



Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Capitan
WILFREDO V. CAPITAN
Division Clerk of Court
Third Division

AUG 17 2018

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 225605

Present:

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

- versus -

VENERANDO GOZO y VELASQUEZ,
Accused-Appellant.

Promulgated:
July 23, 2018

Gregorio S. Santos

X ----- X

DECISION

MARTIRES, J.:

This is an appeal from the 18 June 2015 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06585, which affirmed with modification the 29 November 2013 Decision² of the Regional Trial Court (RTC), in Criminal Case No. 146571 finding accused-appellant Venerando Gozo y Velasquez (*Gozo*) guilty beyond reasonable doubt of Statutory Rape.

[Signature]

¹ *Rollo*, pp. 2-15; penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

² *CA rollo*, pp. 13-21; penned by Judge Lorifel Lacap Pahimna.

THE FACTS

In an Information dated 2 November 2011, Gozo was charged with the crime of statutory rape committed against AAA.³ The accusatory portion of the information reads:

That on or about the 27th day of October 2011, [XXX],⁴ Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and intent to cause or gratify his sexual desire, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], 6 years old, a minor, against her will and consent, the said crime having been attended by the qualifying circumstance of minority, to the damage and prejudice of the said victim.⁵

During his arraignment on 22 November 2011, Gozo pleaded not guilty.

Version of the Prosecution

On 27 October 2011, AAA was staying in the restaurant where her father BBB⁶ worked as a stay-in cook. When it was time for her to sleep, she went up to the second floor of the restaurant. Thereafter, Gozo, who also worked in the restaurant as a stay-in janitor, decided to follow her inside the room. There, he began his advances and started molesting AAA. At first, Gozo inserted his fingers into AAA's vagina but because his lust was not satiated, he eventually inserted his penis into the victim's genitals. After he was through abusing her, he instructed AAA not to tell anyone because it would cause a fight between him and BBB.⁷

Nevertheless, AAA immediately told BBB about the incident when he arrived. They then went to the police station to report what happened and proceeded to the hospital for physical examination. The genital physical

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 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.

⁵ Records, p. 1.

⁶ The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution have 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).

⁷ *Rollo*, p. 4 and *CA rollo*, p. 14.

examination revealed that AAA had fresh shallow lacerations in her hymen at the 3, 6, and 9 o'clock positions.⁸

Version of the Defense

In October 2011, Gozo was working as a janitor in a restaurant where his good friend BBB also worked. He was surprised when he was arrested for allegedly raping AAA noting that BBB sometimes entrusted her to him to the point that they sometimes slept beside each other. Gozo surmised that the rape case might have been filed due to a fight he had with BBB while they were together under a previous employer. He, however, explained that they again became friendly after BBB reached out to him to ask his help for employment in the restaurant.⁹

The RTC Ruling

In its 29 November 2013 decision, the RTC convicted Gozo of statutory rape. The trial court noted that AAA candidly and convincingly narrated how Gozo had defiled her. It quoted her testimony where she recalled how he had inserted his penis and fingers into her vagina. The RTC disregarded Gozo's contention that AAA may have been convinced to testify against him due to his previous fight with BBB because it was unsubstantiated. It found it absurd that AAA's father would allow his child to be subjected to medical examination and be exposed in a public trial if the fact of molestation were untrue.

Further, the trial court ruled that while the prosecution failed to prove AAA's age, Gozo was still guilty of statutory rape. It observed that AAA, who was presented in court, could not be more than 12 years of age. The dispositive portion read:

WHEREFORE, finding accused Venerando Gozo y Velasquez guilty beyond reasonable doubt of STATUTORY RAPE, this court hereby sentences him to suffer the penalty of Reclusion Perpetua; and to indemnify AAA the amount of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages, and PhP30,000.00 as exemplary damages.

SO ORDERED.¹⁰

Aggrieved, Gozo appealed before the CA.



⁸ Id. at 5.

⁹ Id. at 7.

¹⁰ CA rollo, p. 21.

The CA Ruling

In its assailed 18 June 2015 decision, the CA affirmed the RTC decision with modifications. The appellate court agreed that all the elements of statutory rape were present. It explained that while the prosecution did not present any documentary evidence to prove that AAA was below 12 years old, Gozo never questioned nor disputed the trial court's opinion that AAA could not have been more than 12 years old. As such, the CA surmised such conclusion or finding of fact was entitled to great weight and should not be disturbed except for strong and cogent reasons.

