

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO GEROLA Y AMAR ALIAS “FIDEL”, ACCUSED-APPELLANT.

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Himamaylan City, Negros Occidental, Branch 55 in Criminal Case Nos. 1213, 1214 and 1215 dated January 28, 2010[2] and promulgated on April 21, 2010[3] convicting the accused-appellant of three counts of Rape defined and penalized under Art. 266-A, paragraph 1 of the Revised Penal Code as amended by R.A. 8353 in relation to R.A. 7610.

Factual and Procedural Antecedents

In three (3) separate informations, appellant was charged with three (3) counts of Rape allegedly for having carnal knowledge with private complainant AAA[4] through the use of force, threat or intimidation sometime in the year 1998, 1999 and on January 9, 2000, to wit:

In Criminal Case No. 1213[5]

“That sometime in July of 1999, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA[6], a minor, 11 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.”

In Criminal Case No. 1214[7]

“That sometime in the year 1998, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA, a minor, 10 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.”

In Criminal Case No. 1215[8]

“That on or about the 9th day of January, 2000, in the Municipality of Himamaylan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, taking advantage of his moral ascendancy being the step-father of herein victim AAA[9], a minor, 12 years old, did then and there, willfully, unlawfully and feloniously have carnal knowledge of the latter, against her will.

CONTRARY TO LAW.”

When arraigned, appellant pleaded “Not Guilty” to the crimes charged. During the trial, the prosecution presented the private complainant AAA, Dr. Medardo Estanda, private complainant's mother, MMM, and PO3 Bibiana Ramos, as witnesses.[10]

On the other hand, the defense presented appellant himself.[11]

As rebuttal evidence, the prosecution likewise presented Elenita Gerola and Leonardo Puertas.[12]

Version of the Prosecution

Private complainant AAA was born on July 5, 1987.[13] She was a minor when all three (3) acts of rape were committed. She was 11 years old when the first act of rape occurred sometime in the year 1998. The second act of rape happened sometime in the year 1999 when she was 12 years old and the third time was in January 2000 when she was 12 years and 6 months of age.[14] At the time all three (3) acts of rape occurred, she was living in the same house in Barangay Libacao, City of Himamaylan in San Jose with her full-blood sister, her half-siblings (children of her mother and step-father), her mother MMM and AAA's step-father, accused-appellant Federico Gerola.[15]

Sometime in 1998 at around 8:30 in the evening, AAA and her sisters were sleeping.[16] Her mother was in the hospital tending to her aunt who had just delivered a baby.[17] At that time, appellant crawled towards AAA.[18] Accused-appellant told AAA to keep quiet, lie down and remove her underwear.[19] AAA tried to resist but appellant gestured to box her. AAA tried to shout but he covered her mouth. After removing her underwear, accused also removed his brief and laid on top of AAA. Appellant inserted his penis into her vagina. AAA bled and felt pain.[20] AAA did not tell her mother about the incident because appellant threatened her of maltreating them if she did so.[21]

In July 1999 at around 9:30 in the evening, AAA was raped for the second time. While she was sleeping in bed, appellant sat beside her and removed her underwear.[22] He then inserted his penis into her vagina. The victim felt pain and bled.[23] At that time, AAA's mother was in the Himamaylan hospital tending to her grandmother.[24] Again, she did not tell her mother due to appellant's threat to maltreat her mother.[25]

In January of the year 2000, appellant did the same act of having carnal knowledge with AAA for the third time. This was done at around 2:30 in the morning and lasted for about thirty (30) minutes while everyone else in the house was sleeping.[26] AAA's mother was away from home to tend to the latter's younger sister who gave birth.[27] Like the other incidents, AAA did not tell her mother. Instead, AAA told her friend who advised her to tell their teacher.[28] AAA then narrated the incident to her teacher, Mrs. Rafil, who summoned her mother and told her what happened. When her mother learned of her daughter's ordeal, she cried. AAA's aunt Elen accompanied the victim to the Barangay Captain and reported the rape incidents.[29] Appellant was then fetched by the Barangay Captain and thereafter brought to the police station where the appellant was detained.[30]

