

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX ORTOA Y OBIA, ACCUSED-APPELLANT.

Ponente: VIDAL, M.D., J.

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VIDAL, M.D., J.:

This is an Intermediate Review[1] of the Decision[2] dated 30 October 2003 of the Regional Trial Court, National Capital Judicial Region, Branch 208, Mandaluyong City, convicting Accused-Appellant FELIX ORTOA y OBIA (hereinafter Appellant) of the crime of Qualified Rape in Criminal Case No. MC01-327-FC committed against his own daughter, herein Victim MARI GRACE B. ORTOA (hereinafter Victim), a 13-year old minor. The decretal portion of the Decision reads:

WHEREFORE, the Court finds accused FELIX ORTOA y OBIA guilty beyond reasonable doubt of the crime of QUALIFIED RAPE under Article 335 of the Revised Penal Code, as amended by RA 7659 in relation to RA 7610, and sentences him to suffer the penalty of DEATH to be implemented in the manner as provided by law. The accused is hereby ordered to pay MARI GRACE ORTOA the sum of P75,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

The Clerk of Court is hereby ordered to prepare the Mittimus and to transmit the complete records of this case to the Honorable Supreme Court for automatic review.

The City Warden of Mandaluyong, Bureau of Jail Management and Penology is hereby ordered to deliver forthwith the person of FELIX ORTOA y OBIA to the National Bilibid Prisons, Muntinlupa City, with proper escort and security.

SO ORDERED.[3]

THE ANTECEDENTS

The Information charging the Appellant of Rape reads:

That on or about the 3rd day of April, 2001, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with his own daughter, MARI-GRACE B. ORTOA, a minor (13 years old), against her will and consent, thus debasing and/or demeaning the intrinsic worth and dignity of the child as a human being.

CONTRARY TO LAW

City of Mandaluyong

06 April 2001[4]

Appellant was thereafter arraigned and, with the assistance of counsel, pleaded not guilty to the crime charged.[5]

On 19 June 2001, pre-trial was held and terminated with the following stipulations:

- Identity of the accused;
- Victim Mari Grace Ort[o]a is a minor;
- Accused and the victim Mari Grace Ort[o]a live in the same house situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City;
- Victim Mari Grace Ort[o]a was thirteen (13) years old at the time of the commission of the offense;
- Cristeta Balbuena is the common-law-wife of the accused and mother of the victim Mari Grace Ortua;
- Accused, common-law-wife Cristeta Balbuena and the victim are living in the same house situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City;
- Accused is a barber;
- Accused has other daughter by the name of Marjorie Ort[o]a;
- The place of work of the accused is less than one (1) kilometer from the residence situated at 536 Calbayog St., Bgy. Highway Hills, Mandaluyong City[.][6]

Thereafter, trial on the merits ensued.

THE FACTS

As synthesized by the court a quo:

Prosecution's version:

Thirteen year-old Mary Grace Ortoa testified that on 3 April 2001, at about 4:00 p.m., she was in the house with her mother and her siblings when she left defecating. She told her mother that she had to go. Her mother and her siblings left the house to go to their auntie's house with was located in an alley nearby. The whole family lives in a 15 square-meter-long room of a two-storey shanty in Mandaluyong so that when one feels the call of nature, the whole family has to leave and the other member defecates in a plastic bag.

She didn't feel like relieving herself anymore right after her family left. Thereafter, her father, herein accused, Felix Ortoa, arrived and asked where her mother and siblings were. She told him they were in her tita's house. His [sic] father closed the windows and the door and asked her to undress. She did not accede so Ortoa removed her shorts and panty. He then asked her to spread her legs. When she did not obey, her father spread her legs. She told him she does not like it, her father replied "Sandali lang ito."

Thereafter, accused Ortoa, whose pants' zipper was open, mounted his daughter, Mari Grace and forced his penis in the latter's vagina. Mari Grace felt pain inside of her as her father made a push and pull movement while his penis was inserted in her vagina. After satisfying his beastly desires, Ortoa ordered Mari Grace to put on her panty and her shorts then he stood up and opened the door and the windows.