The appellate court pointed out that AAA positively identified Gozo as the one who raped her and her testimony was corroborated by the physical findings. Further, it posited that there was insufficient evidence to hold that BBB prodded his own daughter to testify against Gozo out of ill will. The appellate court, however, modified the damages awarded by imposing legal interest and clarifying that Gozo was not entitled to parole. It ruled:

WHEREFORE, the present appeal is hereby **DENIED**. The Decision dated November 29, 2013 rendered by the Regional Trial Court, [XXX], in Criminal Case No. 146571, for Statutory Rape is hereby **AFFIRMED with MODIFICATIONS**, in that appellant is not eligible for parole and is hereby ordered to pay interest at the legal rate of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.¹¹

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT; AND

II

WHETHER THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE AND IN RELYING HEAVILY ON THE PROSECUTION'S VERSION.¹²



¹¹ *Rollo*, p. 14.

¹² *CA rollo*, pp. 40-41.

THE COURT'S RULING

The appeal has no merit.

In convicting the accused for statutory rape, the prosecution has the burden to prove the following elements: (1) **the age of the complainant**; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.¹³ In turn, conviction may result on the basis of the victim's sole testimony, provided it is credible, natural, and consistent with human nature and the normal course of things.¹⁴

A reading of AAA's testimony shows how she candidly and consistently narrated the abuses she suffered at the hands of the accused, to wit:

COURT

Q: Noong lumipat ka ng higaan doon ka niya inano, ano ang ginawa niya sa iyo?

A: Ni-rape niya po ako.

Q: Hindi ko alam iyong rape, paano ba iyon? Ano ang ginawa niya sa iyo?

A: Ano po... tinusok.

Q: Ano ang tinusok?

A: (Witness demonstrated by the use of her finger).

Q: Saan ka tinusok?

A: Witness pointed to her private parts.

x x x x

Q: AAA, daliri lang ba ang ginamit sa iyo?

A: Hindi po pati dito niya. (Witness pointed to her private part).

Q: Ano iyong pati dito niya, hindi ko naiintindihan iyong pati dito niya?

A: Iyong ano po niya.

Q: Iyong dito niya ang ginamit, alam mo ba ang tawag doon?

A: Hindi po.

Q: Hindi mo alam ang pangalan?

A: Hindi po.

Q: May ipapakita ako sa iyo... iyong tinuturo mo ginamit din sa iyo, tinsuok din sa iyo, iyon ba ang ibig mong sabihin o daliri lang?

¹³ *People v. Cadano, Jr.*, 729 Phil. 576, 584-585 (2014).

¹⁴ *People v. Gahi*, 727 Phil. 642, 657 (2014).



- A: Dalawa po.
- Q: Daliri at saka ano?
A: Iyong dito niya (Witness pointed to her private part).
- Q: Hindi mo alam ang pangalan noon?
A: Hindi po.
- Q: May ipapakita ako sa iyo sasabihin mo sa akin kung alin doon ang tinusok sa iyo ha?
A: Opo.
- Q: Nakita mo ba ito, doll ito ha?
A: Opo.
- Q: Manika ito... alam mo ba kung ano ang itsura ng doll na ito, ano itsura niya mukha ba siyang lalaki o babae?
A: Lalaki po.
- Q: Eh ituro mo nga sa amin kung alin ang sinasabi mo sa amin kasi hindi ko maintindihan kanina eh?
A: Dito po.
- Q: Ano ang ginawa niya dito?
A: Tinusok niya po... tinsuok niya din po dito sa ano ko.
- Q: May ipapakita ako sa iyo, gusto kong makita baka mamaya paa lang pala iyon... ipapakita ko sa iyo ha?
A: Ayoko po.
- Q: Pero ito ang tinusok sa iyo? Manika lang ito, bubuksan ko para ituro mo kasi baka mamaya daliri lang, hindi ko alam eh... eto diba may daliri, andito sabi mo... ito ang tinusok sa iyo... papakita ko sa iyo kasi manika lang naman ito at hindi naman ito nakakatakot, bubuksan ko ha huwag kang magugulat ha... ngayon, alin diyan, ito ang kamay, alin diyan ang tinusok sa iyo?
A: Dalawa po pati po ito. (Witness pointed to the private part of the anatomically correct doll).
- Q: Ano ang sabi mo daliri at saka ito pa?
A: Opo.
- Q: So dalawa?
A: Opo.¹⁵

In her testimony, AAA was straightforward and categorical in identifying Gozo as the one who abused her. Despite her youthful innocence, AAA repeatedly said that Gozo inserted his finger and penis into her vagina. Through the help of anatomically correct dolls, she pointed to the body parts Gozo had inserted into her vagina even if she did not know what they were called. AAA was steadfast that Gozo truly inserted his penis leaving no doubt that she was unduly robbed of her purity and

¹⁵ TSN, 20 March 2012, pp. 12-19.



innocence. Notwithstanding the RTC's clarificatory questions, she was never confused and unequivocally recalled how Gozo had molested her.