On February 7, 2000, AAA was examined by Dr. Medardo Estanda who made a written case report and anatomical sketch of the victim pursuant to the incidents that occurred.[31] The report indicated that there were penetrations on the organ of the victim which had hymenal lacerations at 5, 6 and 12 o'clock positions.[32]

Version of the Appellant

Accused-appellant Federico Gerola y Amar alias Fidel testified that he was married to MMM, the private complainant's mother, in the year 1996 and they begot four (4) children. The family which was composed of his wife and himself, their four children and a child of MMM by her first marriage were living in San Jose Valing, Barangay Libacao, Himamaylan City. The other child of MMM by her first husband, AAA, lived with her aunt

Erlita Aguirre.

As a cane laborer, accused-appellant worked in the sugarcane field and sometimes in the rice field. Since 1998 up to 2000, AAA was living with the latter's aunt Erlita Aguirre in a separate house because she was going to school in San Jose.

Accused-appellant testified that he was not in good terms with Dodoy Puertas, the brother-in-law of his wife MMM, because Puertas was not in favor of their marriage. Accused-appellant recalled that when he and MMM asked permission from Dodoy Puertas about their plan to get married, Puertas did not give consent and merely said "I don't know". Appellant further testified that MMM and Dodoy Puertas initiated the filing of the criminal cases against him because MMM and Puertas have an illicit affair and both live together in Mirasol.

Findings of the trial court

On January 28, 2010, the trial court rendered its Decision convicting accused-appellant as charged. The trial court ruled that the prosecution was able to establish by clear and convincing evidence that indeed, the accused had carnal knowledge with the victim.

The trial court gave full faith and credit to AAA's testimony and ruled after finding that the victim testified in a candid manner how her step-father had consummated the three acts of rape despite the presence of her sleeping siblings.

The trial court further ruled that AAA's accusations were bolstered by the medical findings of the doctor who conducted the medical examination on the private complainant.

The dispositive portion of the said Decision reads:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Federico Gerola y Amar alias "Fidel" "GUILTY" beyond reasonable doubt of the three counts of Rape as charged against him. Since the death penalty is suspended, the Court hereby sentences the accused to three (3) penalties of Reclusion Perpetua, without eligibility of parole.

The accused is further ordered to pay the private complainant, AAA[33], moral damages in the amount of Fifty Thousand Pesos (Php50,000.00) for each case; civil indemnity in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case; and exemplary damages in the amount of Twenty-Five Thousand Pesos (Php25,000.00) for each case.

SO ORDERED."

Accused-appellant timely filed a Notice of Appeal[34] on April 28, 2010, which was given due course by the trial court in its Order dated May 25, 2010[35].

This court received the records of this case on December 8, 2010[36]. On January 14, 2011, a Notice to File Brief[37] was sent to the parties. Appellant filed his brief[38] on August 15, 2011, while the appellee filed brief[39] on May 28, 2012. This case was declared submitted for decision on January 21, 2014.

Assignment of Errors

Accused-appellant Gerola makes the following assignment of error:

"The trial court erred in convicting accused-appellant giving credence to the testimonies of prosecution witnesses which are replete of inconsistencies and contradictions."

Otherwise stated, appellant is imputing error on the part of the RTC for relying on AAA's inconsistent testimony

and thereafter convicting him despite the prosecution's failure to rebut the presumption that he is innocent.

Appellant's Arguments

The accused-appellant contends that the trial court overlooked certain facts of substance pertaining to the credibility of complainant-witness AAA, which, if considered, will affect the result of this case.

The accused-appellant points to allegedly material and substantial inconsistencies in the testimony of private complainant, particularly on private complainant's imperfect recollection as to when and in what year the first incident of rape occurred. This substantial discrepancy of time, appellant argues, should not have been ignored by the trial court as it creates doubt on the credibility of AAA. Moreover, it was error on the part of the trial court to have ignored AAA's failure to promptly disclose her defilement to the authorities or to persons close to her.

