632 Phil. 446

SECOND DIVISION

[G.R. No. 179935. April 19, 2010]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ROGELIO ASIS Y LACSON, APPELLANT.

D E C I S I O N

DEL CASTILLO, J.:

Once again, we are confronted with the repulsive situation where a father raped his minor daughter. In this case, "AAA" [1] was sexually molested not once but twice. Unfortunately, until this stage, her father did not manifest any feeling of remorse or sought forgiveness; instead, he insists on his innocence notwithstanding overwhelming evidence against him.

This is an appeal from the June 29, 2007 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 00961 which affirmed with modification the January 25, 2005 Decision[3] of the Regional Trial Court (RTC), Branch 64, Camarines Norte finding appellant Rogelio Asis *y* Lacson guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Factual Antecedents

On November 8, 1996, two Informations were filed charging appellant with two counts of rape committed against his own daughter, "AAA". The accusatory portions of the two Informations read as follows:

> Crim. Case No. 96-0125:
>
> That on or about January 8, 1994, and subsequently thereafter, at x x x, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the moral ascendancy he exercises over the private complainant and by means of force and intimidation, did then and there,

willfully, unlawfully, and feloniously succeed in having sexual intercourse with his own daughter "AAA," a minor who at the time of the incident is below 12 years old, against the latter's will, to her damage and prejudice.

Contrary to law.[4]

Crim. Case No. 96-0126:

That on or about 3:00 o'clock in the afternoon of August 15, 1996, at x x x, Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the moral ascendancy he exercises over the private complainant and by means of force and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having sexual intercourse with his own daughter "AAA," a minor barely 14 years old, against the latter's will, to her damage and prejudice.

Contrary to law.[5]

During the arraignment on December 4, 1996, the appellant pleaded "not guilty". Trial on the merits ensued thereafter.

Version of the Prosecution

The prosecution presented the offended party "AAA" as its first witness. She testified that on January 8, 1994, while her brother was out with their neighbors and while her mother was doing laundry, she was left alone in their house with her father, herein appellant.[6] The appellant then ordered her to undress. At first, "AAA" tried to resist but she subsequently succumbed to appellant's orders when the latter threatened to kill her if she refused.[7] The appellant then removed his shorts and briefs and ordered "AAA" to lie down on the floor. Appellant thereafter went on top of "AAA", separated her legs and forcibly inserted his penis into his daughter's vagina and succeeded in having carnal knowledge of her. After satisfying himself, appellant threatened to kill "AAA" if she would disclose the incident to anyone.

"AAA" further testified that appellant again raped her on August 15, 1996. Appellant pulled her to a grassy portion near their house and ordered her to remove her clothes. She followed his orders because he threatened to kill her if she refused.[8] After telling her to lie down on the ground, appellant took two pieces of stones, separated her legs, and placed them on top of the stones. He then inserted his penis into her vagina. It was so painful for

"AAA" that she asked her father why he was doing this to her. Appellant answered that before anybody will benefit from her, he will be the one to do it first.[9]

The prosecution presented "BBB", the brother of "AAA", as its second witness. "BBB" testified that on January 8, 1994, he saw his father, the appellant, undressing "AAA".[10] Appellant was already fully naked when he ordered "AAA" to lie down on the ground. "BBB" claimed that he saw his father rape his sister but he did not reveal to anyone what he saw because he was scared of his father who was always carrying a bolo.[11]

On cross-examination, "BBB" testified that he witnessed his father rape his sister "AAA" on two occasions.[12] However, he did not report the incidents to anyone for fear of what his father might do to him.

The prosecution next presented Dr. Marcelito B. Abas. He testified that he conducted a genital examination on "AAA" and found several hymenal lacerations in the following positions: 3, 5, 6, and 12 o'clock positions.[13] He then concluded that the hymenal lacerations were caused by sexual intercourse and that "AAA" is no longer a virgin.

Version of the Defense

The defense presented the appellant as its lone witness. Appellant denied the charges against him and claimed that on January 8, 1994, he was in Quezon City working as a carpenter at Josefa Corporation.[14] According to the appellant, he worked in the said corporation for six months or up to June 1994, although he returned home on January 17, 1994 to get his marriage license and to secure his NBI clearance.[15] Thus, he claimed that he could not have raped his daughter "AAA" on January 8, 1994.

Appellant also denied raping "AAA" on August 15, 1996. He claimed that on said date, he was at his house celebrating the birthday of his mother-in-law.[16] He claimed that during the party, his daughter "AAA" was in the house of her aunt which was located within the same neighborhood as appellant's house.[17]

Appellant also claimed that "AAA" harbored ill-feelings against him hence, she filed the rape charges. He alleged that he scolded "AAA" and did not allow her to work in Manila as a helper.[18] When "AAA" insisted on working in Manila, he whipped her with a broom causing her legs to bleed.

Ruling of the Regional Trial Court

The trial court found the appellant guilty beyond reasonable doubt of two counts of rape and sentenced him to suffer the penalty of death.