A few minutes later, her mother arrived and saw her lying on the make-shift bed. Her mother asked Ortoa what he was doing in the house. He replied there were not much customers in the barber shop where he works so he went home to rest. Ortoa stayed and rested in their house for an hour then left for work. Right after the accused left, Mari Grace's mother took the opportunity to ask her what happened and Mari Grace told her what transpired. She told her mother she was not yet ready to file a complaint against her father then because she was afraid of her father who ordered her not to tell anyone because "ano ang mangyayari sa pamilya natin kung magrereklamo ka?"

Mari Grace further testified that the 3 April 2001 incident was not the first time that her father sexually abused her. She was still very young when Ortoa began raping her. At first, he was just using his finger in her vagina. She did not tell her mother because then, at the age of three, she thought it was just a game, which her father was doing to her.

When Mari Grace was twelve years old, her father got her pregnant. Accused made her take medicines which eventually led to miscarriage. Her mother learned about this because she was constantly vomiting.

Ma. Cristeta Balbuena testified that she is the common-law wife of herein accused, Felix Ortoa and that Mari Grace, private complainant in this case, is their eldest daughter. On 3 April 2001, Mari Grace requested her and her two children to leave their house so that Mari Grace can relieve herself. Cristeta brought her children with her to the house of their Tita Ining who lives nearby. As Cristeta was conversing with her tita, she felt unusual so she immediately went home. She saw Felix Ortoa in front of the door of their house while Mari Grace was lying on the makeshift bed on the verge of crying with her shorts seemed to hastily pulled up.

Cristeta knew that Felix raped her daughter again because Mari Grace once confided to her that her father goes home at around 1:00 p.m. to 3:00 p.m. to wait for Mari Grace to go home. He would have the bed set up and before Mari Grace eats, he would first rape the latter.

Cristeta asked Ortoa why he was home. Ortoa retorted, "don't I have the right to be here? Why is your face like that again, as if you're always 'sinasalisihari?'"

After the confrontation, Ortoa left and Cristeta asked Mari Grace what happened. Mari Grace related the rape incident which just happened to her mother. Cristeta thereafter sought the help of Ortoa's employer, who made arrangements with the police for the arrest of accused and investigation of Mari Grace. She likewise accompanied Mari Grace to the medico-legal for her physical examination.

During the investigation at the police station, while both Mari Grace and Cristeta were crying as Mari Grace was relating her harrowing experience from the hands of her father, her other daughter Marjorie joined them and told her, "Ako rin po Ma, ginagawa din sa akin ni Papa iyong ginagawa niya kay Ate." Marjorie, who is ten years old, confided to Cristeta that her father was sexually abusing her since she was eight.

Dra. Ma. Cristeta Freyra testified that she conducted an examination on the person of Mari Grace Ortoa and issued Medico Legal Report No. M-234-01. Her examination of Mari Grace revealed a deep healed laceration at 5, 7 and 9 o'clock position inflicted by a hard blunt object, possibly an erected male organ, more than seven (7) days prior to the examination.

PO2 Sonia Gaviana, investigator of the Women's and Children Protection Office, testified that she investigated this case and that she took down the statement of Mari Grace Ortoa and the statement of the mother, Cristeta Balbuena. PO2 Gaviana further testified that she also prepared an arrest report and referral for medical examination of the victim.[7]

Defense' version:

The defense presented its lone witness in the person of accused Felix Ortoa. He claimed that she was arrested on 4 April 2001 because a complaint for rape against him had been filed by his own daughter, Mari Grace

Ortoa. He raised the defense of denial and alibi.

Ortoa testified that sometime in February 2000, his wife, Cristeta Balbuena and her daughter Mari Grace got angry at him when Cristeta caught him having a relationship with a certain Emily in the barbershop where he works and threatened to send him to prison. He testified that her daughter Mari Grace got pregnant by a certain Michael, the latter's boyfriend, but he denies knowing whether Mari Grace actually gave birth because from 1996 up to the time he was arrested in 2001, he stayed in his place of work in Shaw Boulevard, which accused described as very far from their house in Calbayog St., Mandaluyong.[8]

After the presentation of Appellant as witness, both the defense and the prosecution were ordered to submit their respective memoranda, after which, the case was submitted for decision.[9]

Giving credence to the evidence of the prosecution the court a quo rendered the Judgment, supra, subject of the instant review.