Finally, the accused-appellant argues, where two conflicting probabilities arise from the evidence, as in this case, the one compatible with the presumption of innocence will be adopted. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment of the abuser. While courts ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, magistrates should equally bear in mind that their responsibility is to render justice in accordance with law.

Appellee's Arguments

The appellee on the other hand argues that the prosecution more than sufficiently proved the guilt of appellant beyond reasonable doubt for three (3) counts of rape. The alleged inconsistencies and contradictions in private complainant's testimony are too inconsequential to the issue of rape and do not affect her credibility.

What is decisive in a rape charge, the appellee argues, is that the commission of the rape by appellant against complainant has been sufficiently proven. Inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. Thus, the trial court was correct in giving full faith and credit to the testimony of AAA.

Anent accused-appellant's allegation that there was delay in reporting the subject offenses, the same lacks merit. The appellee argues that delay in reporting an incident of rape is not an indication of fabricated charge nor does it cast doubt on the credibility of the complainant as it is not uncommon for young girls to conceal for sometime the assault on their virtue because of the rapist's threat on their lives.

Ruling of this Court

After a careful and independent review of the records of this case, this Court finds the accused-appellant's appeal to be devoid of merit.

Gerola was charged with Rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

Article 266-A. Rape, When and How Committed. - Rape is committed:

- 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
 - a) Through force, threat, or intimidation;
 - b) When the offended party is deprived of reason or is otherwise unconscious;
 - c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

ART. 266-B. Penalties. - Rape under paragraph 1 of the next preceding article 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 aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

Accused-appellant Gerola is trying to discredit AAA by enumerating several points against her. Appellant claims that AAA's inconsistent and contradictory testimony, particularly on the actual year when the first incident of rape occurred, is a clear indication that she merely concocted her story of rape.

The Supreme Court has consistently ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[40] The inconsistencies appellant Gerola are referring to are frivolous matters, which merely confused AAA when she was being questioned. Those matters are inconsequential. Thus, such trivial and insignificant discrepancies, which in this case were immediately clarified upon further questioning, will warrant neither the rejection of her testimony nor the reversal of the judgment.[41]

The Supreme Court has likewise ruled that it is not unnatural for a rape victim, especially one who is of tender age, to make inconsistent statements. So long as the testimony is consistent on material points, slightly conflicting statements will not undermine the witnesses' credibility nor the veracity of her testimony. In fact, they tend to buttress, rather than impair, her credibility as they erase any suspicion of a rehearsed testimony. A witness is not expected to remember with perfect recollection every minute detail of her harrowing experience. A minor mistake as to the exact time of the commission of the rape is immaterial and cannot discredit the testimony of a witness.[42]

Accused-appellant Gerola insists that AAA's actions, of not immediately reporting that she was raped, belie her claim of sexual abuse.

However, it is not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant. A rape charge only becomes doubtful when the victim's inaction or delay in reporting the crime is unreasonable or unexplained.[43] In the case at bar, AAA testified that she did not immediately report the crime because she was afraid of her stepfather. It must be noted that AAA was only a child when Gerola started molesting her. Furthermore, it is settled jurisprudence that delay in filing a complaint for rape is not an indication of falsehood, viz:

The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[44]

Anent AAA's behavior after the rapes, suffice it to say that there is no one standard reaction that can be expected from a victim of a crime such as rape. Elucidating on this point, the Supreme Court, in *People v. Saludo*,[45] held:

Not every victim of rape can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; people react differently. Some may shout, some may faint, while others may be shocked into insensibility. And although the conduct of the victim immediately following the alleged sexual assault is of utmost importance as it tends to establish the truth or falsity of the charge of rape, it is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination.[46] These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing.[47] As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.[48]

Appellant Gerola's denial is coupled with the attribution of ill motive against AAA and the latter's mother MMM. Appellant claims that the truth behind AAA's filing of these cases is that AAA's mother MMM used her daughter in filing purely trumped up rape charges and presented a prevaricated testimony in order to have accused-appellant incarcerated, thus, giving the latter's wife, the private complainant's mother, MMM, the opportunity to freely pursue her illicit affair with one Dodoy Puertas.