Thus, AAA's testimony alone is sufficient to prove Gozo's identity as the molester and to confirm that he had carnal knowledge of the victim. It is axiomatic that the findings of the trial courts as to the credibility of witnesses and their testimonies are afforded great weight and are left undisturbed, unless there are facts of substance or value which may have been overlooked and could materially affect the outcome of the case.¹⁶

Gozo assails AAA's testimony to be incredible and contrary to human experience. He notes that given his bigger build, it would have been natural for AAA's genitals to bleed and not only turn red after he allegedly inserted his fingers. Thus, Gozo believes that such absurdity negatively affects AAA's testimony and raises the possibility that she was indeed coached.

The Court, however, finds that AAA's testimony was not inconsistent with the physical evidence. Lack of bleeding of the victim's genitals is not an element of rape. This bears significance considering that the slightest penetration of the female genitalia consummates rape; as a mere touching of the external genitalia by the penis is capable of consummating the sexual act and, thus, constitutes rape.¹⁷ In fact, contrary to Gozo's position, physical evidence corroborates AAA's tale of defloration as it was discovered during the medical examinations that she had fresh lacerations in her vagina.

Considering the element of the victim's age, the trial court ruled that although the prosecution failed to present evidence as to AAA's age, Gozo should still be held guilty of statutory rape. It ratiocinated that upon observation of the victim while testifying, she could not have been more than 12 years old. On appeal, the CA also found that all elements of statutory rape were present because Gozo never questioned the trial court's findings of fact.

In *People v. Pruna (Pruna)*,¹⁸ the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, viz:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party;

¹⁶ *People v. Mangune*, 698 Phil. 759, 769 (2012).

¹⁷ *People v. Butiong*, 675 Phil. 621, 630 (2011).

¹⁸ 439 Phil. 440 (2002).



2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age;
3. If the certificate of live birth or authentic document is shown to have been lost, destroyed, or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
 - a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
 - b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
 - c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused;
5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him; and
6. The trial court should always make a categorical finding as to the age of the victim.¹⁹

In the present case, no documentary evidence such as a birth certificate or other authentic documents were offered to prove AAA's age and there was no explanation why none was presented. Neither was there testimonial evidence from the concerned individuals to establish her age as only the medico-legal testified as to AAA's age. While the medico-legal may have testified as to her age,²⁰ he was not among the individuals enumerated in *Pruna* who may testify in case the birth certificate or authentic documents were lost or otherwise unavailable. In addition, his testimony as to AAA's age was hearsay as he had no personal knowledge because BBB merely relayed the said information to him. Thus, it is readily apparent that the prosecution miserably failed to prove AAA's exact age.



¹⁹ Id. at 470-471.

²⁰ TSN, 23 October 2012, p. 20.

As outlined in *Pruna*, the prosecution has the burden to prove the age of the offended party and the lack of opposition to the testimonial evidence on the part of the accused should not be taken against him. It is noteworthy that in the present case, there was no testimonial evidence that Gozo could have objected to. In addition, the trial court is required to make a categorical finding of the victim's age. Here, however, the RTC simply opined, based on its observation, that AAA could not have been more than 12 years of age. Clearly, the prosecution failed to prove with sufficient and appropriate evidence that AAA was below 12 years of age.

Thus, the designation of the crime Gozo committed should be corrected from statutory rape to simple rape, consistent with the Criminal Law principle that doubts should be resolved in favour of the accused. In *People v. Hilarion (Hilarion)*,²¹ the Court convicted the accused for simple rape after the prosecution failed to prove the victim's age with certainty, to wit:

Second, the appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result. In the present case, AAA testified that she cried when the appellant inserted his penis into her vagina. As a child of tender years, she could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. **Nonetheless, AAA's act of crying during the rape is sufficient indication that the appellant's act was against her will.** x x x x

x x x x

It is not lost on us that the victim's age had been properly alleged in the information which stated that AAA was a minor and six (6) years of age at the time of rape. **We cannot, however, sustain the appellant's conviction for statutory rape since the prosecution failed to sufficiently prove the victim's age.**

x x x x

Accordingly, as the Court did in Buado we can only sustain the accused's conviction for simple rape, as the victim's and her mother's testimonies to prove the victim's minority is insufficient.²² (emphases supplied)

Similar to *Hilarion*, Gozo could also be convicted for simple rape due to the presence of force and intimidation. The accused, a full grown adult, had sexual intercourse with AAA, a minor of tender age. She was crying during the ordeal, indicating that the act was against her will. In

²¹ 722 Phil. 52 (2013).