THE ISSUE

Before Us, Appellant interposed the lone assigned error, viz:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED RAPE.[10]

In support thereof, Appellant questions the credibility of the victim and her mother MA. CRISTETA BALBUENA (hereinafter CRISTETA) on the ground that they allegedly harbor resentment towards him (Appellant) due to the latter's illicit relationship and on his "strictness" to the victim.[11]

OUR RULING

Well-settled is the rule that an accusation is not synonymous with guilt. As our constitution puts it: every accused is presumed innocent until the contrary is proved. Hence, it is incumbent upon the prosecution to demonstrate the culpability of the accused and overthrow the presumption of innocence with proof beyond reasonable doubt, lest the Court should acquit him. However, once such crime is established, he must be impartially punished.

Upon the other hand, incestuous rape of a daughter by a father has always been bitterly and vehemently denounced as more than just a shameful and shameless crime. Indeed, rape is a nauseating crime that deserves the condemnation of all decent persons who recognize that a woman's cherished chastity is hers alone to surrender of her own free will. Whoever violates such chastity will descend to the level of the odious beast. And the act becomes doubly repulsive where the outrage is perpetrated on one's own flesh and blood, for the culprit is reduced to lower than the lowly animal, and forfeits all respect as a human being.[12]

The crime of Rape is defined and penalized under Article 266 of the Revised Penal Code, as amended by R.A. No. 7659, which provides:

Art. 266-A. When and how rape is committed. – Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

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

The crime of rape shall be punished by reclusion perpetua.

Art. 266-B. Penalties. ---- x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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

When the rape is committed by a father against his own daughter, like the case at bar, the father's parental authority and moral ascendancy over the daughter substitutes for violence or intimidation who, expectedly, would just cower in fear and resign to the father's wicked deeds.[13]

We have carefully scrutinized the records of this case and find no reversible error on the part of the court a quo in fully appreciating the evidence for the prosecution which satisfies and substantiates the aforementioned elements of the crime charged against the Appellant.

The pronouncement of the Supreme Court in *People of the Philippines vs. Honorio Mabunga*[14] is worth stressing, to wit:

Well-settled is the rule that conclusions as to credibility in rape cases lie heavily on the trial court. Unless there is a showing that the trial court had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case, the appellate court will not disturb the factual findings of the lower court. For, having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to gauge their credibility and properly appreciate the relative weight of the often conflicting evidence for both parties.

Hence, in this line, the pertinent findings of the court a quo are quoted as follows:

Affirming and confirming her accusation set forth in [sic] 5 April 2001 Sinumpaang Salysay (Exh. "A", "A-1") accusing her father of having raped her on 3 April 2001, Mari Grace testified as follows:Fiscal Tacla: Now what happened if there's anything that happened on April 3, 2001, at your residence?

Witness: "Pinatungan niya po ako," he raped me.

Fiscal Tacla: What did your father do first on that day?

Witness: He closed the windows and the door.

Fiscal Tacla: What happened next?

Witness: He asked me to undress, sir.

Fiscal Tacla: Your upper dress or what?

Witness: He told me to remove my panty and my shorts.

Fiscal Tacla: What did you do when you father told you to remove your shorts and panty?

Witness: I did not agree.

Fiscal Tacla: So nothing happened?

Witness: There was, sir.

Fiscal Tacla: What was it?

Witness: He told me to spread my legs, sir.

Fiscal Tacla: Did you spread your legs?

Witness: No, sir.

Fiscal Tacla: So, in other words, you were made to remove your shorts and panty?

Witness: My father removed my shorts and my panty and he told me to spread my legs.

Fiscal Tacla: Where were you at that time when your father told you to spread your legs?

Witness: I was lying on the makeshift, sir.

Fiscal Tacla: Did you comply when you were told by your father to spread your legs?

Witness: No, sir.

Fiscal Tacla: So nothing happened when you did not spread your legs?

Witness: He was the one who spread my legs, sir.

Fiscal Tacla: When these things were happening to you, what did you do if any?

Witness: I did not like it, sir.

Fiscal Tacla: Did you tell that to your father?

Witness: Yes, sir.