The accused-appellant's contention deserves scant consideration for being unsupported by the evidence on record. Apart from appellant's own words, the defense presented no other witness to corroborate the appellant's elaborate tale of adultery and betrayal as the prime mover behind the filing of rape cases against him. Not only is the appellant's tale so convoluted it is also inconsistent with natural human experience.

The trial court, in disregarding accused-appellant's defense of denial ruled, to wit:

"[N]o mother in her right mind would subject her own offspring to shame and ridicule and wish to stamp her child with the stigma that follows a despicable crime of rape only for (the) purpose of satisfying her lust and continue her (MMM) adulterous relationship with Dodoy Puertas. 'No mother in her right mind would use her offspring as an engine of malice'. (People vs. Antinola, 421 SCRA 587)."

This court finds the trial court's disquisition to be both sound and consistent with jurisprudence. AAA's credibility cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her step-father solely by reason of ill motives on the part of the victim's mother.[49] Besides, even if the private complainant's mother was indeed having improper relations with a man other than her husband, the same cannot erase the fact that the twelve-year old AAA was raped by her step-father, an accusation

that was solidified not only by the testimonial evidence given by the private complainant but also fully supported by medical findings presented in court through the testimony of Dr. Medardo Estanda.

Gerola's defense of denial must necessarily fail. It is a well-settled doctrine that such defense will only prosper upon the presentation of clear and convincing evidence substantiating it. Otherwise, it is a self-serving assertion that deserves no weight in law, and which cannot prevail over the positive, candid, and categorical testimony of the complainant.[50]

Finally, this Court notes that the trial court, the Public Attorney's Office, which represents accused-appellant and the Office of the Solicitor General all failed to abide by the Supreme Court's ruling in *People vs. Cabalquinto*[51] and repeatedly revealed in their pleadings the true identities of the private complainant in this case as well as the identity of the private complainant's mother. In *Cabalquinto*, the Supreme Court had occasion to effectuate the provisions of Republic Act No. 7610 (RA 7610), otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, and its implementing rules, RA 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and its implementing rules, and our own Rule on Violence Against Women and their Children.

The provisions on confidentiality of these enactments uniformly seek to respect the dignity and protect the privacy of women and their children. Sec. 29 of RA 7610 provides:

Sec. 29. Confidentiality. — at the instance of the offended party, his name may be withheld from the public until the court acquires jurisdiction over the case. It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in the case of television and radio broadcasting, producer and director in the case of the movie industry, to cause undue and sensationalized publicity of any case of a violation of this Act which results in the moral degradation and suffering of the offended party.

Sec. 44 of RA 9262 similarly provides:

Sec. 44. Confidentiality.—All records pertaining to cases of violence against women and their children including those in the barangay shall be confidential and all public officers and employees and public or private clinics or hospitals shall respect the right to privacy of the victim. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer, or other identifying information of a victim or an immediate family member, without the latter's consent, shall be liable to the contempt power of the court. Any person who violates this provision shall suffer the penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand Pesos (P500,000.00).

Likewise, the Rule on Violence Against Women and their Children states:

Sec. 40. Privacy and confidentiality of proceedings.—All hearings of cases of violence against women and their children shall be conducted in a manner consistent with the dignity of women and their children and respect for their privacy. Records of the cases shall be treated with utmost confidentiality. Whoever publishes or causes to be published, in any format, the name, address, telephone number, school, business address, employer or other identifying information of the parties or an immediate family or household member, without their consent or without authority of the court, shall be liable for contempt of court and shall suffer the penalty of one year imprisonment and a fine of not more than Five Hundred Thousand (P500,000.00) Pesos.

Thus, in *Cabalquinto* and in all cases thereafter, the courts are enjoined to withhold the real name of the victim-survivor and instead use fictitious initials to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members may not be disclosed.