The trial court rejected appellant's alibi for being self-serving and for lack of any evidence supporting said claim.[19] It held that appellant's denial and alibi deserve no credence at all considering the testimony of "AAA" positively identifying the appellant as the perpetrator of the crime. It also noted that "AAA" was not ill-motivated when she filed the charges against her own father.[20]

The dispositive portion of the Decision of the trial court reads:

> WHEREFORE, judgment is hereby rendered finding accused ROGELIO ASIS Y LACSON GUILTY beyond reasonable doubt of the crime of rape for two (2) counts as charged and defined and penalized under Article 335 of the Revised Penal Code as amended in relation to Section 11 of Republic Act No. 7659 (Death Penalty Law) and accordingly, sentencing him to suffer the capital punishment of death in each two (2) separate crimes of rape committed on January 8, 1994 and August 15, 1996 respectively. To pay the victim the amount of P75,000.00 each for [the] separate crime of rape or for a total of P150,000.00 as civil indemnity; P100,000.00 as moral damages for two (2) counts; P50,000.00 as exemplary damages for two (2) counts and to pay the costs.
>
> SO ORDERED.[21]

Ruling of the Court of Appeals

On appeal, the appellate court affirmed with modification the Decision of

the trial court. It held that the victim's testimony clearly showed that the appellant had sexual intercourse with her on January 8, 1994, and on August 15, 1996. The CA held that the evidence presented by the prosecution specially that of "AAA" was clear, steadfast, and convincing.

Regarding the appellant's argument that the prosecution failed to prove the age of "AAA", the appellate court ruled that:

> x x x Latest jurisprudence, however, also pronounced that the presentation of the

> birth certificate or any other official document is no longer necessary to prove minority. Thus, in this case, where the age of the victim was never put in doubt, except on appeal, and was in fact sufficiently established, there is no corresponding obligation on the part of the prosecution to present other evidence since the testimony of the victim, who is competent to testify, is sufficient to prove her age. The presentation of the birth certificate would merely be corroborative. x x x[22]

Our Ruling

We **AFFIRM** with **MODIFICATIONS** the Decision of the CA.

Findings of the trial court on the credibility of witnesses and their testimonies are accorded great weight and respect.

The trial court found the testimony of "AAA" to be clear, steadfast, and credible. Thus:

> After a careful scrutiny of the evidence adduced by both the prosecution and the defense and the testimonies of their respective witnesses, this Court finds more for the prosecution convincing and worthy of belief.
>
> From the detailed testimony of the private complainant "AAA" (who was only 12 and 14 years old at the time of the incident) the Court is inclined to believe that the incident of rape actually [transpired] x x x. "AAA" has also no reason to concoct false stories just to implicate this serious offense to [her] own father x x x.[23]

The CA affirmed the said findings, holding thus:

> x x x After a perusal of the records of the case, we are convinced that the trial court did not err in giving credence to the testimonies of the victim and the other prosecution witnesses. The testimony of the victim, detailing how she was abused by the accused-appellant, on two separate occasions, was clear, steadfast, and

convincing. x x x[24]

We find no reason to deviate from the said findings. In rape cases, the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect, because the judge has the opportunity to observe them on the stand and ascertain whether they are telling the truth or not.[25] We have long adhered to the rule that findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless it overlooked substantial facts and circumstances, which if considered, would materially affect the result of the case."[26]

An accused could justifiably be convicted based solely on the credible testimony of the victim. At any rate, we perused the records of the case and we find nothing which would indicate that the trial court and the CA overlooked or failed to appreciate some facts which if considered would change the outcome of the case. Thus, we find the testimony of "AAA" sufficient to hold appellant guilty of two counts of rape.

The testimony of "AAA" clearly established that on January 8, 1994, she was ravished by her own father. She succumbed to his lustful desires because appellant threatened to kill her if she refused. "AAA" thus testified in her direct examination, *viz:*

Prosecutor Pante:

Q: While you and your father was in your house sometime on January 8, 1994 do you remember any extra ordinary thing that happened to you?
A: There was, sir.
Q: What was that incident all about?
A: Sometime on January 8, 1994, I was sexually molested by my father x x x
x x x x
Q: How did your father sexually abuse you that noon of January 8, 1994?
A: At noontime, he tried to lay me down but I resisted, sir.
Q: What happened [when you tried to resist]?
A: He told me that I will be killed x x x, sir.
x x x x
Q: After[your father removed his short and briefs] and while he was on top of you what did he do to you?
A: He was kissing me sir, and was placing his organ into my organ, sir.
x x x x
Q: Now, why did you not report [the incident] to your mother or [to] any [of your] relative?
A: [He] threatened to [kill me,] sir.[27]

As regards the rape incident on August 15 1996, "AAA" testified thus:

Prosecutor Pante:

Q: Sometime on August 15, 1996 at about 3:00 in the afternoon while you were in your house in x x x, Camarines Norte is there anything that happened to you?
A: There was, sir.
Q: What was the incident all about?
A: I was raped by my father x x x, sir.
x x x x
Q: After you were totally naked what happened next?
A: He went on top of me and put his organ [in my vagina], sir.
x x x x
Q: Will you kindly tell the court how [his] penis [was] able to penetrate your vagina?
A: He just placed it inside, sir.[28]

Appellant's denial and alibi deserve no consideration at all.