Fiscal Tacla: How did your father react when you said “ayaw mo”?

Witness: He said, “sandali lang ito”

Fiscal Tacla: While your legs were forcibly spread by your father, what did you do if any?

Witness: He went on top of me, sir.

Fiscal Tacla: When he was on top of you, were his pants on?

Witness: Yes, but the pants’ zipper was open.

Fiscal Tacla: What happened next when he opened the zipper?

Witness: He inserted his penis in my vagina.

Fiscal Tacla: How sure are you that he inserted his penis to your vagina?

Witness: I saw it and I feel it, sir.

Fiscal Tacla: How did you feel?

Witness: “Masakit”, sir.

Fiscal Tacla: Did you tell that to your father while he was performing that act?

Witness: Yes, sir.

Fiscal Tacla: How did your father react, if any?

Witness: He told me that, “sandali lang matatapos na.”

Fiscal Tacla: What happened when your father’s penis was inserted in your vagina?

Witness: “Yumuyogyog po siya.” (push and pull movement).

Fiscal Tacla: When your father was doing this push and pull movement, how did you feel?

Witness: It’s painful, sir.

Fiscal Tacla: In particular, where was the pain?

Witness: Inside my vagina, sir.

Fiscal Tacla: What could be the reason why you felt pain?

Witness: Because my vagina was moved.

Fiscal Tacla: Is it normal for you to feel pain?

Witness: Yes, sir.

Fiscal Tacla: Even without your father’s penis inserted in your vagina, you still feel pain?

Witness: Sometimes.

Fiscal Tacla: What is that pain all about?

Witness: It’s painful when I am urinating, sir.

Fiscal Tacla: Was that before or after the incident?

Witness: After sexual intercourse, sir.

Fiscal Tacla: How long did it take for your father to insert his penis in your vagina?

Witness: I do not know exactly how long.

Fiscal Tacla: Did it take the whole afternoon for your father to insert his penis?

Witness: No, sir.

Fiscal Tacla: Did your father finally took off his penis from your vagina?

Witness: Yes, sir.

Fiscal Tacla: When was that?

Witness: After he raped me.

Fiscal Tacla: After that, what happened next?

Witness: He ordered me to put on my panty and my shorts and then he stood up and opened the door and the

windows.

Fiscal Tacla: After that, what happened next?

Witness: Few minutes later my mother arrived.

Having observed the demeanor and deportment of minor Mari Grace, the Court finds her testimony straightforward, candid and convincing. With spontaneity, she narrated that before the bestial act was performed, her father, Felix, closed the windows and the door, asked her to remove her short and panty and told her to spread her legs. She resisted the preluding acts. Against her will, Felix spread her legs, opened the zipper and forcibly inserted his penis in her vagina.

Mari Grace did not merely say that she was raped. She was able to state in detail the circumstances under which her father inserted his penis into her vagina. She categorically declared that upon insertion of her father's penis in her vagina, he (Felix) was in a push and pull movement (yumuyogyog). Accused's insertion of his penis in Mari Grace's vagina constitutes sexual assault. There being sexual intercourse, or sexual bodily connection between accused and Mari Grace, the requisite carnal knowledge is convincingly proved. Carnal knowledge is defined as the act of man having sexual intercourse or sexual bodily connection with a woman. For this purpose, it is enough if there was even the slightest contact of the male sex organ with the labia of the victim's genitalia.[15]

Evidently, from the foregoing, the prosecution has sufficiently established with reasonable and moral certainty that degree of proof which produces conviction in an unprejudiced mind, that the Appellant had inflicted his animal greed on the victim in a disgusting coercion of incestuous lust.

Furthermore, in the light of the Appellant's admission during the trial[16] on the victim's minority and the latter's relationship with him, i.e., his daughter, coupled with the presentation in court of the victim's birth certificate[17], the elements of incestuous rape, supra had been aptly established.