WHEREFORE, the appeal is hereby DENIED. The Decision of the Regional Trial Court of Himamaylan City,

Negros Occidental Branch 55 in Criminal Case Nos. 1213, 1214 and 1215 dated January 28, 2010 is hereby AFFIRMED in its entirety.

SO ORDERED.

Francisco, R.C., and Lopez, J.Y.,[*] JJ., concur.

[1] Penned by Hon. Franklin J. Demonteverde, Presiding Judge.

[2] Pages 356-362, original record of Crim. Case No. 1213.

[3] Page 363, original record of Crim. Case No. 1213.

[4] Pseudonym in lieu of private complainant's true identity in compliance with Sec. 29 of RA 7610.

[5] Page 1, original record of Crim. Case No. 1215.

[6] Pseudonym in lieu of private complainant's true identity in compliance with Sec. 29 of RA 7610.

[7] Page 1, original record of Crim. Case No. 1214.

[8] Page 15, original record of Crim. Case No. 1213.

[9] Pseudonym in lieu of private complainant's true identity in compliance with Sec. 29 of RA 7610.

[10] TSN's dated September 18, 2001, November 8, 2002, May 23, 2003 and July 12, 2006,

[11] TSN dated January 30, 2008.

[12] TSN dated September 9, 2009.

[13] TSN dated May 23, 2003, p. 7 referring to the victim's birth certificate (Exhibit "E").

[14] TSN dated October 23, 2001, pp. 13-15.

[15] TSN September 18, 2001, pp. 5-7; TSN dated May 23, 2003, pp. 9-10.

[16] September 18, 2001, pp. 7-8; TSN dated October 23, 2001, p. 14.

[17] Ibid, p. 8 and 11.

[18] Ibid, p. 15.

[19] Ibid.

[20] Ibid, p. 16.

[21] Ibid, p. 8.

[22] TSN dated September 18, 2001, pp. 11, 17 and 19.

[23] Ibid, at p. 15.

[24] Ibid, at p. 11.

[25] Ibid, at p. 12.

[26] Ibid, at p. 18.

- [27] TSN, dated May 23, 2003, p. 18; TSN dated September 18, 2001, p. 20.
- [28] TSN, dated May 23, 2003, pp. 20-21.
- [29] TSN dated September 18, 2001, p. 22.
- [30] TSN dated September 18, 2001, pp. 22-23.
- [31] Ibid, pp. 4-5.
- [32] Ibid, pp. 4-5.
- [33] Pseudonym in lieu of private complainant's true identity in compliance with Sec. 29 of RA 7610.
- [34] Pages 202-203, original record of Crim. Case No. 1213.
- [35] Page 366, original record of Crim. Case No. 1213.
- [36] Page 3, rollo.
- [37] Page 25, rollo.
- [38] Pages 33-50, rollo.
- [39] Pages 78-93.
- [40] People v. Cabungan, G.R. No. 189355, January 23, 2013.
- [41] People v. Cabungan, G.R. No. 189355, January 23, 2013.
- [42] People vs. Reynaldo Bares, G.R. Nos. 137762-65, March 27, 2001, People vs. Nilo Ramos, G.R. No. 115656, June 27, 1995.
- [43] People v. Cabungan, G.R. No. 189355, January 23, 2013.
- [44] People v. Gecomio, 324 Phil. 297, 314-315 (1996).
- [45] G.R. No. 178406, April 6, 2011, 647 SCRA 374, 394.
- [46] People vs. Zafra, G.R. No. 197363, June 26, 2013.
- [47] People vs. Zafra, G.R. No. 197363, June 26, 2013.
- [48] People v. Sapigao, Jr., G.R. No. 178485, September 4, 2009, 598 SCRA 416, 425-426.
- [49] People v. Acala, 366 Phil. 797, 814 (1999).
- [50] People v. Dion, G.R. No. 181035, July 4, 2011, 653 SCRA 117, 135.
- [51] G.R. No. 167693, September 19, 2006 (Formerly G.R. Nos. 147678-87)

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