Appellant's defense of alibi deserves no credence at all. He claimed that on January 8, 1994, he was working as a carpenter in Quezon City and only returned to Camarines Norte on January 17, 1994 to get his marriage license and to secure his NBI clearance. However, other than this self-serving allegation, the defense presented no other evidence to corroborate said claim. When asked to present any documentary proof to substantiate his claim, he claimed that he lost his identification card.

As regards the August 15, 1996 rape incident, appellant claimed that he attended the birthday party of his mother-in-law which was held in his house in Camarines Norte. He denied having raped his daughter and claimed that it was impossible for him to have raped "AAA" on said date considering that a number of people were in attendance during the party.

We are not persuaded. We have held that "denial, if unsubstantiated by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."[29] In this case, appellant's denial does not deserve any consideration given "AAA's" positive identification of appellant as her lecherous attacker.

We are likewise not swayed by appellant's assertion that "AAA" filed the rape charges

against him because he disallowed her to work in Manila. This claim is not only unsubstantiated, but likewise unworthy of belief. As aptly held by the trial court, it strains credulity that the victim would concoct a tale of rape against her own father, allow an examination of her private parts and subject herself to a public trial simply because she was not allowed to work in Manila. We have consistently held that when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[30]

The minority of the victim was satisfactorily established .

The Informations specifically alleged that "AAA" was a minor, *i.e.*, below 12 years old on January 8, 1994, and barely 14 years old on August 15, 1996, when she was raped by her own father. While the evidence of the prosecution consisted mainly of the victim's testimony, we find that the express admission by the accused as regards the age of the victim sufficient to establish her minority.

We quote the testimony of appellant, *viz*:

> Prosecutor Velarde:
> Q: You will admit that on January 8, 1994, your daughter "AAA," who is the complainant in this case was only 11 years old going to 12, isn't it?
> A: Yes.
> Q: In fact she was in grade 6, isn't it?
> A: Yes.[31]

At this juncture, we deem it proper to reiterate the guidelines set forth in *People v. Pruna* [32] in appreciating the 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.
>
> 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 or 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.** (Emphasis supplied)

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.

6. The trial court should always make a categorical finding as to the age of the victim.

The rape incidents in this case were committed on January 8, 1994 and August 15, 1996. As such, the applicable provision is Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 or the Death Penalty Law.[33] Article 335 provides:

ART. 335. *When and how rape is committed*. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman in under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.

> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following circumstances:
>
> 1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
>
> x x x x

The prosecution satisfactorily proved the concurrence of minority and relationship. Thus, the proper imposable penalty would have been death. However, with the passage of Republic Act No. 9346 (An act Prohibiting the Imposition of Death Penalty), the appellate court correctly reduced the penalty to *reclusion perpetua*.

As regards the damages, we find that the appellate court correctly awarded the amounts of P75,000.00 as civil indemnity and another P75,000.00 as moral damages for each count of rape, pursuant to prevailing jurisprudence.[34] However, the award of exemplary damages must be increased from P25,000.00 to P30,000.00.[35]

Finally, appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

WHEREFORE, the June 29, 2007 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00961 finding appellant Rogelio Asis *y* Lacson guilty beyond reasonable doubt of two counts of rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "AAA" the amounts P75,000.00 as civil indemnity and another P75,000.00 as moral damages, for each count, is **AFFIRMED** with **MODIFICATIONS** that the award of exemplary damages is increased to P30,000.00, for each count of rape. Appellant is likewise held not eligible for parole.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and *Perez, JJ.*, concur.

[1] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[2] CA *rollo*, pp. 87-100; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman.

[3] Id. at 2140-223; penned by Judge Franco T. Falcon.

[4] Records, p. 2.

[5] Id. at 9.

[6] Id. at 10

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 11.

[11] Id.

[12] Id.

[13] Id. at 199.

[14] Id. at 148-149.

[15] Id. at 149.

[16] Id. at 152-153.

[17] Id. at 151.

[18] Id. at 153.

[19] CA *rollo,* p. 16.

[20] Id. at 17.

[21] Id. at 17-18.

[22] Id. at 98.

[23] Records, pp. 218-219.

[24] CA *rollo*, p. 91.

[25] *People v. Manalili,* G.R. No. 184598, June 23, 2009.

[26] Id.

[27] TSN, April, 14, 1997, pp. 11-17.

[28] Id. at 18-21.

[29] Id.

[30] *People v. Ruales*, 457 Phil. 160, 172 (2003).

[31] TSN, September 8, 1999, p. 25.

[32] 439 Phil. 440, 470 (2002).

[33] See *People v. Manalili,* supra note 25.

[34] *People v. Sarcia*, G.R. No. 169641, September 10, 2009.

[35] Id.

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