear.

Besides, physical resistance is not the sole test to determine whether a woman voluntarily succumbed to the lust of an accused. Rape victims show no uniform reaction. Some may offer strong resistance while others may be too intimidated to offer any resistance at all. **After all, resistance is not an element of rape and its absence does not denigrate AAA's claim that the accused-appellant consummated his bestial act.**³² (emphases supplied)



²⁸ *People v. Tionloc*, G.R. No. 212193, 15 February 2017.

²⁹ 593 Phil. 288 (2008).

³⁰ *Id.* at 319.

³¹ *People v. Joson*, 751 Phil. 450 (2015).

³² *Id.* at 460.

Like other forms of sexual abuse or assault, rape essentially boils down to the lack of consent on the part of the victim. In turn, consent should not be implied from the lack of resistance of the abused. As is now seen of the recent Me Too Movement, women have been coming forward about the sexual abuse they had suffered from prominent figures or persons of influence across all industries. What stands out among from these allegations is that the victims failed to show resistance to the advances of their abusers precisely because of the influence the latter possessed.

As applied in the present case, it could be reasonably expected that AAA could not have offered any resistance considering that her very abuser was her own flesh and blood. Bugna's influence and moral ascendancy over AAA had crippled her to such an extent that she succumbed to his dastardly plans. How could AAA resist when the person she expects to keep her safe would ultimately be the one to violate her dignity and rob her of her innocence?

Thus, where there is force and intimidation or in cases where the moral ascendancy or influence of the accused validly substitutes actual force and violence, the lack of resistance should never be used as indicia of consent. For after all, such violence or moral ascendancy may have reduced the victim to nothing more but an object, devoid of free will, to satisfy the abuser's ungodly desires.

Bugna also questions AAA's testimony claiming that it was impossible for him to have raped AAA because her siblings were in the room at the time of the incident. It must be remembered, however, that it has been long settled that lust is no respecter of time and place.³³ The presence of AAA's siblings does not necessarily contradict her allegations of rape especially since she had categorically, consistently, and positively identified Bugna as his abuser.

Likewise, Bugna assails that AAA's actions during and after the alleged rape renders her credibility questionable. Nevertheless, it must be remembered that there is no expected uniform reaction from a rape victim considering that the workings of the human mind placed under emotional stress are unpredictable.³⁴ In other words, a rape victim's survival instincts may trigger her attempt to fight her abuser or at least to shout for help; or the victim may be rendered paralyzed or helpless or hopeless due to the trauma caused by the abuse.



³³ *People v. Cabral*, 623 Phil. 809, 815 (2009).

³⁴ *People v. Lucena*, 728 Phil. 147, 163 (2014).

Modification of damages to conform to recent jurisprudence

The appellate court affirmed the conviction of Bugna but modified the damages awarded. It increased the award of moral damages to ₱75,000.00, and awarded ₱75,000.00 as civil indemnity and ₱30,000.00 as exemplary damages.

Under Article 266-B of the RPC, the penalty of death shall be imposed when the victim is under eighteen (18) years old and the offender is a parent. In view of Republic Act (R.A.) No. 9346,³⁵ however, the penalty of *reclusion perpetua* shall be imposed in lieu of the death penalty when the law violated uses the nomenclature of the penalties under the RPC.

On the other hand, the Court in *People v. Jugueta*³⁶ set the award of damages for the crime of Rape, among others. There, it was held that when the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. No. 9346, the victim is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages. In conformity with the said ruling, all damages awarded to AAA should be increased accordingly.

WHEREFORE, the 17 December 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01055-MIN is **AFFIRMED with MODIFICATION**. Accused-appellant Jerry Bugna y Britanico is ordered to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages for each count of rape with an interest at the rate of six percent (6%) per annum computed from the finality of this judgment until fully paid.

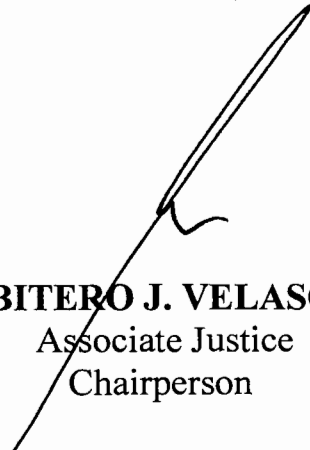
SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

³⁵ An Act Prohibiting the Imposition of Death Penalty in the Philippines.

³⁶ 783 Phil. 806 (2016).


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



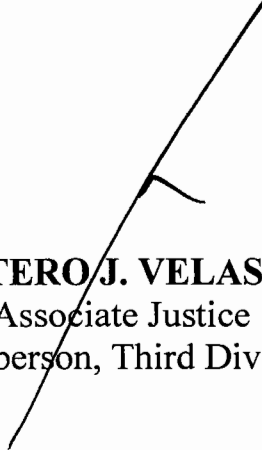
MARVIC M. F. LEONEN
Associate Justice



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.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', written in a cursive style.

ANTONIO T. CARPIO
Acting Chief Justice