²² Id. at 55-58.

addition, it is settled that even absent any actual force or intimidation, rape can be committed if the malefactor has moral ascendancy over the victim.²³ In this case, Gozo and BBB, AAA's father, were close friends. In fact, he claimed that BBB would sometimes entrust AAA to his care and, on occasion, would sleep beside each other. Thus, notwithstanding the lack of blood relations between Gozo and AAA, it is shown that he had the authority or ascendancy over her in view of their close relationship.

Appropriate penalty and damages

In its assailed decision, the CA clarified in the dispositive portion that Gozo was not eligible for parole. In A.M No. 15-08-02-SC,²⁴ the Court had provided the guidelines for the use of the phrase "without eligibility for parole" to remove any confusion, to wit:

1. In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility of 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 Republic Act (R.A.) No. 9346, the qualification of without "eligibility of parole" shall be used to qualify *reclusion perpetua* 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.

In summary, there is only a need to qualify that the accused is not "eligible for parole" in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346. This is to differentiate cases where the penalty imposable was **reduced** to *reclusion perpetua* from cases where the penalty imposed was *reclusion perpetua*. Here, Gozo is guilty of simple rape, punishable by *reclusion perpetua*; thus, there was no need to indicate that he was ineligible for parole because accused sentenced to indeterminate penalties are *ipso facto* ineligible for parole.

As to the award of damages, the courts *a quo* required Gozo to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In order to conform with recent jurisprudence,²⁵ however, the exemplary damages should be increased to ₱75,000.00.



²³ *People v. Amoc*, G.R. No. 216937, 5 June 2017.

²⁴ Guidelines for the proper use of the phrase "without eligibility for parole" in indivisible penalties.


²⁵ *People v. Jugueta*, 783 Phil. 806, 849 (2016).

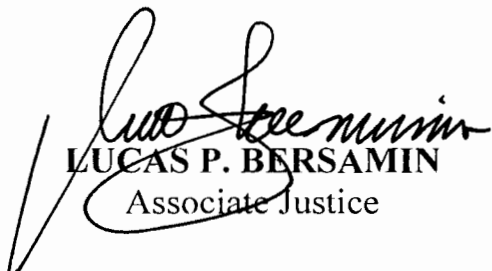
WHEREFORE, the 18 June 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06585 is **AFFIRMED with MODIFICATION**. Accused-appellant Venerando Gozo y Velasquez is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All damages awarded are subject to an interest of six percent (6%) per annum computed from the finality of this judgment until fully paid.

SO ORDERED.

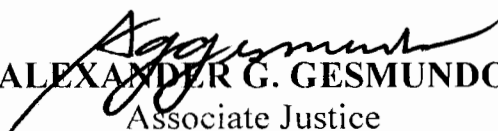

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

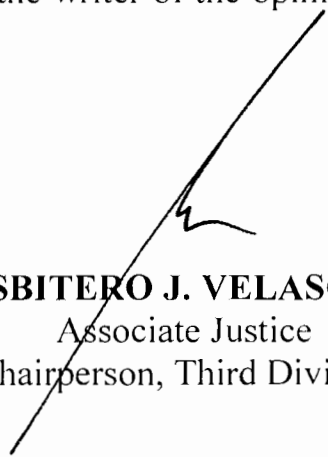

LUCAS P. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

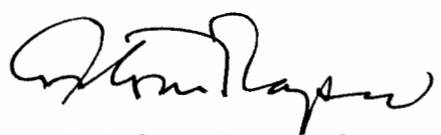
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



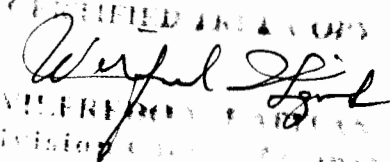
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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. No. 296,
The Judiciary Act of 1948, as amended)

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 WILFREDO P. VELASCO
 Division Chairperson
 Third Division
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