Moreover, the result of the physical examination conducted on the victim by DR. MA. CRISTINA B. FREYRA, the Chief Medico-Legal Officer of the Philippine National Police Crime Laboratory, Eastern Police District, had in effect corroborated the victim's claim of sexual abuse on 3 April 2001. In her Medico-Legal Report No. M-234-01, she submitted the following pertinent findings:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are Hemispherical with pale brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of public hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 5, 7 and 9 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency. Xxx

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are NEGATIVE for gram-negative diplococci and for spermatozoa.[18]

We are not convinced by the stance of Appellant that the Victim and her mother were motivated to impute to him (Appellant) the crime charged because of their resentment towards him.

Surely, the victim would not have publicly disclosed that she had been raped by her own father and then undergo trial where she had to bare her traumatic and harrowing experience and be subjected to harassment, embarrassment and humiliation, unless she was really raped and her sole motive was to seek justice. She was thirteen (13), innocent, inexperienced, naive when raped. It is highly improbable for her against whom no proof of sexual perversity or loose morality had been shown to fabricate charges, much more against her own father. Thus, her credible testimony alone is sufficient to sustain the conviction of her ravisher. In fact it is entitled to greater weight since her accusing words are directed against her own father. As the Supreme Court ruled in *People vs. Roberto Abordo*[19], thus:

no woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and expose herself to humiliation as a result of a public trial if she is not motivated solely by a desire to vindicate her honor.

Additionally, it is axiomatic that where there is no evidence to indicate that the principal witness for the prosecution was actuated by any improper motive, the presumption is that she was not so actuated and her testimony is thus entitled to full faith and credit.[20]

Likewise, We sustain the court a quo's disregard of Appellant's defense of alibi. Appellant was positively identified by the victim.[21] It is a fundamental judicial dictum that the defense of alibi cannot prevail over the positive identification of the Appellant. Otherwise put, it is worthless in the face of positive identification.[22]

Besides, in order to establish an alibi, appellant must be able to demonstrate to the court's satisfaction that it was physically impossible for him to have been present at the time and in the place of commission of the crime.²³ Sadly, such is clearly wanting in the instant case. In fact, the distance between their house and the barbershop where Appellant was working was much less than a kilometer - an easier distance for Appellant to travel to and fro their house. In other words, Appellant failed to establish that it was impossible for him to have been at the place where the crime was committed at the time of its commission.

In conclusion, let us hear what the Supreme Court has to say on fathers who rape their own daughters, viz:

The man who violates his own progeny commits an act which runs against known biologic, legal and moral laws. Even some of the most primitive beasts protect their offspring with a fierceness which costs their own lives. By inflicting the primitive, bestial act of incestuous lust on his own blood, appellant deserves to forfeit his place in human society.

However, in the light of the abolition by the Congress of the Philippines of the Death Penalty (Republic Act No. 9346), the penalty of death imposed by the court a quo is reduced to Reclusion Perpetua.

WHEREFORE, premises considered, herein appeal is hereby DISMISSED for evident lack of merit and the assailed Judgment is hereby AFFIRMED with MODIFICATION imposing the penalty of RECLUSION PERPETUA upon the Appellant without possibility of parole.

SO ORDERED.

Reyes, and Lampas Peralta, JJ., concur.

[1] Rollo, page 118, Appeal transferred to the Court of Appeals pursuant to S.C. En Banc Resolution dated 26 July 2005 citing *People vs. Efren Mateo y Garcia*, G.R. No. 147678-87 dated 7 July 2004.

[2] Records, pp. 453 - 470

[3] Records, pp 468- 469

[4] Rollo, page 5

[5] Records, page 33

[6] Records, pp 53-54

[7] Records, pp 454- 456

[8] Records, page 457

[9] Records, page 431

[10] Rollo, page 55

[11] Rollo, page 58

[12] *People vs. Mabunga*, GR No. 96441, 13 November 1992

[13] *People vs. Rodriguez*, 375 SCRA 233

[14] GR No. 96441, 13 November 1992

[15] Rollo, pp 457-461

[16] TSN, 5 June 2003; Records, page 405

[17] Records, page 16

[18] Records, page 386

[19] GR No. 80437-38, 11 July 1996

[20] *People vs. Alfeche*, GR No. 124213, 17 August 1998

[21] TSN, 30 June 2001; Records, page 106

[22] *People vs. Bracamonte*, GR No. 95939, 17 June 1996

[23] *People vs. Melivo*, GR No. 113029, 8 February 1996

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